

PRISONERS' RIGHTS ISSUES IN THE ASPECT OF HUMAN RIGHTS PROTECTION UNDER THE CONDITIONS OF THE CORONAVIRUS DISEASE PANDEMIC (COVID-19)

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Abstract

Under the conditions of the global pandemic, the problem of international legal regulation of relations in the field of human rights and freedoms becomes extremely relevant. It must be recognized that the pandemic and its socio-economic consequences will have a disproportionate and detrimental effect on the rights of women, children, the elderly, refugees, migrants, displaced persons and the others in at-risk population group. In this situation, the problem of respect for rights of persons in detention facilities deserves special attention. After all, when a person gets into prison, he actually becomes isolated not only from the society, but also from the opportunity to exercise his constitutional rights and freedoms.

The purpose of this research is to review the problem of human rights and freedoms restriction under the conditions of the global pandemic in terms of the execution of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and the case law of the European Court of Human Rights, as well as identification and delineation of the problem areas such as detention facilities containing prisoners who are in fact an at-risk group for the Coronavirus disease (COVID-19) spread, and in which, despite the relative control of the whole system, it will be very difficult to stop the spread of the disease in case of its spread in these institutions.

Proceeding from this goal, we want to draw attention to the observation of international legal requirements for the legitimacy of human rights and freedoms restrictions in the global pandemic, as well as the Coronavirus disease spread in detention facilities, disclose the content of international legal acts containing specific measures and recommendations, which may be useful in their implementation in the penitentiary institutions practice to prevent the uncontrolled spread of COVID-19.



Keywords

Prisoners' rights; pandemic; COVID-19; Council of Europe; Convention for the Protection of Human Rights and Fundamental Freedoms; European Court of Human Rights

Resumo

Nas condições da pandemia global, o problema da regulação jurídica internacional das relações no domínio dos direitos humanos e das liberdades torna-se extremamente relevante. Há que reconhecer que a pandemia e as suas consequências socioeconómicas terão um efeito desproporcionado e prejudicial sobre os direitos das mulheres, crianças, idosos, refugiados, migrantes, pessoas deslocadas e os outros pertencentes a um grupo populacional em risco. Nesta situação, o problema do respeito pelos direitos das pessoas em centros de detenção merece uma atenção especial. Quando uma pessoa entra na prisão, fica na realidade isolada não só da sociedade, mas também da oportunidade de exercer os seus direitos e liberdades constitucionais.

O objectivo desta investigação é rever o problema da restrição dos direitos humanos e das liberdades nas condições da pandemia global em termos da execução da Convenção para a Protecção dos Direitos Humanos e Liberdades Fundamentais de 1950 e da jurisprudência do Tribunal Europeu dos Direitos do Homem, bem como a identificação e delimitação das áreas problemáticas, tais como as instalações de detenção contendo prisioneiros que são de facto um grupo de risco para a propagação da doença do Coronavírus (COVID-19), e nas quais, apesar do controlo relativo de todo o sistema, será muito difícil parar a propagação da doença no caso da sua propagação nestas instituições.

Partindo deste objectivo, queremos chamar a atenção para a observação dos requisitos legais internacionais para a legitimidade das restrições de direitos humanos e liberdades na pandemia global, bem como a propagação da doença do Coronavírus em instalações de detenção, divulgar o conteúdo de actos legais internacionais contendo medidas e recomendações específicas, que podem ser úteis na sua implementação na prática das instituições penitenciárias para impedir a propagação descontrolada da COVID-19.

Palavras-chave;

Direitos dos prisioneiros; pandemia; COVID-19; Conselho da Europa; Convenção para a Protecção dos Direitos Humanos e Liberdades Fundamentais; Tribunal Europeu dos Direitos do Homem.

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Introduction

The rapid spread of the coronaviral disease has led to the fact that on March 11, 2020. The World Health Organization (WHO) declared a global pandemic. At the request of the WHO, with concerns about alarming levels of the disease spread and the seriousness of the situation, many governments around the world have begun urgent and severe measures to stop the spread of the virus, which considerably restricted human rights and freedoms.

First of all, such restrictions on human rights and freedoms concern the right to respect for private life; restrictions on the right to work and get salary (many people are forced to go on leave of absence, especially parents of young children due to schools and kindergartens closure); restriction of the right to freedom and personal security - forced placement of citizens in observations; restrictions of the civil right to freedom of movement: prohibition for certain categories to move across the state border and check points, cancellation of transport connections; restriction of the right to exercise the freedom of peaceful assembly - prohibition to gather more than a certain number of people; restriction of the right to education - prohibition to attend educational institutions; restriction of the right to freedom of religion - prohibition of religious events; restriction of the right to access to medical care - temporary suspension of planned hospitalization measures and planned operations, except for urgent and acute ones, etc.

The coronavirus pandemic is an unprecedented global emergency. The epidemiologic situation in many countries of the world has forced governments to take unprecedented measures to stop the rapid spread of the disease. But even with stern measures, some facilities are still unnoticed by governments and society, while being one of the most dangerous sources of the disease. Such institutions, first of all, include detention facilities.



Prisoners are considered to be at-high risk individuals of the incidence of the disease, because detention facilities are overcrowded accommodation of people who are recognized as sources of the spread of dangerous infectious diseases such as tuberculosis, hepatitis and AIDS, and now the coronavirus disease (COVID-19).

In order to create and ensure a favorable environment for persons to be held in detention facilities, states must fulfill a number of positive obligations, set out in the relevant international legislation and decisions of the European Court of Human Rights. These obligations should be effective and timely and should be designed taking into account the specific dangers of the coronavirus disease (COVID-19).

Restrictions on human rights according to the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950

Restrictions on human rights and freedoms imposed by the governments of the member states of the Council of Europe have a direct impact on the exercise of rights and freedoms according to the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950.¹

As a result of the COVID-19 pandemic, 10 states out of 47 member states of the Council of Europe have so far declared their intention to derogate provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950: Latvia, Romania, Moldova, Armenia, Estonia, Georgia, Albania, Northern Macedonia, Serbia and San Marino (the list is updating²). Latvia and Romania were the first countries to derogate from the obligations according to this Convention on 16 and 18 March 2020, respectively.

In this case we are talking about a retreat ("derogation" - the contractual right of the state to derogate from certain contractual obligations during armed conflicts and other social dangers threatening the life of the nation³) from certain provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the possibility of which is provided by its Article 15.⁴ The state notifies the Secretary General of the Council of Europe that the measures it takes may derogate from its obligations according to the Convention. Such a derogation is possible only within the limits required by the seriousness of the situation. Providing that such measures do not contradict with its other obligations according to the international law.

However, according to the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, there are inalienable rights, "derogation" in respect of which is impossible in any case: the right to life (except in cases of death as a result of lawful military activities), prohibition on torture and the other kinds of improper

¹ Convention for the Protection of Human Rights and Fundamental Freedoms / Council of Europe. European Convention on Human Rights. URL: <https://www.echr.coe.int/Pages/home.aspx?p=basictexts>

² Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5). Notifications under Article 15 of the Convention in the context of the COVID-19 pandemic. URL: <https://www.coe.int/en/web/conventions/derogations-covid-19>

³ Khrystova G. Derogation from state's human rights obligations in time of public emergency. Visegrad Journal on Human Rights. 2018. № 4 (2). C. 119-126. URL: https://journal-vjhr.sk/wp-content/uploads/2020/12/Vyshegrad-4_2018_Tom-2.pdf

⁴ Convention for the Protection of Human Rights and Fundamental Freedoms / Council of Europe. European Convention on Human Rights. URL: <https://www.echr.coe.int/Pages/home.aspx?p=basictexts>



treatment, prohibition on slavery and forced labor, and prohibition on cruel and unusual punishment.

First of all, while introducing a state of emergency as a result of a "public danger threatening the life of the nation" the state's response has to be based on factual data and not conditioned by political pressure or the need to do something. There must be a clear scientific and medical feasibility for emergency measures.

Equally important is the need to use the legislation to achieve the ultimate goal. It is necessary to prove that the recommendations, soft obligations and rationing arrangements will not work and the enforcement of a qualitative law is necessary.

Proceeding from the case law of the European Court of Human Rights (ECHR) on the violation of such rights in the context of Article 15 of the Convention, whenever an applicant complains that his rights according to the Convention have been violated during the derogation period, firstly the Court examines whether the measures taken can be justified according to the main articles of the Convention; and only if they cannot be justified in this way the Court proceeds to determine whether the derogation from obligations was lawful (for example, Case of Lawless v. Ireland (N^o 3, 1961)).⁵

In its advice on the application of Article 15 of the Convention, the ECHR stated that due attention was paid to factors such as: the nature of the rights affected by the derogation; circumstances leading to a state of emergency and its duration (Case of Brannigan and McBride v. the United Kingdom, 1993⁶ and Case of A. and Others v. the United Kingdom, 2009⁷); whether ordinary legislation would be sufficient to deal with the threat posed by public danger; whether the measures are an actual response to a state of emergency; whether the measures were used for the purpose they were authorized for; whether safeguards against abusive practice were provided.

Therefore, in the context of the human rights and freedoms restriction in the territory of the member states of the Council of Europe and the propriety of the interference limits of such rights, it is necessary to establish whether there was a public danger, whether measures were taken in response to the threat and whether national legislation was sufficient.

It is publicly available and acknowledged, primarily due to the WHO decision, that coronavirus infection is recognized as a pandemic, i.e a threat and a public danger, so it will be less controversial and problematic to prove the existence of one of the elements of Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950.

Taking into account the numerous case law of the ECHR regarding state interference in human rights, the Court notes that in order for the interference to be justified, three factors are necessary:

⁵ Case of Lawless v. Ireland (No. 3), 1961 / European Court of Human Rights. URL: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57518%22%7D>

⁶ Case of Brannigan and McBride v. the United Kingdom, 1993 / European Court of Human Rights. URL: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57819%22%7D>

⁷ Case of A. and Others v. the United Kingdom, 2009 / European Court of Human Rights. URL: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-91403%22%7D>



- qualitative law - national legislation must be clear, predictable and properly accessible (Case of Silver and Others v. the United Kingdom, 1983 [1]⁸). The requirement of clarity is used to determine the extent of discretionary powers public authorities are vested with. The national law must reasonably and clearly define the amount and manner of relevant exercising of power and authority laid upon public authorities in order to guarantee individuals the minimum level of protection they are given in a democratic society in accordance with the rule of law (Case of Piechowicz v. Poland, 2012⁹);
- a legitimate justified goal - the establishment of specific, measurable, achievable, realistic and time-bound goals to change and improve the situation in the future;
- social necessity - the correspondence of the balance of rights of one person with the balance of the rights of the whole nation to the healthy existence and a safe environment. The balance of individual and public health convenience is reflected in the Case of Solomakhin v. Ukraine, 2012¹⁰, where the Court noted that the violation of the applicant's physical integrity can be considered justified by public health considerations and the need to control the spread of the infectious disease in the area.

It should be noted that the ECHR first of all pays attention to the existence of a qualitative law, as its absence automatically indicates non-compliance of a justified goal and social necessity. The conclusion that such a measure does not comply with the law is sufficient for the Court to find that the violation took place. Therefore, there is no need to check whether the intervention pursued a "legitimate objective" or was "necessary in a democratic society" (Case of M.M. v. the Netherlands, 2003¹¹).

By the way, there is a point of view that the fight against the pandemic does not require to derogate from the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. According to this line of thinking, rationing agreements imposed by states can be justified by reference to the possibility of state interference in the certain rights exercise, which are enshrined in the text of the Convention and repeatedly explained in the case law of the ECHR.¹²

According to Mykola Gnatovskyy, who was the first Vice-President of the Ukrainian Association of International Law and President of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and who now is the judge of the European Court of Human Rights (ECHR), when in the case of the

⁸ Case of Silver and Others v. the United Kingdom, 1983 / European Court of Human Rights. URL: [https://hudoc.echr.coe.int/eng#{%22tabview%22:\[%22document%22\],%22itemid%22:\[%22001-57577%22\]}](https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-57577%22]})

⁹ Case of Piechowicz v. Poland, 2012 / European Court of Human Rights. URL: [https://hudoc.echr.coe.int/eng#{%22tabview%22:\[%22document%22\],%22itemid%22:\[%22001-110499%22\]}](https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-110499%22]})

¹⁰ Case of Solomakhin v. Ukraine, 2012 / European Court of Human Rights. URL: [https://hudoc.echr.coe.int/eng#{%22tabview%22:\[%22document%22\],%22itemid%22:\[%22001-109565%22\]}](https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-109565%22]})

¹¹ Case of M.M. v. the Netherlands, 2003 / European Court of Human Rights. URL: [https://hudoc.echr.coe.int/eng#{%22tabview%22:\[%22document%22\],%22itemid%22:\[%22001-61002%22\]}](https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-61002%22]})

¹² Sean Molloy. Covid-19 and Derogations Before the European Court of Human Rights / Verfassungsblog on matters constitutional. 10.04.2020. URL: <https://verfassungsblog.de/covid-19-and-derogations-before-the-european-court-of-human-rights/>



COVID-19 pandemic the European Court of Human Rights (if there is such an opportunity) will estimate the correspondence of agreements of the Convention taken both by the states that declared a "derogation" and those that remained silent, the Court is unlikely to appear excessively formalistic. It is more likely that the propriety of taken measures will be assessed first. It should also be remembered that one of the first duties of a state to all persons under its jurisdiction is to protect their lives and health, as the ECHR has repeatedly emphasized in the context of the positive obligations of states according to Article 2 of the Convention on the Protection of Human Rights and Fundamental Freedoms in 1950.

Prisoners' rights protection during the pandemic

The crisis caused by the pandemic instantly reveals weaknesses in all spheres of social life, starting from the organization of public health. And when it comes to people in detention facilities, by definition the situation will be even more acute. Firstly, when a person is placed in detention facilities by a state decision, the state has an increased obligation to care for that person: his life, health and other needs. Everything bad that happens to a person in detention facilities due to the lack of necessary care on the part of the state is the responsibility of the latter. In this regard, the UN Human Rights Committee in its Concluding Observations on Moldova clearly stated that the inability of the state to take positive steps to prevent the spread of infectious diseases in detention facilities would signify a violation of Article 6 (the right to life) and Article 9 (the right to freedom). International Covenant on Civil and Political Rights of 1966.¹³ Thus, a state that has ratified the Covenant is obliged to take the necessary measures to prevent the spread of COVID-19 in detention facilities, and any refusal would violate its obligations under the International Covenant on Civil and Political Rights of 1966.

Secondly, detention facilities often have an increased risk of inappropriate treatment of detainees. It is difficult to generalize, because the nature of the problems, such as, with the treatment of detainees on suspicion of committing a crime, taken into custody, those who are on preventive detention and, such as, the treatment of involuntary patients in psychiatric hospitals or residents of psychoneurological institutions have a lot of differences. However, all these problems are united by contempt, sometimes systemic, for the dignity of these people, which creates significant potential for a violation of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, which prohibits torture, inhuman or degrading treatment or punishment. Access to such closed institutions by independent monitoring bodies, both international and national, is one of the most important means of preventing infringement on the dignity of persons in detention. This access by human rights bodies and organizations must be guaranteed even during an epidemic.

At the same time, human rights defenders and other visitors of detention facilities should take their work responsibly and always be guided by "Do no harm" principle, which is no

¹³ Consideration of Reports Submitted by States Parties under Article 40 of the Covenant. Concluding observations of the Human Rights Committee. Republic of Moldova. CCPR/CO/75/MDA. 05.08.2002 / United Nations.

URL: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d/PPRiCAqhKb7yhsmq1D+4Wv_g6LhA1iuk+Ho+UUI/18PqzftybICPY5yac8piWATK8r2LWbh/u4BHKEHg9hC51fybu3iIbqdvmeXapVvM/0qY73OwiMa9OJ3P



less important for them than for doctors. For example, the staff of the monitoring body (or other authorized persons) visit the nursing home, where there is a large number of elderly people moreover with various chronic diseases. Even after the pandemic's peak, visiting such people will require special precaution and, if necessary, the use of all necessary personal protective equipment. However, for those involved in detention facilities monitoring, such requirements should be self-evident. After all, even without an epidemic, they must go to places where at-risk people with dangerous infectious diseases or weak immune system are placed. Nobody will cancel the requirements of common sense. However, all detention facilities must remain open for monitoring and external inspections, even during a pandemic or quarantine.

As previously stated, those serving sentences in detention facilities are among the most susceptible to the virus. This is because they are in a high-risk environment: as a rule, such institutions are not adapted to the situation of a large-scale epidemic, and basic protective measures, such as social distance and hygiene rules, cannot be provided at the same level as outside these institutions, exposing prisoners to greater health risks. In addition, in many European countries, the pandemic is spreading in overcrowded detention facilities and poor conditions in cramped collective prison cells with poor health care, as well as higher rates of infectious and chronic diseases among prisoners such as tuberculosis, diabetes and AIDS. Coronavirus infection has already been reported in detention facilities across Europe, and in some cases it was followed by death. Covid-19 outbreaks and deaths from the virus have been reported in detention facilities in many countries, including Belgium, Spain, the United Kingdom, as well as China, Iran, Kenya, India, and others.¹⁴ Tensions in detention facilities have risen since the pandemic crisis outbreak, leading to protests. In some countries, there are even violent protests of prisoners (USA¹⁵, Brazil, Colombia^{16,17}; Italy¹⁸; Iran, Egypt¹⁹; China, South Korea²⁰; Peru²¹; Ukraine²² etc.). In response, penal administration is taking steps to restrict visits and other forms of leisure in detention facilities.

Chronic overcrowding and underfunding have left prisons around the world vulnerable to being ravaged by coronavirus, criminal justice experts have warned. Prisons [in more than](#)

¹⁴ Pandemic potentially a 'death sentence' for many prison inmates, experts warn. / The Guardian. 23.04.2020. URL: <https://www.theguardian.com/global-development/2020/apr/23/pandemic-potentially-a-death-sentence-for-many-prison-inmates-experts-warn>

¹⁵ Prison uprising put down as US inmates demand protection from coronavirus / The Guardian. 10.04.2020. URL: <https://www.theguardian.com/us-news/2020/apr/10/us-prisons-coronavirus-uprising-riot>

¹⁶ As Coronavirus Strikes Prisons, Hundreds of Thousands Are Released / The New York Times. 26.04.2020. URL: <https://www.nytimes.com/2020/04/26/world/americas/coronavirus-brazil-prisons.html>

¹⁷ Prison riots break out around the world as coronavirus spreads / The Telegraph. 01.04.2020. URL: <https://www.telegraph.co.uk/news/2020/04/01/prison-riots-break-around-world-coronavirus-spreads/>

¹⁸ Death toll rises in Italian prisons as inmates riot over COVID-19 rules / Euronews. 10.03.2020. URL: <https://www.euronews.com/2020/03/09/six-dead-as-coronavirus-restrictions-trigger-italy-prison-riots>

¹⁹ Amnesty: Iran Joins Syria, Egypt in Seeing Prison Unrest Linked to Coronavirus / VOANEWS. 10.04.2020. URL: <https://www.voanews.com/science-health/coronavirus-outbreak/amnesty-iran-joins-syria-egypt-seeing-prison-unrest-linked>

²⁰ How the coronavirus is igniting riots, releases and crackdowns in world's prisons / The Washington Post. 26.03.2020. URL: https://www.washingtonpost.com/world/how-coronavirus-is-igniting-riots-releases-and-crackdowns-in-the-worlds-prisons/2020/03/25/6ca94494-6aba-11ea-b199-3a9799c54512_story.html

²¹ Officials: 9 inmates dead in Peru coronavirus prison riot / TRIBLIVE. 16.05.2020. URL: <https://triblive.com/news/world/officials-9-inmates-dead-in-peru-coronavirus-prison-riot/>

²² Koronavirus sprychynyv bunt u SIZO Chernivtsiv, ye poraneni / BBC NEWS. Ukrayina.26.04.2020. URL: <https://www.bbc.com/ukrainian/news-52431273>



[100 countries operate above their occupancy rates](#), with 20 countries at double their capacity limit.

The challenges of a record global prison population of 11 million have been brought to light in a [report](#) published by [Penal Reform International](#) (PRI) which found that 102 countries have prison occupancy levels of more than 110%.

Social distancing and personal infection control are almost impossible in overcrowded settings where poor ventilation and sanitation are likely increase the speed at which the virus spreads.

Florian Irminger, executive director of PRI, said: «Prison systems globally were at crisis point before the coronavirus pandemic. Now prisons across the world are ticking time bombs set to be devastated by this virus because of overcrowding, lack of basic healthcare, limited access to clean water... and inhumane living conditions».²³

To prevent a large-scale coronavirus outbreak in detention facilities, some states have initiated the release of certain categories of prisoners: Turkey's parliament [adopted a law allowing the temporary release of](#) 45 thousand prisoners; Indonesia - about 30 thousand, Brazil - about 30 thousand, the United States - several thousand²⁴; Iran - 70 thousand²⁵; Great Britain - about 4 thousand²⁶; Bahrain - 1.5 thousand²⁷, Egypt - about 10 dissidents²⁸, in Ukraine it is planned to amnesty about 1 thousand prisoners in 2020²⁹).

Many other states have begun the process of adapting their criminal justice systems to reduce the number of prisoners, taking various measures, including temporary or early release and amnesty; keeping under arrest at home and commutation of sentences; suspension of criminal investigations and execution of sentences. Thus, the Italian government adopted a decree that, in part, allows for early supervised release of prisoners with less than 18 months left to serve. Germany, which released 40 inmates in Hamburg who were imprisoned because they could not pay a fine for their crime, has delayed incarceration for those facing sentences of less than three years.³⁰ Israel is

²³ Pandemic potentially a 'death sentence' for many prison inmates, experts warn. / The Guardian. 23.04.2020. URL: <https://www.theguardian.com/global-development/2020/apr/23/pandemic-potentially-a-death-sentence-for-many-prison-inmates-experts-warn>

²⁴ As Coronavirus Strikes Prisons, Hundreds of Thousands Are Released / The New York Times. 26.04.2020. URL: <https://www.nytimes.com/2020/04/26/world/americas/coronavirus-brazil-prisons.html>

²⁵ Coronavirus: Europeans warned to expect months of disruption / The Guardian. 09.03.2020. URL: <https://www.theguardian.com/world/2020/mar/09/coronavirus-six-die-in-prison-protest-linked-to-italian-clampdown>

²⁶ Richard Garside: 'The UK is lagging behind Europe on coronavirus in prisons' / The Guardian. 21.04.2020. URL: <https://www.theguardian.com/society/2020/apr/21/richard-garside-uk-lagging-behind-europe-coronavirus-prisons>

²⁷ How the coronavirus is igniting riots, releases and crackdowns in world's prisons / The Washington Post. 26.03.2020. URL: https://www.washingtonpost.com/world/how-coronavirus-is-igniting-riots-releases-and-crackdowns-in-the-worlds-prisons/2020/03/25/6ca94494-6aba-11ea-b199-3a9799c54512_story.html

²⁸ Amnesty: Iran Joins Syria, Egypt in Seeing Prison Unrest Linked to Coronavirus / VOA VOANEWS. 10.04.2020. URL: <https://www.voanews.com/science-health/coronavirus-outbreak/amnesty-iran-joins-syria-egypt-seeing-prison-unrest-linked>

²⁹ Romanov M. Zakhody proty poshyrennya epidemiyi COVID-19 v penitentsiarnykh ustanovakh Ukrayiny / Prava Lyudyny v Ukrayini. Informatsiynyy portal Kharkivs'koyi pravozakhysnoyi hrupy. 05.04.2020. URL: <http://khp.org/index.php?id=1586113143>

³⁰ How the coronavirus is igniting riots, releases and crackdowns in world's prisons / The Washington Post. 26.03.2020. URL: https://www.washingtonpost.com/world/how-coronavirus-is-igniting-riots-releases-and-crackdowns-in-the-worlds-prisons/2020/03/25/6ca94494-6aba-11ea-b199-3a9799c54512_story.html



considering transferring 500 prisoners to house arrest, but this rule will not reach Palestinian inmates.³¹

International documents of Council of Europe on protection the prisoners' health

For many years public health authorities at both national and international levels paid little or no attention to health care in prisons. World Health Organization (WHO) in the first four decades of its existence carried out no substantive work and published no documents about health services in prisons or the health of prisoners. Prison health was little studied, did not feature in academic programs and was rarely the subject of published articles in medical journals. Prisons were a “world apart” and the few doctors working in prisons were employed and supervised by the prison administration and had no contact with local or national health bodies, medical schools or other professional bodies.³²

The basic principles of the health care system organization in detention facilities were developed and integrated in the Recommendation of the Committee of Ministers of the Council of Europe Rec (98) 7 on the ethical and organizational aspects of health care in prisons almost two decades ago.³³ Council of Europe member states are encouraged to take these principles into account when reviewing their own legislation and case law in the field of health care in detention facilities. The Recommendation emphasizes that medical practice in public health service centers out of and in detention facilities should be guided by the same ethical principles, and the respect for fundamental rights of prisoners by providing prisoners with preventive treatment and health care equivalent to those which are provided in the community. Recommendation of the Committee of Ministers Rec (98) 7 remains a fundamental document in this field.

The prisoners' right to receive medical treatment is one of the basic principles of Recommendation of the Committee of Ministers of the Council of Europe Rec (2006) 2 on European Penitentiary Rules, according to which “persons deprived of their freedom retain all rights which they have not been legally deprived of, according to which they are sentenced to imprisonment or taken into custody.”³⁴

As soon as the scale of the pandemic in Europe became more or less clear, the European Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment (CPT) 20.03.2020 approved a document entitled “Statement of principles relating to the treatment of persons deprived of their liberty in the context of the

³¹ How the coronavirus is igniting riots, releases and crackdowns in world's prisons / The Washington Post. 26.03.2020. URL: https://www.washingtonpost.com/world/how-coronavirus-is-igniting-riots-releases-and-crackdowns-in-the-worlds-prisons/2020/03/25/6ca94494-6aba-11ea-b199-3a9799c54512_story.html

³² Jörg Pont, Timothy Wilfrid. Harding. Organisation and management of health care in prison. Guidelines / COUCIL OF EUROPE. URL: <https://rm.coe.int/manual-organisation-and-management-of-health-care-in-prison-coe-2019/16809e4d87>

³³ Recommendation No. R (98) 71 of the Committee of Ministers to Member States Concerning the Ethical and Organizational Aspects of Health Care in Prison: adopted by the Committee of Ministers on 8 April 1998 / Council of Europe. URL: <https://rm.coe.int/09000016804fb13c>

³⁴ Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules: *Adopted by the Committee of Ministers on 11 January 2006* / Council of Europe. URL: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d8d25



coronavirus disease (COVID-19)³⁵. This document, which is the most concise and accessible list of the ten basic principles, has been translated into many languages of the member states of the Council of Europe. These recommendations received positive feedback from both states and relevant international organizations. Interestingly, the detailed recommendations of the World Health Organization (WHO) on the specifics of struggle against the pandemic in detention facilities³⁶, developed on 13.05.2020 p., fully comply with the viewpoints expressed by the European Committee for the Prevention of Torture.

Statement of Principles of the European Committee for the Prevention of Torture emphasizes the need to take all possible measures to protect the health and safety of all persons in detention facilities and of the staff working there, as these are directly interrelated matters. As the struggle against the pandemic is a global matter, it should be guided primarily by WHO recommendations and national reports based on them. Mobilization, training and creating conditions for staff to work in such conditions is also a necessary element.

Inmates should have access to both coronavirus testing and, if necessary, intensive care units. Increased attention should be paid to the special needs of such persons, in particular vulnerable groups and at-risk groups, namely the elderly, persons with pre-existing conditions, pregnant women and juvenile prisoners. The Committee's principles include maintaining the necessary personal hygiene level (including the availability of soap and hot water), psychological support and human contact for people in medical isolation, and compensating for the lack of access to relatives by telephone and voice connection via the Internet, necessity to be outdoors for at least an hour a day.

According to the Principles, alternatives to imprisonment used by the member states of the Council of Europe is a priority in situations of detention facilities overcrowding, and even more so in states of emergency. The pandemic has created a situation where states must seriously consider urgent measures to "unload" detention facilities. Reducing the number of prisoners throughout Europe is a prerequisite for ensuring effective sanitation and easing growing pressure on prison staff and the penitentiary system as a whole. It is clear that the immediate and unconditional release of human rights defenders, activists, journalists and all those deprived of their liberty for violating human rights standards in some member states of the Council of Europe must also be a priority in this context.

It is clear that close contact between prisoners in overcrowded cells, barracks or wards can quickly turn these places into breeding grounds for infection, dooming to serious illness or even the death of a large number of inmates. In addition, the infection can spread to the whole society, for which prisons, so to say, will play the role of "amplifiers" of the epidemic. Therefore, the European Committee for the Prevention of Torture calls on states to use the alternatives of detention more often, to reduce imprisonment length, parole, reassess the need to continue involuntary hospitalization of psychiatric patients,

³⁵ Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic / Council of Europe. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. URL: <https://rm.coe.int/16809cfa4b>

³⁶ UNODC, WHO, UNAIDS and OHCHR joint statement on COVID-19 in prisons and other closed settings / World Health Organization. URL: <https://www.who.int/news-room/detail/13-05-2020-unodc-who-unaid-and-ohchr-joint-statement-on-covid-19-in-prisons-and-other-closed-settings>



and release or provide community care to persons in social protection institutions, as well as to the refusal, as far as possible, of migrants administrative detention.

Particular attention should be paid to those prisoners who have health problems; the elderly who do not pose a threat to society; and those accused or convicted of minor or nonviolent crimes. At the same time, those released persons in need of support should be provided with adequate access to emergency care, housing and basic services, including health care.

Governments must ensure that the human rights of all those who remain in detention facilities are respected during the COVID-19 pandemic. Any restrictive measures taken against persons in detention must be necessary, proportionate, non-discriminatory, limited in time and under control. The absolute prohibition on torture and ill-treatment should never be violated by measures taken in detention facilities, including in the case of health protection isolation. All measures should be taken to protect the right to life and health of prisoners and prison staff in accordance with the WHO Regional Office for Europe recommendations. As emphasized in the Interim Guidance on COVID-19, inmates should continue to have access to information, legal assistance and independent grievance mechanisms. Mechanisms for monitoring detention facilities should be able to continue to monitor the situation, taking precautions not to put people at risk (the "Do no harm" principle).³⁷

In order to effectively solve the problems associated with the spread of the coronavirus in detention facilities, the Council of Europe member states must urgently adopt and start exercising a humane and comprehensive crisis plan based on sufficient human and financial resources, taking into account the needs of those who leaves detention facilities, and those who remains, as well as penitentiary institutions employees. This should be done according to relevant human rights parties concerned, in particular national preventive mechanisms and other independent monitoring bodies, national human rights bodies and human rights organizations.³⁸

Conclusion

The Council of Europe member states, like most countries in the world, have introduced safeguard measures to stop or at least significantly slow down the spread of the coronavirus pandemic (COVID-19). They have developed a number of recommendations and measures that are needed to be introduced and exercised within penitentiary institutions, and which should help to take control of the situation and manage it.

From the human rights perspective, first of all it must be remembered that the state has positive obligations to protect the lives and health of all persons under its jurisdiction, including those in detention facilities. Therefore, the failure of the state to take the necessary measures may amount to a serious violation of fundamental human rights and

³⁷ IASC Interim Guidance on COVID-19: Focus on Persons Deprived of Their Liberty (developed by OHCHR and WHO). URL: <https://interagencystandingcommittee.org/other/iasc-interim-guidance-covid-19-focus-persons-deprived-their-liberty-developed-ohchr-and-who>

³⁸ COVID-19 pandemic: urgent steps are needed to protect the rights of prisoners in Europe / Council of Europe. Commissioner for Human Rights. URL: https://www.coe.int/en/web/commissioner/view/-/asset_publisher/ugj3i6qSEkhZ/content/covid-19-pandemic-urgent-steps-are-needed-to-protect-the-rights-of-prisoners-in-europe?_101_INSTANCE_ugj3i6qSEkhZ_languageId=en_GB



freedoms, starting with the right to life. At the same time, any human rights and freedoms restriction by the state must be based on the law, be necessary, proportionate, based on respect for human dignity and limited in time. Even during a state of emergency or quarantine, the state must guarantee the human rights and freedoms enshrined in its own Constitution and in its international obligations.

The protection of human rights and freedoms in a pandemic is an activity in which both government agencies and non-governmental human rights organizations must participate. Public authorities must act straightforwardly and clearly, explaining the pandemic policies, and explain why these policies are needed, especially those relating to human rights and freedoms restrictions. Human rights organizations must continue to monitor, document and report on the respect for human rights and freedoms in detention facilities, and advocate for changes in our society aimed at better rights protection of this category of people.

References

Amnesty: Iran Joins Syria, Egypt in Seeing Prison Unrest Linked to Coronavirus / Voanews. 10.04.2020. URL: <https://www.voanews.com/science-health/coronavirus-outbreak/amnesty-iran-joins-syria-egypt-seeing-prison-unrest-linked>

As Coronavirus Strikes Prisons, Hundreds of Thousands Are Released / The New York Times. 26.04.2020. URL: <https://www.nytimes.com/2020/04/26/world/americas/coronavirus-brazil-prisons.html>

Case of A. and Others v. the United Kingdom, 2009 / European Court of Human Rights. URL: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-91403%22%5D%7D>

Case of Brannigan and McBride v. the United Kingdom, 1993 / European Court of Human Rights. URL: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57819%22%5D%7D>

Case of Lawless v. Ireland (No. 3), 1961 / European Court of Human Rights. URL: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57518%22%5D%7D>

Case of M.M. v. the Netherlands, 2003 / European Court of Human Rights. URL: <https://hudoc.echr.coe.int/eng#%7B%22tabview%22:%5B%22document%22%5D%2C%22itemid%22:%5B%22001-61002%22%5D%7D>

Case of Piechowicz v. Poland, 2012 / European Court of Human Rights. URL: <https://hudoc.echr.coe.int/eng#%7B%22tabview%22:%5B%22document%22%5D%2C%22itemid%22:%5B%22001-110499%22%5D%7D>

Case of Silver and Others v. the United Kingdom, 1983 / European Court of Human Rights. URL: <https://hudoc.echr.coe.int/eng#%7B%22tabview%22:%5B%22document%22%5D%2C%22itemid%22:%5B%22001-57577%22%5D%7D>

Case of Solomakhin v. Ukraine, 2012 / European Court of Human Rights. URL: <https://hudoc.echr.coe.int/eng#%7B%22tabview%22:%5B%22document%22%5D%2C%22itemid%22:%5B%22001-109565%22%5D%7D>



Consideration of Reports Submitted by States Parties Under Article 40 of The Covenant. Concluding observations of the Human Rights Committee. Republic of Moldova. CCPR/CO/75/MDA. 05.08.2002 / United Nations.

URL: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d/PPRiCAqhKb7yhsmq1D+4Wvg6LhA1iuk+Ho+UUl/18PqzftybICPY5yac8piWATK8r2LWbh/u4BHKEHq9hC51fvbu3iIbqdvejmeXapVvM/0qY73OwIMa9OJ3P>

Convention for the Protection of Human Rights and Fundamental Freedoms / Council of Europe. European Convention on Human Rights.

URL: <https://www.echr.coe.int/Pages/home.aspx?p=basictexts>

Convention for the Protection of Human Rights and Fundamental Freedoms ([ETS No. 5](#)). Notifications under Article 15 of the Convention in the context of the COVID-19 pandemic.

URL: <https://www.coe.int/en/web/conventions/derogations-covid-19>

Coronavirus: Europeans warned to expect months of disruption / The Guardian. 09.03.2020. URL: <https://www.theguardian.com/world/2020/mar/09/coronavirus-six-die-in-prison-protest-linked-to-italian-clampdown>

COVID-19 pandemic: urgent steps are needed to protect the rights of prisoners in Europe / Council of Europe. Commissioner for Human Rights.

URL: https://www.coe.int/en/web/commissioner/view/-/asset_publisher/ugj3i6qSEkhZ/content/covid-19-pandemic-urgent-steps-are-needed-to-protect-the-rights-of-prisoners-in-europe?_101_INSTANCE_ugj3i6qSEkhZ_languageId=en_GB

Death toll rises in Italian prisons as inmates riot over COVID-19 rules / Euronews. 10.03.2020. URL: <https://www.euronews.com/2020/03/09/six-dead-as-coronavirus-restrictions-trigger-italy-prison-riots>

How the coronavirus is igniting riots, releases and crackdowns in world's prisons / The Washington Post. 26.03.2020. URL: https://www.washingtonpost.com/world/how-coronavirus-is-igniting-riots-releases-and-crackdowns-in-the-worlds-prisons/2020/03/25/6ca94494-6aba-11ea-b199-3a9799c54512_story.html

IASC Interim Guidance on COVID-19: Focus on Persons Deprived of Their Liberty (developed by OHCHR and WHO).

URL: <https://interagencystandingcommittee.org/other/iasc-interim-guidance-covid-19-focus-persons-deprived-their-liberty-developed-ohchr-and-who>

Jörg Pont, Timothy Wilfrid. Harding. Organisation and management of health care in prison. Guidelines / Council of Europe. URL: <https://rm.coe.int/manual-organisation-and-management-of-health-care-in-prison-coe-2019/16809e4d87>

Khrystova G. Derogation from state's human rights obligations in time of public emergency. Visegrad Journal on Human Rights. 2018. № 4 (2). C. 119-126.

URL: https://journal-vjhr.sk/wp-content/uploads/2020/12/Vyshegrad-4_2018_Tom-2.pdf

Koronavirus sprychynyv bunt u SIZO Chernivtsiv, ye poraneni / BBC NEWS. Ukrayina. 26.04.2020. URL: <https://www.bbc.com/ukrainian/news-52431273>



Officials: 9 inmates dead in Peru coronavirus prison riot / Triblive. 16.05.2020.
URL: <https://triblive.com/news/world/officials-9-inmates-dead-in-peru-coronavirus-prison-riot/>

Pandemic potentially a 'death sentence' for many prison inmates, experts warn. / The Guardian. 23.04.2020. URL: <https://www.theguardian.com/global-development/2020/apr/23/pandemic-potentially-a-death-sentence-for-many-prison-inmates-experts-warn>

Prison riots break out around the world as coronavirus spreads / The Telegraph. 01.04.2020. URL: <https://www.telegraph.co.uk/news/2020/04/01/prison-riots-break-around-world-coronavirus-spreads/>

Prison uprising put down as US inmates demand protection from coronavirus / The Guardian. 10.04.2020. URL: <https://www.theguardian.com/us-news/2020/apr/10/us-prisons-coronavirus-uprising-riot>

Recommendation No. R (98) 71 of the Committee of Ministers to Member States Concerning the Ethical and Organizational Aspects of Health Care in Prison: Adopted by the Committee of Ministers on 8 April 1998 / Council Of Europe. URL: <https://rm.coe.int/09000016804fb13c>

Recommendation *Rec(2006)2* of the Committee of Ministers to member states on the European Prison Rules: *Adopted by the Committee of Ministers on 11 January 2006* / COUNCIL OF EUROPE. URL: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d8d25

Richard Garside: 'The UK is lagging behind Europe on coronavirus in prisons' / The Guardian. 21.04.2020. URL: <https://www.theguardian.com/society/2020/apr/21/richard-garside-uk-lagging-behind-europe-coronavirus-prisons>

Romanov M. Zakhody proty poshyrennya epidemiyi COVID-19 v penitentsiarnykh ustanovakh Ukrainy / Prava Lyudyny v Ukraini. Informatsiynyy portal Kharkivs'koyi pravozakhysnoyi hrupy. 05.04.2020. URL: <http://khpg.org/index.php?id=1586113143>

Sean Molloy. Covid-19 and Derogations Before the European Court of Human Rights / Verfassungsblog on matters constitutional. 10.04.2020. URL: <https://verfassungsblog.de/covid-19-and-derogations-before-the-european-court-of-human-rights/>

Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic / Council of Europe. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. URL: <https://rm.coe.int/16809cfa4b>

UNODC, WHO, UNAIDS and OHCHR joint statement on COVID-19 in prisons and other closed settings / World Health Organization. URL: <https://www.who.int/news-room/detail/13-05-2020-unodc-who-unaid-and-ohchr-joint-statement-on-covid-19-in-prisons-and-other-closed-settings>