Introduction

The right to health does not only encompass medical assistance, but also the living environment, clear and proper sanitation, adequate food, air and sunlight, all of which contributes to a well-being of a person. On one hand, prisoners and detained persons retain their right to health, while incarcerated. On the other hand, medical care is extremely important for this social group, as the statistical data show a much higher number of persons belonging to this group with infective or psychological diseases in comparison to general population. Although states may be struggling with the budget allocations for the prisoners' health, it should not be forgotten that investments in prisoner's health are investments in public health of benefit for the whole community.

The paper focuses on the following topics:

- General Duties of the Health Professionals
- Medical Records
- Accountability of Health Professionals
- Education and Training
- Infective diseases
- Life sentence
- Standards Pertaining to Juveniles and Women

True individual cases set out below illustrate the reasons for standard-setting exercise in the field of health care for the incarcerated persons.

Case number 1: A person who could not pay a minor offence fine was put in prison with a serious offender with a predatory conduct, who raped him. The psychological assessment was missing, as well as the proper categorization of offenders. Although the victim was provided with the necessary psychological and medical aid the harm was already done.

Case number 2: A person who was put in a police holding cell, as he was considered to be under an influence of alcohol, requested medical assistance. It took some time until the police officer called the ambulance, which arrived an hour later. The doctor could only determine his death.

Case number 3: A psychologically troubled juvenile was imprisoned together with adults. He was left without any treatment. The juvenile committed a suicide.

Case number 4: A prisoner was put in a cell for six people with ten more people. They all shared the same bucket, which served as a toilet and which was rarely emptied. Such conditions are clearly detrimental to the health and well-being of prisoners.

The states have consented to international standards regarding prison health care for strong reasons. Firstly, the international standards have the power to prevent the situations described above. It is the fact that imprisoned and detained individuals sooner or later will come back to their lives in the community. The goals of their resocialization and reintegration cannot be achieved without proper care for the prisoners' well-being, without providing them with proper living conditions and without adequate health care. Effective system for infective diseases' prevention and treatment must be in place, otherwise the infective diseases might be contracted and spread further by the prison wardens and staff, their families and prisoners' visitors.

Secondly, inadequate and belated medical assistance can lead to situations that fall within the scope of "inhuman and degrading treatment", which is absolutely prohibited by the major international human rights instruments.

Finally, prisoners deserve uniform living and health conditions in all prisons. Therefore, legislation must be consistently applied regarding all places of incarceration.

International Standards

Standards regarding prison health care service and medical assistance for detained/imprisoned persons are dispersed in a number of instruments at universal and European level. Some of them are legally-binding. Others, like the OSCE commitments are politically binding, and thus show a consensus about certain health related issues in prisons and places of detention expressed by Governments. Below, a non-exhaustive list of pertaining standards is provides, as follows:

- The UN Convention against Torture (1985);
- The UN Standard Minimum Rules for the Treatment of Prisoners (1955);
- The UN Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment (1988);
- The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN Istanbul Protocol 1999);
- The UN Principles of Medical Ethics relevant to the Role of Health Personnel (1982);
- The UN Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules" 1985);
- The European Convention for the Prevention of Torture (1987);[1]
- The European Convention on Human Rights – ECHR (1950);
- European Prison Rules (Recommendation No. R(87)3 of the Committee of Ministers of the Council of Europe 1987);
- Recommendation R (2003) 23 on the Management of Life-sentence and Other Long-term Prisoners;

[1] Abbreviation CPT means Committee for Prevention of Torture.

- Recommendation 1080 (1988) on a Co-ordinated European Health Policy to Prevent the Spread of AIDS in Prisons;
- Recommendation No R (98) 7 concerning the Ethical and Organizational Aspects of Health Care in Prison (1987);
- Recommendation concerning Prison Overcrowding and Prison Population Inflation (1999);
- Recommendation (93) 6 concerning Prison and Criminological Aspects of the Control of Transmissible Diseases (1993);
- The World Health Organization's The Madrid Recommendation: Health protection in prisons as an essential part of public health (2009);
- OSCE Commitments;
- The World Medical Association's Declaration of Tokyo (1975); and
- International Council of Nurses' Ethical Code (1973).

General Duties of the Health Professionals

The central tenet of health care ethics is the fundamental duty to act always in the best interests of the patient, regardless of the constraints, pressures or contractual obligations. According to the CPT standard, there is a **duty of care** that encompasses effective methods of disease prevention, of screening and of medical treatment. To fulfil the duty of care the medical professionals working with detainees and prisoners must adhere to the principles of professional independence, competence and non-discrimination regardless of the race, ethnicity, religion, gender, sexual orientation or other status characteristics.

The principle of professional independence when translated into practical terms means that health care professionals should have the unquestionable right to make independent clinical and ethical judgments, without improper outside interference. The principle of competence requires the same quality and standard of care that applies to free persons. The application of the above principles helps safeguard the confidence that penitentiary health professionals enjoy from their patients. Only health professional who aspires confidence can exercise his or her duties, i.e., participate fully in the healing, explain medical treatments, obtain full information from the patient, administer medications and obtain consent for the treatments. Patients' confidence is indispensable for the prospect of success of treatments against substance abuse or HIV.

For safeguarding professional independence and for providing better medical services, the CPT considers that medical personnel should be aligned as closely as possible with the health authorities. The reasons are as follows:

First, health professionals' duty to care and ethical considerations might collide with the considerations of prison management and security in prisons. Second, the quality and

the effectiveness of medical work must be assessed by a qualified medical authority. Third, the available resources, human resources and budgeting for medications and equipment should be managed by health authority, which possesses the required expertise, and not by the bodies responsible for security or administration. They are also in position to asses better the need for the number, qualifications and training needs of medical staff.

A short review of comparative practices of Norway, the United Kingdom, France, Kosovo and Canada discloses that they have transferred their health services under a direct competence of the health authorities in order to achieve equal health treatment. In Canada, the prison health care department reports to the regional director of health services under the Ministry of Health in order to provide consistent and equal care, and to make it more independent from the correctional services. In this country, the accreditation of the prison health services, of its staff, equipment, quality assurance measures, medication management, and prevention of infectious diseases, patients' rights and security is performed by the Canadian Council on Health Services Accreditation. It appears that the desiderata for organizational and institutional set up of the prison health services is to be functionally connected with the health administration of the particular country.

On a specific note, the duties of health professionals include **regular inspection and reporting** on sanitary, living and general health conditions to the custodial authorities, but also to independent medical authority, and when necessary, advocating for better custodial conditions. Sanitary facilities must fulfil the basic standards of hygiene and accessibility. They must allow for some privacy when used by the persons deprived from liberty in balance with the requirement for security and prevention of self-harm. For example, a surveillance camera that is pointed at a toilet seat does not fulfil the requirement of privacy.

Regarding adequate conditions of imprisonment, the European Court of Human Rights (ECtHR) deemed it inacceptable to use unskilled prisoners in order to assist seriously sick and disabled prisoners. In *Farbtuhs v. Latvia*[2]*,* the applicant, who was severely disabled and 84 years old (when sent to prison), complained, *inter alia*, about a lack of appropriate continuous medical assistance and supervision. In particular, although he was assisted during working hours by the prison medical staff and from time to time by his family, for the reminder of the time he depended on his inmates' voluntary help for basic needs and for cases of emergency. The ECtHR found that this practice was incompatible with Article 3 of the ECHR.

A similar conclusion was reached by the ECtHR in *Semikhvostov v. Russia*[3]*.* The judgment emphasized the positive obligation of the State to ensure adequate conditions of imprisonment for a wheelchair bound inmate with seriously deficient eye sight. The applicant alleged that, for example, he was unable to use the lavatory or get access to

[2] Application no. 4672/02.
[3] Application no. 2689/12.

shower or medical unit without a help from the inmates who he had to compensate with money or cigarettes. The ECtHR considered that even if the inmates had helped the applicant voluntarily and free of charge, that did not absolve the State from its obligations: "…*to remove the environmental and attitudinal barriers which had seriously impeded [the applicant's] ability to participate in daily activities with the general prison population…".*

Regarding duty to prevent deterioration of health and to promote well-being there must be standards in place to prevent **overcrowding**. Too many prisoners sharing small space increases prisoner on prisoner violence, as well as the transmission of contagious diseases.

The CPT orientation standard for a prison cell is at least 6 m^2 for a single occupancy, and at least 9 m^2 for two inmates. For police holding cells, the CPT desiderata for a single occupancy for stays in excess of a few hours is in the order of 7 m^2, 2 m or more between the walls and 2.5 m^2 between the floor and the ceiling. To avoid prisoner on prisoner violence, it is recommendable to have a single occupancy overnight, or if that is not possible there must be an effective supervision by prison wardens.

As a comparison, the Croatian legislation requires clean, dry and sufficiently specious cells with at least 4 m^2 and 10 m^3 space for each inmate. The Macedonian legislation stipulates that in the cells there must be 9m^3 space per prisoner and a maximum of five prisoners in a cell. It requires a single occupancy overnight to the extent possible. In the cells there should be no moist, and they must be sufficiently warmed-up. In Canada the average space for one prisoner is 5.50 m^2 per person.

Health professionals must monitor the health condition of a prisoner put in a solitary confinement. They must inform the prison authorities if he or she has health problems. According to CPT, the solitary confinement should not exceed 14 days. It should be imposed under the principles of necessity, proportionality, legality and accountability.

There are also standards regarding the **food** that is served in prisons. They require at least 3000 calories to be served per prisoner, with a full observance of the hygiene. Prisoners that are sick must obtain the food that is adequate for their health condition.

According to the UN standard minimal rules for treatment of prisoners, it is incumbent on the medical officers regularly to inspect and advise the prison management regarding the quantity, quality, preparation and service of food; of general hygiene and cleanliness of the institution and the prisoners, the sanitation, heating, lighting and ventilation of the institution; of the suitability and cleanliness of the prisoners' clothing and bedding. The prison director shall undertake steps to implement the doctor's recommendations or submit his own report and the advice of the medical officer to higher authority.
The comparative examination shows that medical doctors in the Croatian and Macedonian penitentiary institutions inspect the food, the hygiene in the kitchen and persons preparing the food. The regularity of inspection ranges from daily routine to twice a week for which an entry is made in a special log. The doctors also participate in

the determination of the patients' diets in accordance with the principle of individualization.

Last, but not least, in addition to effective and timely medical help, the prison health care service must ensure sufficient **medical equipment, orthopedic aids, medical tests and access to sufficient medications**. According to the ECtHR case-law, in two cases against *Russia - Vasilyev*[4] and *Slyusarev*[5] the ECtHR found that a failure to provide a prisoner with adequate orthopedic footwear or glasses had caused a distress and hardships for the applicant, and has thus amounted to degrading treatment.

Another case, *Kupczak v. Poland*[6] concerned a paraplegic detainee who had to have a morphine tube implanted in his body as he suffered from a severe pain. However, for a certain period of time after his arrest, the morphine tube was not functional. Although he was receiving strong pain killers they were not sufficient to relieve his suffering. The ECtHR found that Mr Kupczak suffered inhuman and degrading treatment, contrary to Article 3, since he had not been provided with adequate medication for chronic back pain for about two years.

Medical Records/Documentation

When speaking about medical records and documentation, the key words are confidentiality and detail. For **confidentiality reasons,** medical documentation and files must be completed and maintained only by doctors and nurses. They must be accessible only to authorized persons, like authorized officials from health authorities for valid reasons, such as researches or for prevention of infectious diseases, etc. In the event of a transfer of a prisoner, his medical file is forwarded to the doctors in the receiving establishment. Medical record must be made available to the detainee and his lawyer for further procedures, investigations, as well as for further medical treatments.

In the case *Szuluk v. the United Kingdom*[7] the Court dealt for the first time with the issue of medical confidentiality in prison. A prisoner who had undergone a brain surgery discovered that his correspondence with an external specialist supervising his hospital treatment had been monitored by a prison medical officer. The ECtHR found a violation of his right to respect for his correspondence under Article 8 of the Convention, as, *inter alia*, there was no indication that the prisoner tried to abuse the confidentiality of correspondence with his doctor. Furthermore, the Government failed to prove any risks involving confidential correspondence with bona fide, qualified and easily distinguishable medical doctor.

[4] Application no. 28370/05.
[5] Application no. 60333/00.
[6] Application no. 2627/09.
[7] Application no. 36936/05.

Regarding the needed **detail** for medical file, medical examinations with accurate results, the name of the doctor(s), all treatments with start and end dates, relevant statements of the prisoner, the doctor's conclusions, nature of any restraints on arrival or during the examination[8], behavior of any accompanying official, threatening statements and any other relevant facts should be included therein. The medical documentation should be kept in accordance with the international classification of diseases (ICD).

Description of any marks, injures, hematomas with color photos should be also included in the medical file. An interpretation as to the ways how the injuries were inflicted and probable relationship to possible torture or ill-treatment should be provided by the doctor, as well as recommendations for further treatments and examinations. When an autopsy is performed, there should be a detailed description of all the wounds, the fatal wounds, the distance from where it was shot and the time of death, in addition to the probable cause of death.

Data included in the medical record must be accurate and the doctor's conclusion should be clear and made professionally. The report should clearly identify those carrying out the medical examination and must be signed. In addition, health care professionals should keep daily registers of examined patients in which particular incidents should be mentioned.

Another related duty of the health care staff is to compile periodic **statistics** concerning injuries observed, infective diseases, drug users for the attention of prison management, the Ministry of Justice and the Ministry of Health.

At the State level, Croatian example illustrates that medical data represent official and professional secret by law. The law enumerates the persons who have access to the medical file. The prisoner has the right to request a medical certificate and medical report about his treatment, unless there are special circumstances which limit such a right for certain medical specialist's opinions. After prisoner's release, medical files are kept in accordance with the rules on maintaining archives.

In Croatia medical files contain: inherited disease and anomalies, disease of close relatives, history of diseases, work history, current state of health, smoking, substance abuse, height, weight, clinical examinations, laboratory findings, outcomes of the examinations, working ability, remarks.

Accountability and Responsibility of Health Professionals

[8] Medical personnel must be consulted when restraints are used to prevent self – injury, injury of other or property damage. The prison director must report the use of restraints to a higher authority.

Medical experts should observe the highest ethical standards regarding their conduct and professional discipline. They shall obtain informed **consent** before any examination, treatment or procedure is undertaken, unless there are strong and compelling reasons against that.

Health professionals working in prisons have a **duty to report** to the health authorities and to national professional organizations any deficiency in health care provided to the inmates (e.g., a lack of mediation, of effective treatment or of transportation means for external doctors' appointments) and any situation involving high epidemiological risk or human rights' violation. However, medical personnel must be protected against any possible reprisals.

In addition to criminal proceedings in case of complicity in torture or ill-treatment, there should be effective procedures for holding doctors accountable. This applies for breaches of human rights or unethical behavior in line with the rules and procedures of national medical associations. Medical professionals working in prisons should adhere to a Code of Ethics.

Education and Information

Members of the prison health service must be educated and informed about **international obligations and human rights' standards** pertaining to detained and imprisoned persons.

They must be provided with **continuous education** to keep up and improve their professional abilities. As a part of their job motivation, there should be also possibilities for career advancement.

Infective diseases

It is well known that prisoner population suffers much more from infective diseases, especially hepatitis B and C, HIV/AIDS, tuberculosis (TB) and skin diseases in comparison to general population. Blood transmittable diseases like viral hepatitis are transmitted through piercing, tattoo, drug abuse. TB easily spreads out in overcrowded cells with no ventilation and sunlight. Therefore, the medical personnel has a number of duties regard infective disease, in addition to the adequate medical treatment. They encompass prevention, education for prison staff and prisoners, proper screening, monitoring of material conditions, fighting stigma for people with HIV, prescribing adequate food, etc.

In respect of preventive measures, states are under **a positive obligation to prevent the spreading of contagious diseases**. Therefore, medical screening for infective

diseases must be done properly upon the admission of prisoners. It is recommendable also to screen the prisoners before being discharged from prison.

In the case *Ghavtadze v. Georgia*[9], after finding a structural problem of inadequate medical care in Georgian prisons, the ECtHR considered that the Georgian authorities should take the necessary legislative and administrative measures to prevent the spreading of contagious diseases (TB, hepatitis) in prisons, to introduce a screening system for prisoners upon admission and to guarantee prompt and effective treatment. In this case, the applicant was complaining that he contracted hepatitis C and TB while in prison and that his condition was aggravated by a lack of proper treatment and poor imprisonment conditions. While the ECtHR could not establish with certainty that the applicant contracted hepatitis C in prison, it established that a lack of proper medical treatment made his disease chronic with possible deadly consequences. Regarding TB, in view of a lack of proper screening, of medical professionals and considering the deplorable conditions in prison, it found out that the applicant not only contracted the disease in prison, but that the situation with his health seriously deteriorated, and thus found a breach of Article 3 which, *inter alia*, requires the States to protect the health of prisoners.

In respect of **information**, a prison health care service should regularly provide information about contagious diseases (e.g., hepatitis, AIDS, TB, dermatological infections) to prisoners and to prison staff. The target groups should be adequately informed about the ways of transmission, disinfection and rules of hygiene.

Health professionals must monitor and make sure that **material conditions** do not contribute to the spread of infectious diseases. Even if a sick prisoner is put in a quarantine, as long as the source of infection is out there due to, for example, poor hygienic conditions, overcrowding or a lack of fresh air, the infection will continue to spread. Therefore, cleaning materials including hot water must be made available to prisoners. There should be proper ventilation, sunlight, access to fresh air and regular white out of prison cells; simple and inexpensive steps that if regularly undertaken by prison administration can help combat and prevent life-taking diseases.

Contagious diseases require appropriate **medical documentation**. The documentation should include data about when the prisoner contracted the disease, when he or she started the treatment, places where the infected person stayed, his or her routines and contacts with other persons for at least 3 weeks before the disease was detected.

Regarding prisoners affected with **HIV/AIDS**, health professionals should provide adequate counselling before and, if necessary, after any screening test. They should also educate prison staff and prisoners about the preventive measures to be taken (e.g. the use of condoms that should be made available in prisons). Confidentiality requirement also applies regarding prisoners that are infected with HIV, in order to avoid

[9] Application no. 23204/07.

their stigmatization. CPT in its reports has emphasized that there was no medical justification for the segregation of prisoners affected with HIV, if they were well.

In *Salakhov and Islyamova v. Ukraine*[10] the application was brought by the mother of the first applicant who is deceased. The first applicant was HIV positive. When he was put in pre-trial detention, his health sharply deteriorated. However, the authorities only placed him in hospital after the ECtHR issued an interim order to that effect. The first applicant was allegedly handcuffed to his bed while in hospital, for which his mother produced photos. Although the first applicant was only sentenced to pay a fine, he had to remain in custody for additional two weeks until the judgment became final. He died two weeks after his release. The ECtHR noted the fact that the State could not produce medical documentation in order to prove that the first applicant received equivalent and adequate care while kept in pre-trial detention. Moreover, no such documentation was made available to the applicant's mother or to the prosecution authorities. The ECtHR established a breach of Article 3 of the ECHR on the account of inadequate medical assistance and of first applicant's handcuffing in the hospital. It also established a breach of positive obligation under Article 2 of ECHR as the State failed to protect first applicant's right to life.

Life Imprisonment

Health professionals must make **risk assessments** of life prisoners in order to determine the risk of self-injury or injury of other. Efforts must be put in order to avoid segregation of life prisoners from the rest of inmates, or to limit its duration as much as possible.
To the extent possible prisons where life prisoners are kept should offer various activities, allow association between the prisoners and freedom of movement within the unit.

Specialized help should be provided to life prisoners in order for them to come to terms with the offence and harm done, prevent suicide and combat bad effects from long-term imprisonment. Any psychological illnesses should be detected early and adequately treated.

Standards Pertaining to Juveniles

Although it is considered that in some cases juveniles are better off when they are separated from their abusive families or dangerous company, prison or detention conditions must not do any harm to their health and general development. The juveniles must be **immediately examined** by a medical doctor upon their admission. They must be screened regarding drug abuse, suicidal tendencies and sexual abuse and educated

[10] Application no. 28005/08.

about health risks. The juveniles must be able to approach medical unit on confidential basis.

Juveniles should be provided with sufficient good quality **food** for their growth.

According to CPT juveniles, should not be placed in large dormitories as that puts them at a higher risk of violence and abuse. If possible, overnight each juvenile should sleep alone in a cell.

If **solitary confinement** for juveniles is allowed by law, it must not exceed three days. There must be daily visits of health care staff to all juveniles put in solitary confinement.

Regarding other countries' experience, Macedonian law requires health professionals who work with juveniles to have knowledge of child psychology and of mental diseases with fully application of individualized approach. There must be regular medical examinations of all incarcerated juveniles. Juvenile's family must be informed about her or his health conditions.

Women Prisoners

The required equivalence of care means that medical practitioners and nurses working with female prisoners must have **specific training** in women's health issues, including in gynecology. Female prisoners must be screened for diseases typical for this group of prisoners, such as breast or cervical cancer.
Female prisoners who suffered physical, mental and sexual violence must be provided with adequate medical services. Furthermore, the specific hygiene needs of women should be addressed in an adequate manner, e.g., they must be provided with sanitary towels.

Recommendations

1) Reform of the health system for protection of prisoners is a complex task which involves multiple pieces of legislation with different legal value. According to best legislative practices, it is recommendable to work on the legislative revisions of all involved pieces of legislation in order to avoid any inconsistency among laws and by-laws.

2) Looking at the macro picture, effective probation service and alternatives to imprisonment can help Armenia achieve its goal for a more humane treatment of prisoners, as it decreases the number of prisoners.

3) Penitentiary healthcare services should have a functional connection with the Ministry of Health. While legislative transplant from another country with different

social reality might not be the best way forward, comparative examples of other countries in conjunction with the international standards will provide orientation and tools for successful legislative reform. Established links and improved coordination between the penitentiary health care service and the Ministry of Health should contribute towards equal and enhanced medical care and a better use of the resources in terms of training, facilities, information flow, budget planning, data collection and analysis.

4) Detailed and accurate medical information must be collected, kept and maintained as it serves the preventive purposes, in addition to the needs for treatment and medications. The confidentiality requirements should be fully observed also regarding prisoners affected by HIV/AIDS.

5) Hepatitis, which is a deadly disease, must not be excluded from the screening at the admission of a prisoner.

Annex - Selected articles of ECHR

ARTICLE 2

Everyone's right to life shall be protected by law.

…

ARTICLE 3

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

ARTICLE 8

Everyone has the right to respect for his private and family life, his home and his correspondence.

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.