

## CONDITIONS OF DETENTION AND TREATMENT OF PRISONERS IN THE PRISONS IN THE REPUBLIC OF NORTH MACEDONIA: ARE THEY IN CONFORMITY WITH THE ARTICLE 3 OF THE EUROPEAN CONVENTION OF HUMAN RIGHTS?

Abstract.....	1	III. <i>Key problems of the penitentiary system in the Republic of North Macedonia</i> .....	6
I. <i>Introduction</i> .....	2	IV. <i>Conclusion</i> .....	13
II. <i>The conditions of detention and the treatment of prisoners in the prisons in the Republic of North Macedonia through the prism of the last highly critical report of the Committee for Prevention of Torture</i> .....	3		

“The degree of civilization in a society can be judged by entering its prisons.”  
Fyodor Dostoevsky  
 (“The House of the Dead”, 1862)

### *Abstract*

In the paper, the author analyses the conditions of detention and the treatment of prisoners in the prisons in the Republic of North Macedonia through the prism of the last highly critical report of the Committee for Prevention of Torture and points to the need for urgent reforms of the penitentiary system in the Republic of North Macedonia.

The author concludes that the penitentiary system in the Republic of North Macedonia has the features of a modern system. It is one of the penitentiary systems that fully incorporates the Nelson Mandela Rules, the Revised Standard Minimum Rules for the Treatment of Prisoners and the European Prison Rules in the Law on Execution of Sanctions. But the system *de facto* faces serious weaknesses.

The author refers to the judicial practice of the European Court of Human Rights regarding detention conditions and treatment of prisoners in regards to violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights. Furthermore, the author disputes the question of why prisoners serving their prison sentence in the prisons in the Republic of North Macedonia in such conditions of detention and treatment do not require judicial protection of their rights. Also, the author emphasizes the need for systematic research on the protection of prisoners' rights using legal means, such as legal advice and legal means of convicted persons and the right to appeal to international bodies.

*Keywords: European Convention on Human Rights, torture, European Court of Human Rights, penitentiary system, protection of the human rights of prisoners, prisoners, treatment of prisoners, prison*

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## I. INTRODUCTION

The Republic of North Macedonia, as a candidate country for EU membership, faces numerous challenges in the effective implementation of serious reforms in the legal, political and economic system. In this context, the penitentiary system is also an important segment.

The penitentiary system in the Republic of North Macedonia is defined by the Law on Execution of Sanctions<sup>1</sup> (LES) adopted in 2019.

By affirming the concept of human rights and freedoms as the highest and civilization value in modern society, numerous documents have been adopted guaranteeing the rights of humans, including the prisoners.<sup>2</sup>

The rights of prisoners are guaranteed by the following international documents: Nelson Mandela Rules - Revised Standard Minimum Rules for the Treatment of Prisoners (NMP-SMRTP)<sup>3</sup> and the European Prison Rules (EPR).<sup>4</sup> Penitentiary issues have been dealt with in other instruments of the Council of Europe, most notably: the conventions, then, the recommendations,<sup>5</sup> the case law of the European Court of Human Rights and the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

The paper further analyses the conditions of detention and the treatment of prisoners in the prisons in the Republic of North Macedonia through the prism of the last highly critical report of the Committee for Prevention of Torture and points to the need for urgent reforms of the penitentiary system in the Republic of North Macedonia.

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<sup>1</sup> Law on Execution of Sanctions („Official Gazette of the Republic of Macedonia“ No. 99/2019 and 220/2019).

<sup>2</sup> - The Convention for the Protection of Human Rights and Fundamental Freedoms, better known as the European Convention on Human Rights, was opened for signature in Rome on 4 November 1950 and came into force on 3 September 1953.

- Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

- International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49.

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984, entry into force 26 June 1987, in accordance with Article 27 (1).

- Code of Conduct for Law Enforcement Officials, Adopted by General Assembly resolution 34/169 of 17 December 1979.

<sup>3</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) Resolution adopted by the General Assembly on 17 December 2015 [*on the report of the Third Committee (A/70/490)*]. Accessed: 17.4.2018.

Standard Minimum Rules for the Treatment of Prisoners“, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

<sup>4</sup> Council of Europe, Committee of Ministers, 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 at the 952nd meeting of the Ministers' Deputies).

<sup>5</sup> Important Recommendations: No. R (89) 12 on education in prison, No. R (93) 6 concerning prison and criminological aspects of the control of transmissible diseases including Aids and related health problems in prison, No. R (97) 12 on staff concerned with the implementation of sanctions and measures, No. R (98) 7 concerning the ethical and organisational aspects of health care in prison, No. R (99) 22 concerning prison overcrowding and prison population inflation, Rec (2003) 22 on conditional release (parole), and Rec (2003) 23 on the management by prison administrations of life sentence and other long-term prisoners.

## II. THE CONDITIONS OF DETENTION AND THE TREATMENT OF PRISONERS IN THE PRISONS IN THE REPUBLIC OF NORTH MACEDONIA THROUGH THE PRISM OF THE LAST HIGHLY CRITICAL REPORT OF THE COMMITTEE FOR PREVENTION OF TORTURE<sup>6</sup>

Analysing the principles of execution of sanctions for criminal acts and misdemeanours, especially the principles of execution of the sentence of imprisonment, it can be concluded that the system of execution of sanctions, especially the penitentiary system in Macedonia has the characteristics of a modern system. It is one of the penitentiary systems that completely incorporates the Nelson Mandela's Rules - Revised Standard Minimum Rules for the Treatment of Prisoners and the European Prison Rules in the Law on Execution of Sanctions. Through all the elements of his organization, functioning and realization of the educational process, the system should ensure humane treatment of prisoners, protection of their interests and integrity, approximation of the living conditions in the penitentiary institutions with the conditions for life at liberty, with a single goal - to achieve their re-socialization. This is in fact the principle of the modern penology.<sup>7</sup>

Stressing the general and the specific principles upon which the system of execution of sanctions is based, it is clear that this is a dynamic system that is constantly evolving, changing and promoting in accordance with the effects of the re-socialization of the convicts. The system shows weaknesses, especially where objective conditions for the execution of sanctions in accordance with these principles are not created. Therefore, the system for execution of sanctions is under constant supervision of the competent authorities for the execution of sanctions, as well as the scientific theory and practice.

The Law on Execution of Sanctions protects its citizens and legal entities from excessive, unlawful, inhuman, irrational, unnecessary and impeccable application of force by state organs, as well as from abuse of power by the authorities.

The Law provides the protection and realization of the guaranteed rights and freedoms of the convicted persons. The rules on execution of sanctions are applicable impartially.

The complexity and the complementarity of the Law on Execution of Sanctions is expressed through many bodies involved in the execution of sanctions. The execution of sanctions includes several forms of supervision of the work of the institutions. The basic form of supervision is from the aspect of the principle of legality - legal execution of the judgments. The following form of supervision is in relation to the principle of legitimacy of the execution of sanctions provided by law. These forms of supervision and control in the Law on Execution of Sanctions are designated as judicial supervision in the execution of sanctions and are entrusted to the Judge for Execution of Sanctions.<sup>8</sup>

Another form of supervision and control is the expert-instructor supervision in the execution of the sanctions, which is entrusted to the Ministry of Justice through the Directorate for Execution of Sanctions (DES) as a body within the Ministry of Justice.<sup>9</sup> The expert-instructor supervision is performed by the Directorate for Execution of Sanctions. In case of irregularities, the Director of the DES issues an order for their removal.

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<sup>6</sup> For more refer to: Aleksandra Gruevska-Drakulevski, (2018) "Current Challenges in Conforming the Macedonian Penitentiary System to the European and International Standards", SEE EU Cluster of Excellence in European and International Law (Ed.), Series of Papers Volume 4, Verlag Alma Mater, Saarbrücken.

<sup>7</sup> Arnaudovski, Lj. and Gruevska Drakulevski, A. (2011) „Law on Execution of Sanctions: integral text with preface, short explanations and a register of terms with appendixes”, Skopje: “Studiorum” - Center for Regional Research and Cooperation.

<sup>8</sup> See: Article 42-43, 134-136 LES.

<sup>9</sup> Article 133 LES.

Preventive visits by the Committee of the Council of Europe for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)<sup>10</sup> and the National Preventive Mechanism (NPM)<sup>11</sup> of the Ombudsman, are of no less importance for the protection of the rights of convicts.

The CPT organises visits to places of detention, in order to assess how persons deprived of their liberty are treated. These places include prisons, juvenile detention centres, police stations, holding centres for immigration detainees, psychiatric hospitals, social care homes, etc.<sup>12</sup>

CPT delegations have unlimited access to places of detention, and the right to move inside such places without restriction. They interview persons deprived of their liberty in private and communicate freely with anyone who can provide information. After each visit, the CPT sends a detailed report to the State concerned. This report includes the CPT's findings and its recommendations, comments and requests for information. The CPT also requests a detailed response to the issues raised in its report.<sup>13</sup>

The National Preventive Mechanism (NPM)<sup>14</sup> according to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>15</sup> is a national body that regularly reviews the treatment of persons deprived of their liberty in order to strengthen, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment.<sup>16</sup>

All of these reports, such as: the reports of the CPT, the annual reports of the NPM, the annual reports of the DES, contain information on the country's penitentiary system. General conclusion of these reports is that the position of prisoners in the Republic of North Macedonia *de facto* differs greatly from what is provided in the international documents and with the national regulations.

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<sup>10</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) <http://www.cpt.coe.int/en/>. Accessed: 20.11.2018.

<sup>11</sup> National Preventive Mechanism (NPM) [http://www.ombudsman.mk/mk/nacionalen\\_preventiven\\_mehanizam.aspx](http://www.ombudsman.mk/mk/nacionalen_preventiven_mehanizam.aspx). Accessed: 20.11.2018.

<sup>12</sup> <http://www.cpt.coe.int/en/about.htm>. Accessed: 20.11.2018.

<sup>13</sup> <http://www.cpt.coe.int/en/about.htm>. Accessed: 20.11.2018.

<sup>14</sup> The Republic of Macedonia signed the Optional Protocol to the Convention against Torture on 1 September 2006, while the Parliament of the Republic of Macedonia ratified the same protocol on 30.12.2008, thus appointing the Ombudsman to act as National Preventive Mechanism (NPM) in the Republic of Macedonia the main task is the prevention of torture and other cruel, inhuman and degrading treatment or punishment. The National Preventive Mechanism in the Republic of North Macedonia draws its mandate and competences from the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Law on the Ombudsman, and has also prepared a separate Rulebook on the manner of prevention and methodology for the manner of conducting preventive visits. The National Preventive Mechanism implements its activities in accordance with the Annual Work Program approved by the Ombudsman.

<sup>15</sup> Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199 entered into force on 22 June 2006.

<http://www.ohchr.org/en/ProfessionalInterest/Pages/OPCAT.aspx>.

<http://www.ombudsman.mk/upload/NPM-dokumenti/Pravna%20ramka%20NPM/Fakultativen%20protokol%20na%20konvencijata%20mkd.pdf>. Accessed: 20.11.2018.

<sup>16</sup> [http://www.ombudsman.mk/mk/nacionalen\\_preventiven\\_mehanizam/npm\\_vo\\_rm.aspx](http://www.ombudsman.mk/mk/nacionalen_preventiven_mehanizam/npm_vo_rm.aspx). Accessed: 20.11.2018.

After the last visit of the Republic of North Macedonia,<sup>17</sup> the CPT publishes a highly critical report on the prisons in the Republic of North Macedonia.<sup>18</sup> In a report published on October 12, 2017, for a visit in December 2016, the CPT criticize the conditions of imprisonment and treatment of prisoners in Idrizovo Penitentiary, in which about 60% of the prisoners in the country serve their prison sentence.<sup>19</sup>

The Report recalls that since 2006, the CPT has on several occasions highlighted some basic structural issues, such as “lack of policy on how to manage complex institutions, an inadequate system of reporting and supervision, and the poor management and performance of staff.”<sup>20</sup> The findings of the visit in December 2016 show little progress has been made to address these issues in the prison system. Also, in the Idrizovo Penitentiary, “the provision of health care remains completely inadequate and the places where prisoners live at risk; the absence of appropriate treatment means that prisoners have nothing to do constructively; and conditions for imprisonment in several parts of the prison can be considered inhuman.”<sup>21</sup>

The problem of corruption in the Idrizovo Penitentiary is particularly emphasized. The CPT found that “at Idrizovo Penitentiary, every aspect of imprisonment is up for sale, from obtaining a place in a decent cell to home leave, to medication, to mobile phones and drugs.”<sup>22</sup>

The report further states that “ill-treatment, inter-prisoner violence, corruption and a lack of activities offered to prisoners at Idrizovo Penitentiary are intrinsically linked to the insufficient number of prison staff and the lack of training and support provided to them.”<sup>23</sup>

Regarding the detention unit at the Skopje Prison (which accommodates the largest number of detainees in the country), the CPT qualifies the regime offered to the detainees as a relic of a repressive past. Detainees are locked in their cells 23 hours a day for up to two years, and they are offered nothing but reading, playing cards and listening to the radio. Material conditions are again criticized.<sup>24</sup>

Although the situation in the closed part of the Stip Penitentiary is not as bad as in the Idrizovo Penitentiary, the report recommends, inter alia, to reduce the extreme overcrowding in certain cells, to improve the material conditions and to offer activities to prisoners.<sup>25</sup>

The CPT completes the report stating that “time has come for the rule of law and protection of human rights to be applied fully in the prison system and for “the former Yugoslav Republic of Macedonia” to abide by its international obligations to cooperate with the CPT.”<sup>26</sup>

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<sup>17</sup> A delegation of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out a periodic visit to North Macedonia from 2 to 12 December 2019. This was the 13th visit to the country. To this date, the report is not yet published, so in the paper, the author refers to the lastly published report. Also, on 9 December 2020 Council of Europe anti-torture Committee (CPT) visits North Macedonia and hold talks with the Prime Minister on the need to improve the treatment of persons held in prisons, but this report also is not published yet.

<sup>18</sup> Council of Europe, CPT/Inf (2017), 30 Report to the Government of “the former Yugoslav Republic of North Macedonia” on the visit to “the former Yugoslav Republic of Macedonia” carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 6 to 9 December 2016, Strasbourg, 12 October 2017. <https://rm.coe.int/pdf/168075d656>. Accessed: 1.7.2018.

<sup>19</sup> <https://www.coe.int/en/web/cpt/-/cpt-publishes-highly-critical-report-on-prisons-in-the-former-yugoslav-republic-of-macedonia->. Accessed: 1.7.2018.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

### III. KEY PROBLEMS OF THE PENITENTIARY SYSTEM IN THE REPUBLIC OF NORTH MACEDONIA

The key problems that the penitentiary system in the Republic of North Macedonia is facing are: overcrowding in penitentiary institutions; lack of prison staff; high rate of recidivism; the problem of “vulnerable categories” of prisoners in the penitentiary institution; inadequate conditions; inadequate health care of prisoners; inadequate treatment of prisoners in order to achieve the re-socialization process; ill-treatment and corruption and etc.

Further in the paper, a brief review is given of the current problems of the penitentiary system, which consequently violates the rights of prisoners guaranteed by international and national documents and in particular the article 3 of the European Convention of Human Rights.

#### *i. Prison overcrowding*

The penitentiary system in the Republic of North Macedonia faces a serious problem of overcrowding in the penitentiary institutions. It is estimated that in the penitentiary institutions there are almost twice as many prisoners as the institution's capacity permits. For years, almost all the penitentiaries face the problem of overcrowding, that is, for years the total number of prisoners exceeds 3000, and the total maximum capacity (with some adapted accommodation for prisoners whose primary purpose is not a room for accommodation) is 2026. That means that there are 1.5 prisoners on one bed. Or, for example, in the Idrizovo Penitentiary where the situation has been the most dramatic for years, the capacity of 700-800 prisoners (with some adaptations of premises contrary to the CPT standards, with a total capacity of 1,094 places), nearly 2,000 prisoners have been accommodated for years. The same is also found in other prisons.

After the adoption of the Law on Amnesty in 2017 and the release of 815 people, the situation with the accommodation is relaxed, hence, overcrowding is still evident in the Idrizovo Penitentiary, the Stip Penitentiary and the Tetovo Prison. However, it must be noted that such resolution of the problem of overcrowding is only temporary taking in consideration the data on the judicial penal policy (according to which still predominates prison sentences), as well as the high rate of recidivism (for illustration, one person released from prison in accordance with the Law on Amnesty of 2017, committed a new crime only four hours after releasing him from prison).<sup>27</sup> In addition, research will present how many of the amnestied people and during which period they will re-offend. The experiences from the previous amnesty laws show a high percentage of 30% reoffending of the amnestied persons.

The problem of overcrowding violates the right of prisoners to a minimum of living space (4m<sup>2</sup>/ 9m<sup>3</sup>) that further generates other problems (failure, due to the lack of staff and other pressures, to carry out the re-socialization process resulting in increased recidivism).

The problem of overcrowding is generated by the increase in the prison population. In the Republic of North Macedonia, there is a trend of continuous growth of the prison population, which additionally worsens the problem of overcrowding in the penitentiary institutions.<sup>28</sup> In such a situation, efforts are being made to build new prisons to provide new (expensive) prison places, which are likely to be filled quickly (and will be overcrowded) in a relatively short

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<sup>27</sup> <https://infomax.mk/wp/%D1%80%D0%B5%D0%BA%D0%BE%D1%80%D0%B4%D0%BD%D0%B8-%D1%87%D0%B5%D1%82%D0%B8%D1%80%D0%B8-%D1%87%D0%B0%D1%81%D0%B0-%D0%BD%D0%B0-%D1%81%D0%BB%D0%BE%D0%B1%D0%BE%D0%B4%D0%B0-%D0%B0%D0%BC%D0%BD%D0%B5%D1%81/>.

<sup>28</sup> See: Annual Reports of the Directorate for Execution of Sanctions on the Condition and Operation of the Penitentiaries in the Republic of Macedonia for 2008-2017. <http://www.pravda.gov.mk/tekstoviuis.asp?lang=mak&id=godizv>. Accessed: 1.9.2018.

period, and this will not be beneficial for improving the security in the community. Hence, a penal policy is needed to reduce the number (or at least to stop the growth) of the prison population.

## *ii. Lack of staff in the penitentiaries*

The penitentiary system in the Republic of North Macedonia also faces the problem of an insufficient number of prison staff in proportion to the number of prisoners. Almost 70% of the employees work in the Security Sector (Prison Police). The second and the third categories of employees are in administration and finance (13%) and in the sector for re-socialization (12.4%).<sup>29</sup> The CPT repeatedly underlines the problem of an insufficient number of prison staff. In the latest report, the CPT states that: "Ensuring a positive climate requires a professional team of staff, who must be present in adequate numbers at any given time in detention areas and in facilities used by prisoners for activities. An overall low staff complement which diminishes the possibilities of direct contact with prisoners will certainly impede the development of positive relations; more generally, it will hinder any efforts to maintain effective control and will generate an insecure environment for both staff and prisoners. Furthermore, low staffing levels make it nearly impossible to provide an acceptable regime for prisoners".<sup>30</sup>

At Prison Skopje, the number of prison officers remained the same as that observed during the October 2014 visit (i.e. 110). "Nevertheless, steps should be taken to ensure that at least one female prison officer is on duty at all times in the detention area which was not the case at the time of the visit."<sup>31</sup> In Stip Penitentiary, prison staff is 64 for a prison population of 359 people. Hence, CPT recommends increasing the number of prison officers in the Stip prison. In the Idrizovo Penitentiary, the CPT reiterates that issues such as harassment, violence among prisoners, corruption and lack of activities offered to prisoners at the Idrizovo Penitentiary are essentially related to the insufficient number of prison staff and the lack of training and support for them. All prison staff should be provided with appropriate training. "The situation regarding "educators" at Idrizovo remains the same as that observed at the time of the 2014 visit. Many prisoners complained that they hardly ever saw their educator and a considerable number of inmates alleged that educators usually sought a reward whenever they were asked to make a recommendation about home leave or another prison-related matter. Similar complaints were received at Stip Prison concerning the educators."<sup>32</sup> The CPT reiterates the importance of having a sufficient number of suitably qualified tutors adequately supervised by the management. Furthermore, there is a need to increase the number of educators who speak Albanian and employ at least one Roma educator.

Same considerations confirm the NPM, as well. For example, in the special report of the NPM for the visit of the Idrizovo Penitentiary from March 2017, "According to the Rulebook on the systematization of work places in the Idrizovo Penitentiary with an open department in Veles, the projected number of employees in this institution is 430, however from the conversation

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<sup>29</sup> See: Annual Reports of the Directorate for Execution of Sanctions on the Condition and Operation of the Penitentiaries in the Republic of Macedonia for 2008-2017.

<http://www.pravda.gov.mk/tekstoviuis.asp?lang=mak&id=godizv>. Accessed: 1.9.2018.

<sup>30</sup> Council of Europe, CPT/Inf (2017), 30 Report to the Government of "the former Yugoslav Republic of Macedonia" on the visit to "the former Yugoslav Republic of Macedonia" carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 6 to 9 December 2016, Strasbourg, 12 October 2017. <https://rm.coe.int/pdf/168075d656>. Accessed: 1.7.2018.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

with the director, as well as from the insight in the table overview of the jobs, it follows that the actual number of filled positions is 272.”<sup>33</sup>

The next problem is the lack of properly trained (competent and professional) personnel at different levels in the system. Studies show a very low level of penitentiary issues of the prison staff.<sup>34</sup> It is extremely important to provide opportunities and resources for continuous training. The CPT advocates a professional management career within the prison system, and the hierarchical relationship between prison directors and the Director of DES should be clearly defined.

### *iii. The problem of high rate of recidivism*

The rate of recidivism is high. The analysis shows that over 53% of prisoners are recidivists, which only confirms the thesis that prisons are “schools of crime”.<sup>35</sup>

Of particular concern is the high rate of drug addicts among the prison population, which has seen rapid growth in recent years.<sup>36</sup> Given that there is a high percentage of prisoners who are addicted to drugs, consideration should be given to opening specialized penitentiary facilities for drug addicts. First, they will be provided with appropriate treatment, and secondly, they will be protected from further criminal infection.

Some prisoners who are mostly addicted to drugs also have mental problems and require appropriate treatment.<sup>37</sup> Therefore, it is necessary to establish specialized penitentiary institution for addicts from alcohol, drugs and other psychotropic substances, especially since the fact that drug or alcohol addiction is a strong prognostic factor for future recidivism, as well as, specialized institutions for prisoners with mental disorders, in which institutions, these categories of prisoners will receive appropriate treatment.

From these data and analyses, one can notice a violation of the right of this category of prisoners to appropriate treatment for addictions and mental disorders.

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<sup>33</sup> Ombudsman "Special report on the visit to the Idrizovo Penitentiary - Skopje, March 2018. <http://ombudsman.mk/upload/documents/2017/1/Posebno-izvestaj-Idrizovo-2016.pdf> Accessed: 2.7.2018.

<sup>34</sup> Analysis of the results of the examination of the knowledge of the employees in the penitentiary and correctional institutions, Directorate for Execution of Sanctions, Skopje, 2011. <http://www.pravda.gov.mk/UIS/ANALIZA%20NA%20REZULTATITE%20OD%20PROVERKA%20NA%20ZNAENJATA%20NA%20VRABOTENITE%20VO%20KPU%20I%20VPU.pdf>. Accessed: 1.7.2018.

<sup>35</sup> *Gruevska Drakulevski, A.* The Impact of Imprisonment on Recidivism, Law Faculty "Iustinianus Primus" in Skopje, 2010.

<sup>36</sup> It should be emphasized that according to the data from the Ministry of Justice in the penitentiary institutions in the country, the number of prisoners who are drug addicts is worrying. Namely, in the period 2000-2004, 260-410 people were drug users (mostly heroin) every year. In 2008, 649 prisoners were addicted to drugs (31% of 2101 prisoners). In 2009, there were 516 prisoners of drug addicts (23.3% of the total number of 2215 prisoners). In 2012 there were 1,148 prisoners - drug addicts who requested 3,055 health check-ups. Most striking is the situation in the Idrizovo Penitentiary where most of the prisoners are drug addicts. Thus, in 2006, 197 addicts were detected; in 2007 - 209 and in 2008 - 466 addicts (36.8% of the total number of 1268 prisoners in Idrizovo). In the department for addicts and chronically ill prisoners, there were 66 prisoners, of which 37 were addicted under methadone therapy, and 29 elderly prisoners remained in the geriatric unit. And in 2009, the largest number of drug addicts were registered in Idrizovo with 386 registered drug addicts (29.6% of the total number of 1,304 prisoners). In Bitola Prison, 48 prisoners (43.2% of the total number of 111 prisoners on 31.12.2009) were addicted to drugs. Furthermore, unofficial data indicate that 80% of prisoners are addicted to drugs. There are also many prisoners who have become addicted during serving the sentence of imprisonment. Currently, the Regional Methadone Centre has been set up at the Idrizovo Prison. It is also planned to establish a drug-free department. *Arnaudovski, Lj./ Gruevska-Drakulevski, A.*, Penology (first and second part), Faculty of Law "Iustinianus Primus" in Skopje, 2 August S Stip, Skopje, 2013.

<sup>37</sup> In 2012 there were 399 prisoners with mental disorders who requested 1,497 medical examinations.

#### *iv. The problem of “vulnerable categories” of prisoners*

The penitentiary system faces the problem of prisoners who become vulnerable because of their minority status and different cultural characteristics. The 2012 NPM Annual Report shows that 44% of prisoners were Macedonians, 32% Albanians, 15% Roma, 4% Turks, 2% Serbs and 3% others. One of the minority groups (Roma) is subjected to greater marginalization and discrimination than other prisoners, although this appears to be due to their different cultural characteristics rather than to their minority status. The 2012 NPM report commented on this issue in detail and called on the authorities to take the necessary safeguards.<sup>38</sup>

#### *v. The problem of inadequate conditions*

In terms of accommodation of prisoners, the CPT and the NPM have concluded for years that the living conditions of prisoners, as well as, detainees are below the standards prescribed by national laws and international documents and it is necessary to undertake concrete measures and activities for the construction of new accommodation facilities that will meet the national and the international law standards.<sup>39</sup>

“At the time of the 2016 visit, insalubrious and severely overcrowded living conditions in an unsafe and unhygienic environment prevailed in many of the living quarters. Two days of intense cleaning prior to the delegation’s visit made little difference. The conditions of detention in the un-renovated B Wing (notably Wings 2 and 5) of the closed section of the prison, most of the rooms in the “school”, the admission unit and the “ambulanta” could certainly be described as inhuman and degrading treatment taking into consideration the European Court of Human Rights’ most authoritative judgment to date on this matter.”<sup>40</sup>

“The sanitary annexes to these areas were in a stunning state (filthy, foul-smelling, damaged and leaking), many of the showers did not work and there was hardly any provision of hot water. The heating was working for several hours a day. Not surprisingly, the delegation observed that many prisoners suffered from insect bites and infections such as scabies.”<sup>41</sup>

But, “In the midst of a sea of misery at Idrizovo Penitentiary, the CPT’s delegation found a wing (No.9) with excellent conditions; cells of 11m<sup>2</sup> accommodating two persons, in a good state of repair with carpets on the floors and furnished with leather sofas and wooden framed beds, plasma screen TV sets, fridges, cooking appliances and individual air conditioning systems, all bought with the inmates’ own funds. The common areas were pleasant with an aquarium, tables, chairs and sofas, a freezer and a gym with weights equipment and exercise bicycles. The contrast was striking. Unfortunately, it was a flagrant manifestation of a corrupt system and showed clearly where the power within the prison lay.”<sup>42</sup>

In conclusion, hygiene, clothing and bedding, as well as the food for prisoners should not be the reason for the dissatisfaction of the prisoners. They must be met, as they are standards that will help the successful re-socialization of prisoners. This is especially true when it comes to

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<sup>38</sup> Ombudsman, National Preventive Mechanism, Annual Report of the NPM for 2012, Skopje, May 2013. <http://www.ombudsman.mk/upload/NPM-dokumenti/Izvestai/NPM%20Godisen%20izvestaj-2012.pdf>. Accessed: 2.7.2018.

<sup>39</sup> See the Reports of NPM and CPT.

[http://www.ombudsman.mk/mk/nacionalen\\_preventiven\\_mehanizam/izveshtai/godishni\\_izveshtai.aspx](http://www.ombudsman.mk/mk/nacionalen_preventiven_mehanizam/izveshtai/godishni_izveshtai.aspx)  
<http://www.cpt.coe.int/en/states/mkd.htm>. Accessed: 2.7.2018.

<sup>40</sup> Council of Europe, CPT/Inf (2017), 30 Report to the Government of “the former Yugoslav Republic of Macedonia” on the visit to “the former Yugoslav Republic of Macedonia” carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 6 to 9 December 2016, Strasbourg, 12 October 2017. <https://rm.coe.int/pdf/168075d656>. Accessed: 1.7.2018.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

food because the penal institutions have conditions for food production that will meet the needs of prisoners.<sup>43</sup>

*vi. Inadequate health care for prisoners*

The level of health care for prisoners in the country is below the level of what is required by the best practices and on many occasions, the CPT points out negative remarks. The current state of the health care system in the penitentiary and the correctional institutions shows a deficit in human and material resources. Namely, there is an insufficient number of employees (especially qualified medical personnel), but also inadequate conditions for accommodation of convicts who need treatment.<sup>44</sup>

Another problem is the health insurance of prisoners, the right of the prisoners according to the LES,<sup>45</sup> which, unfortunately, is not realized. Hence, the health policy in the penitentiary institution should be integrated and in line with the national health policy. The prison health service should have a sufficient number of qualified medical, hospital and technical personnel, as well as, appropriate premises, quality installations and equipment similar, if not the same as that which exists in the community. The role of the Ministry of Health should be strengthened in the domain of quality assessment of hygiene, health care and organization of health services. A clear division of responsibilities and powers should be established between the Ministry of Health or other competent ministries, who should cooperate in the implementation of an integrated health policy in prisons. Also, international documents in this area should be respected.<sup>46</sup>

A step forward has been made in order to solve this problem, namely the obligation for health services is undertaken by the Ministry of Health and a positive outcome from such a measure is expected. Otherwise, the challenges faced by healthcare workers in prisons are enormous, including lack of staff, the inadequate health check of newly admitted prisoners, inadequate dental and psychiatric care, poor practice of treating drug addiction.<sup>47</sup>

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<sup>43</sup> “The delegation once again was able to observe for itself both the meagre portions and the inadequacy of the diet, including no fresh fruit. For example, on one day of the visit, lunch was potato and chicken stew, except that the delegation observed that the portions being served out of large containers to the prisoners contained no chicken, only potato. Further, the manner in which the food was distributed had little regard to hygiene or to the dignity of prisoners.” *Ibid.*

<sup>44</sup> See the Reports of the NPM and the CPT.

[http://www.ombudsman.mk/mk/nacionalen\\_preventiven\\_mehanizam/izveshtai/godishni\\_izveshtai.aspx](http://www.ombudsman.mk/mk/nacionalen_preventiven_mehanizam/izveshtai/godishni_izveshtai.aspx)

<http://www.cpt.coe.int/en/states/mkd.htm>. Accessed: 2.7.2018.

<sup>45</sup> Article 117 LES.

<sup>46</sup> R (98) 7 on ethical and organizational aspects of prison health care; R (93) 6 on prison and criminological aspects of the control of transmissible diseases, including AIDS and related health problems in prisons.

<sup>47</sup> “The health care staffing team at Idrizovo Penitentiary consisted of two doctors (a general practitioner and a psychiatrist) and two nurses for a population of over 1,800 prisoners. This is totally inadequate and, consequently, the team was overwhelmed. The delegation received many complaints relating to access to health care which is scarcely surprising. Officially, inmates made a request to the director to see the doctor, which was filtered by the prison officers. Weeks could go by before the request reached the doctors and even then it was not certain that the doctor would call the inmate. Alternatively, an inmate could persuade a prison officer that he needed to see a doctor urgently. The material conditions of the medical facilities remained inadequate and in a state of neglect and dilapidation. They need to be completely renovated and re-equipped. Further, the dental equipment should be repaired to enable the full-time dentist to work. The Idrizovo health care team was supported by six “assistant” prisoners who were essentially performing nursing duties such as maintaining the health care registers, distributing medication and being on-call to deliver care to other prisoners when no member of the health care team was present (notably deciding on whether to call the emergency response service in Skopje which they did on more than 200 occasions in 2016). In the CPT’s opinion, prisoners should never be involved in health care duties. The CPT reiterates its recommendation that immediate steps be taken to replace prisoners performing such nursing duties with qualified health care staff. The health care team decreased in the Skopje prison from 2014 and consisted of one doctor and one nurse for 198 detainees and 117 convicted prisoners. In the Stip Penitentiary,

*vii. The problem of inadequate treatment of prisoners in terms of the re-socialization process*

The main purpose of the prison sentence - resocialization is not realized in the penitentiary institution.

The serious weakness of the penitentiary system is that it does not realize the basic purpose of the prison sentence - resocialization of the convicted persons. This is primarily due to inadequate treatment of convicted persons. Regarding the types of treatment of prisoners, special attention should be paid to the following.

First, a significant part of the treatment is the education of convicted persons, given the fact that the largest number of prisoners have finished secondary education, as well as, elementary education. Vocational training of prisoners is also significant. Convicts should be allowed to be trained for a particular profession. It is very important that vocational education be developed in a way that will strengthen the employment opportunities after the release from the institution, as this will ensure basic literacy for those who need it.<sup>48</sup>

The second issue that needs attention is to provide opportunities for convicted persons to work. The current situation is quite unfavourable. The NPM report for 2012 highlights the importance of the working engagement of convicted persons as an important factor in favour of resocialization, but adds that "Only convicts with a milder treatment regime (semi-open or open treatment) are provided through work to gain and to develop work habits and acquire specialized knowledge for work at liberty ... In most of the penitentiary institutions, convicts from closed departments are not engaged in work ... (which) may negatively affect the process of resocialization."<sup>49</sup>

Especially important is the application of specific programs for certain categories of prisoners.<sup>50</sup>

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there was one general practitioner and one nursing assistant for 359 prisoners. The CPT recommends that in both prisons the number of nurses should increase to at least five. The CPT reiterates its recommendation that every newly arrived prisoner be adequately interviewed and physically examined as soon as possible, and at the latest within 24 hours (cases of examination were noticed in the Idrizovo Penitentiary after 7 or 10 days after admission) upon receipt by a doctor or a fully qualified nurse who will notify the doctor and all allegations of ill-treatment and signs of injury should be fully recorded in accordance with the appropriate instructions. Furthermore, screening of prisoners for infectious diseases, in particular hepatitis and HIV, should be offered, along with voluntary counselling. The CPT calls on the national authorities to take steps to ensure that medical confidentiality is fully guaranteed in all prisons." Council of Europe, CPT/Inf (2017), 30 Report to the Government of "the former Yugoslav Republic of Macedonia" on the visit to "the former Yugoslav Republic of Macedonia" carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 6 to 9 December 2016, Strasbourg, 12 October 2017. <https://rm.coe.int/pdf/168075d656>. Accessed: 1.7.2018.

<sup>48</sup> Council of Europe Committee of Ministers Recommendation No. R (89) 12 of the Committee of Ministers to Member States on Education in Prison (Adopted by the Committee of Ministers on 13 October 1989 at the 429th meeting of the Ministers' Deputies).

<sup>49</sup> Ombudsman, National Preventive Mechanism, Annual Report of the NPM for 2012, Skopje, May 2013. <http://www.ombudsman.mk/upload/NPM-dokumenti/Izvestai/NPM%20Godisen%20izvestaj-2012.pdf>

<sup>50</sup> Treatment of convicted persons who abuse drugs and other psychotropic substances;

- Treatment of convicted alcohol abusers;
- Treatment of convicted persons who committed sexual acts,
- Treatment of convicted persons by violent behaviour;
- Treatment of persons convicted of crimes with elements of violence;
- Treatment of younger adult convicts,
- Treatment of convicted persons - juveniles,
- Treatment of convicted persons - women,
- Treatment of convicted persons to life imprisonment and
- The medical and psychological treatment of the convicts.

Post-penal assistance after release from prison is an extended part of the treatment of convicted persons. This type of treatment is an element of re-socialization as a continuous process that aims to have a successful positive life in the aftermath of his release from prison.

The fact that in the country recidivism mostly occurs in the period immediately after release, 4-6 months and 1-3 years after the release from the institution, it can be concluded that this is a critical period when the assistance after release from an institution is necessary. In assessing the problems that the former convicted faces after releasing from the institution and their resolving, there is a need for a more active role of the judge for the execution of sanctions and the Centre for Social Work.<sup>51</sup>

Assistance after release as a form of penal treatment provides realizing the principle of humanity in the execution of criminal sanctions. Upon release from prison, the convict is in a state of psychological tension related to his reasoning and feeling about the day of release from prison and the path to freedom. Experience has shown that inmates experience life's freedom differently and manifest different feelings and moods. Some show great joy and are eagerly awaiting the day of leaving the institution as the day they meet their new life. Others are determined to lead a normal social life, to respect the positive social norms in order not to regain the status of a prisoner again. Third, some are indifferent to what they expect on the day of release. Fourth, some have fears about the uncertainty of their lives.<sup>52</sup>

For better results in this support after releasing from the institution as the final phase of the re-socialization process, it is necessary, first of all, to treat the released convicted persons in the same way as the others members of society.

In the country, we are witnessing a paradoxical phenomenon. Because of the difficult situation as a whole, it often happens that immediately after release from prison, a person commits a new offence in order to be returned to prison because he has been provided with a place to live, as well as, food, conditions that he is not able to provide them outside of the institution.<sup>53</sup>

It is necessary to undertake initiatives to establish organizations that would provide assistance to convicted persons after their release from the institution since these organizations will not only help a large number of convicted persons but also have an indirect effect on the society as a whole.

#### *viii. Ill-treatment and corruption*

In general, with few exceptions, the CPT's delegation received no allegations of ill-treatment by prison officers in Skopje Prison and in Stip Penitentiaries.

By contrast, ill-treatment by staff and inter-prisoner violence at Idrizovo Penitentiary remain serious problems.<sup>54</sup> The violence in Idrizovo Penitentiary is integrally linked to the endemic

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<sup>51</sup> Gruevska-Drakulevski, Aleksandra, Imprisonment and Recidivism, Studiorum, Skopje, 2017.

<sup>52</sup> Gruevska-Drakulevski, Aleksandra, Post Penal Assistance of Ex-Prisoners: The Case of the Republic of Macedonia in *Iustinianus Primus Law Review*, No.4, Year III, spring 2012, Skopje: Faculty of Law "Iustinianus Primus" in Skopje.

<sup>53</sup> Gruevska-Drakulevski, Aleksandra, The Impact of Imprisonment on Recidivism, Faculty of Law "Iustinianus Primus" in Skopje, 2010.

<sup>54</sup> "The CPT's delegation received a number of consistent allegations of deliberate physical ill-treatment of prisoners by prison officers. The alleged ill-treatment consisted mainly of slaps, punches, kicks and blows with a baton to various parts of the body and once again apparently occurred in the control room<sup>3</sup> on the ground floor of the main closed accommodation building and dormitories. Physical violence was said to be used by prison staff as a tool to impose discipline, as an unofficial punishment for possession of illicit items such as mobile phones and following instances of inter-prisoner fights, or as a reaction to requests and complaints made by the prisoners concerned. Several of the prisoners interviewed also stated that during frequent cell searches, prison staff behaved roughly and often destroyed inmates' property. The delegation again found that newly-arrived prisoners sentenced for sexual offences were ill-treated by other inmates in the admission unit." Council of Europe, CPT/Inf (2017), 30 Report to the Government of "the former Yugoslav Republic of Macedonia" on the visit to "the former

corruption that has pervaded the whole prison and implicates prison officers, including officers of all grades up to the most senior officers, and educators.<sup>55</sup>

Prison staff must respect the right of prisoners to physical and mental integrity. Prisoners should be able to submit requests and complaints without fear of retaliation.

“The CPT remains concerned that deaths in custody are not systematically the subject of a thorough investigation to ascertain, inter alia, the cause of death, the facts leading up to the death, including any contributing factors, and whether the death might have been prevented.”<sup>56</sup>

#### *ix. Other issues*

Another problem, pointed by the CPT is the disciplinary procedure and the solitary confinement as a disciplinary punishment for juveniles which according to the CPT recommendations should be abolished.

Also, the CPT once again reiterates its recommendation that the State Commission be established without further delay and that steps be taken to ensure that it and existing supervisory mechanisms operate in a professional, transparent and independent manner.”<sup>57</sup>

Unfortunately, the new Law on Execution of Sanctions does not provide such a Commission.

## **IV. CONCLUSION**

The system of execution of sanctions, especially the penitentiary system in the Republic of North Macedonia, has the characteristics of a modern system. It is one of the penitentiary systems that fully incorporates the Nelson Mandela Rules, the revised Standard Minimum Rules for the Treatment of Prisoners and the European Prison Rules in the Law on Execution of Sanctions.

Stressing the general and the specific principles upon which the penitentiary system is based, it is clear that it is a dynamic system that is constantly evolving, changing and promoting according to the effects of the re-socialization of the convicted persons. But the system shows weaknesses, especially where there are no objective conditions for the execution of the prison sentence in accordance with these principles.

The penitentiary system in North Macedonia *de jure* has the characteristics of a modern system, but *de facto* faces serious weaknesses.

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Yugoslav Republic of Macedonia” carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 6 to 9 December 2016, Strasbourg, 12 October 2017. <https://rm.coe.int/pdf/168075d656>. Accessed: 1.7.2018.

<sup>55</sup> “Prisoners said that they paid up to 2,000 Euros to be allocated to a cell rather than a dormitory and allegedly 400 Euros for home leave. Mobile phones were present throughout the prison, with smartphones costing some 300 Euros plus a small daily payment to prison officers to look the other way. Indeed, the fact that almost all the “public” card phones were out of order at the time of the visit contributed to feed the business of mobile phones. Mobile phones were openly used. Each wing had a prisoner (“winger”) who acted as the prison staff’s intermediary for all transactions and usually had better living conditions.” Council of Europe, CPT/Inf (2017), 30 Report to the Government of “the former Yugoslav Republic of Macedonia” on the visit to “the former Yugoslav Republic of Macedonia” carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 6 to 9 December 2016, Strasbourg, 12 October 2017. <https://rm.coe.int/pdf/168075d656>. Accessed: 1.7.2018.

<sup>56</sup> “At Idrizovo Penitentiary, nine inmates died in 2016 and another three in January 2017. Autopsies were carried out by the Institute for Forensic Medicine but the prison was not always informed of the outcome and no steps were taken to investigate the cause of the death.” Council of Europe, CPT/Inf (2017), 30 Report to the Government of “the former Yugoslav Republic of Macedonia” on the visit to “the former Yugoslav Republic of Macedonia” carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 6 to 9 December 2016, Strasbourg, 12 October 2017. <https://rm.coe.int/pdf/168075d656>. Accessed: 1.7.2018.

<sup>57</sup> *Ibid.*

The difficulties encountered by the prison system in the Republic of North Macedonia cannot be attributed to the lack of laws and by-laws. Moreover, there is “inflation” of by-laws that to some extent additionally hamper the work of the prison staff. The problem lies in the fact that laws do not always apply consistently enough.

Furthermore, the necessity of providing human resources, as well as, technical and material preconditions for the smooth functioning of the penitentiary institutions, should be imposed, thus achieving the respect for the rights of the persons deprived of their liberty.

In terms of exercising the rights of prisoners, it is necessary to strengthen the supervision over the work of the institutions, in particular: judicial supervision of the execution of the sanctions entrusted to the judge for the execution of the sanctions and the expert-instructor supervision in the execution of the sanctions entrusted to the Ministry of Justice through the Directorate for Execution of Sanctions as a body within the Ministry of Justice.

The question arises as to why prisoners in such conditions of functioning of the penitentiary system do not require judicial protection of their rights. There is almost no data on court procedures that protect the rights of prisoners. Hence, there is a need for systematic research on the protection of the rights of convicted persons by using legal means, such as legal advice and legal means of convicts and the right to appeal to convicted persons to international bodies. Surprising, in a position of severe violation of the rights of prisoners, no prisoners from the country asked for protection of their rights before the European Court of Human Rights (ECHR) in Strasbourg. This is not the case with prisoners from other states. Namely, they complained about the hygienic conditions in prisons, ill-treatment of prison staff, prison overcrowding, frequent displacements of prisoners from one institution to another, imposing disciplinary solitary confinement, searches of prisoners, surveillance of cells, inadequate treatment of mentally ill persons, inappropriate calorie value of food, inadequate medical assistance provided, hunger strike that resulted in a death of a prisoner or forcibly feeding the prisoners and a series of other cases of violations of the rights guaranteed to prisoners by international and national law.<sup>58</sup> In most cases, the ECHR held that there had been a violation of Article 3 of the Convention (prohibition of inhuman or degrading treatment).

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<sup>58</sup> European Court of Human Rights, Factsheet – Detention conditions and treatment of prisoners, October 2020.

- European Court of Human Rights, Factsheet – Detention and mental health, March 2020.
- European Court of Human Rights, Factsheet – Prisoners’ health-related rights, July 2020.
- European Court of Human Rights, Factsheet – Hunger strikes in detention, August 2015.