

THE HEALTH CARE OF PRISONERS IN MACEDONIA: A CRITICAL ANALYSIS

Abstract

The health care of the convicts is one of the most significant elements in the entire process of serving the imprisonment sentence. The right of the convicts to free access to healthcare services in the country without discrimination on any grounds, especially their legal status is more important. Obtaining appropriate health care and care for the mental and physical health of the prisoners and detainees is one of the most alarming issues which are constantly being pointed to. Recently, a public platform, one of the many organised so far, was held, where it has been pointed out to the bad condition of the penitentiary institutions in the Republic of Macedonia. Encouraged by their appeals to overcome the crisis and the unacceptable situation we are facing with as soon as possible, I will make critical analysis in my paper: what has been said and recommended in the international standards and regulations, and what has been the reality translated into the yearly reports of the international and national institutions competent for solving this long-burning issue in the country.

Key words: prison, health, nursing, health care, prisoners.

I. Introduction

Firstly, before I begin the analysis of the provisions and directions of the UN Standard Minimum Rules for the Treatment of Prisoners and the European Prison Rules of the Council of Europe as the most important international documents when it comes to prison rights, we should indicate that the international agreements ratified in accordance with the Constitution of the Republic of Macedonia¹ are part of the national legal order and cannot be amended by law.² The significance of the international agreements and their compulsory application in the national legislation, especially for the other signatory countries of the agreements (*pacta sunt servanda!*) is a result of this. If the country does not observe and does not comply with the international agreement it performs an international illegal act and exposes itself to international liability or liability towards other countries with which it concluded the agreement.³ The international

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¹ Constitution of the Republic of Macedonia, Official Gazette of the Republic of Macedonia, No. 52/91, 1/92, 31/98, 91/01, 84/03, 107/05 и 3/09.

² Loc. cit., Article 118.

³ See: Сулејманов З., Пенолошки компендиум, p.13.

documents including the conventions, protocols, resolutions, declarations, recommendations and all other opinions by the relevant bodies on regional and global level are only a guideline when adopting and setting up rules in the national legislations.

By implementing the international regulations and standards in the national legislation, the Republic of Macedonia made a step forward in setting up the fundamental basis for the recognition of the rights of the convicts by the society, simultaneously setting up concrete mechanisms for humane treatment of convicts and respecting their dignity. The open questions and given ideas for the right of the convicts, are a result of the long-term and persistent analysis by internationally recognised experts in the area of substantive, procedural and executive penal law.⁴ All these idea are included in the international documents of relevant organisations and are an expression of the entire civilisation level and humanity degree in our society.

The Standard Minimum Rules⁵ are an expression of the insistence of the Universal Declaration of Human Rights, G.A. res.217 A (III), UN Doc. A/810 at 71 from 1948, for their application to the convicts as a special category of citizens. The goal of these Rules is to minimize the differences between the prison life and the life at freedom. All these leads to facilitation of the reintegration of the convict in the society - as a law-abiding person. In this manner the imposed sentence is being justified and ultimately the society is protected against the crime. Therefore it is necessary the institution to use all means, types of assistance and necessary measures which will provide the inmate to gradually return to his previous life.⁶

The influence of these regulations on the modern penal law is conducted via the direct undertaking of the international prohibitions and their implementation in the national penal legislation, as well as via the adaptation of the penal law solutions to the universally accepted principles and standards of the human rights and freedoms. This concludes the functioning of the system of the international penal justice represented via the international instruments for human rights protection and observing the international prohibitions.⁷

II. Application of the UN Standard Minimum Rules for the Treatment of Prisoners and the European Prison Rules of the Council of Europe

1. UN Standard Minimum Rules for the Treatment of Prisoners in the Macedonian Legislation and Their Application.

The living conditions in the detention and rehabilitation institutions, regardless whether it is a prison, jail or youth detention centers, as well as the conditions for accommodation in these facilities are below the minimum standards recommended by the international and national legislation. All (without any exception) reports of separate organisations and institutions in the country, which are the only source providing real and authentic picture of the conditions in the national penitentiary institutions witness to the bad grades for the application of the Standard Minimum Rules. Here I would like to underline the notions given in the annual reports of the

⁴ For chronological overview of the activities of certain organizations and bodies, see: Сулејманов, loc.cit.

⁵ The complete text is available at:

https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf, last visit: 9/11/2016.

⁶ Taxman S. Faye, Young Douglas and Byrne M. James, With eyes wide open: formalizing community and social control intervention in offender reintegration programmes, p. 233.

⁷ See: Камбовски Владо, Казнено право – општ дел, p.173.

Ombudsman of the Republic of Macedonia⁸, the Helsinki Committee⁹ and the European Committee¹⁰ for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)¹¹.

Obtaining appropriate health care and care for the mental and physical health of the prisoners and detainees is one of the most alarming issues which are constantly being pointed to. From the contents of the Standard Minimum Rules it can be concluded that the Rule No. 22 stating: *“medical services should be organised in close relation to the general health administration of the community and the country; they should include psychiatric services [...] sick prisoners in need of specialist treatment should be transferred to specialised institutions or civil hospitals...”* has been breached.

Besides the inadequate premises (hospitals), lack of equipment, medications and medical staff, etc. the persons deprived of liberty complain about the healthcare workers especially their relation during examination of the new prisoners and during regular examinations for sexually transmitted diseases, such as prevention of "Hepatitis C" that is present among the prisoners.¹² These comments are proof of the breach of the Rule No. 24 of the Standard Minimum Rules stating that: *“A physician shall see and examine every prisoner as soon as possible following his or her admission and thereafter as necessary, especially in order to detect physical or mental illness and to undertake all the necessary measures; to separate the prisoners for whom there is a suspicion they have infectious or contagious diseases; noticing physical or mental weakness that might impede the rehabilitation and determining the physical work capacity of every prisoner”*.

The following case of disrespect of the right to health care in the citizens is in favour of the above-mentioned:

“Case that testifies that there is a disrespect and violation of human rights within the closed type institutions in the Republic of Macedonia, more precisely, the Prison Idrizovo in Skopje is the case of the convict N.S. who is serving an imprisonment sentence in this institution. Namely the convict N.S. addressed the Helsinki Committee on several occasions stating that he needs help in the enjoyment of his right to health care which is in accordance with Articles 124 and 129 paragraphs 1 and 2 of the Law on Execution of Sanctions.

Due to his poor health condition, the convict demands from the prison services to be sent to have a surgery in order to prevent further deterioration of his health, on his own initiative

⁸ Available at: http://ombudsman.mk/MK/posebni_izveshtai.aspx, last visit: 9/11/2016.

⁹ Available at: <http://www.mhc.org.mk/pages/reports#.VmKXwnarTIU>, last visit: 9/11/2016.

¹⁰ The CPT's full title is the “European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment”. This highlights two important features: first, it is European, and second, it not only covers “torture”, but also a whole range of situations which could amount to “inhuman or degrading treatment or punishment”. 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. 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. These reports and responses form part of the ongoing dialogue with the States concerned. See more at: <http://www.cpt.coe.int/macedonian.htm>, last visit: 9/11/2016.

¹¹ Available at: <http://www.cpt.coe.int/macedonian.htm>, last visit: 9/11/2016.

¹² Available at: <http://www.mhc.org.mk/pages/reports#.VmKXwnarTIU>, last visit: 9/11/2016.

and his own expense, whereupon if he receives appropriate medical treatment his condition will improve. In addition to the allegations of the convict, it must be mentioned that he was sent several times to medical examinations in the University Clinic for Radiology and University Clinic for Neurological Disorders in Skopje by the responsible persons in the Prison Idrizovo where it was established that the health condition of the convict is bad, however he has not been taken to surgery yet.

Several demands for notifications have been sent by the Helsinki Committee to the Prison Idrizovo regarding this case and whether the convict will be enabled further appropriate treatment in order to improve his health condition. By the time of writing the report, the last information obtained regarding this case is that additional medical examinations of Mr. N.S. has been scheduled during which it should be established if there is a need of appropriate medical treatment – surgery. The Helsinki Committee thinks that the competent persons in the Prison Idrizovo unnecessarily delay the convict's entire treatment process and his surgery, a situation which deteriorates his health, thus violating his legally guaranteed right to health care".¹³

2. Health Care of the Prisoners in the Structure of the European Prison Rules

The consistent application of the UN recommendations and directions and complete respect of the concept of protection and enjoyment of the guaranteed rights and freedoms determined with the European Convention on Human Rights has been proven by the adoption of the European Prison Rules – Recommendation R(87)3, adopted by the Committee of the Ministers of the Council of Europe on the 404 session of the Deputies Ministers. The concept of human rights and freedoms as highest civilisation value in the modern society has not been given at the level of its initial forming, but as dynamic process that constantly brings new rights, freedoms, values, guarantees of their implementation during its development.¹⁴ All this is confirmed with the amendments to the European Prison Rules of 2006 when the Recommendation Rec(2006)2 of the Committee of Ministers of the Council of Europe regarding the European Prison Rules renewing the text of the Rules was adopted.

The European Prison Rules are systematised in nine separate parts, the third part of which is called "*Health*" and regulates the health care of the prisoners. Obeying the directions provided in this chapter and obeying principally the constitutional principle stated in Article 39 par.1 of the Constitution of the Republic of Macedonia, are assurance for certain prison health care in the Republic of Macedonia. The Law on Health Care provides for that on the basis on the principles of reciprocity and solidarity the compulsory health insurance provides the insured persons right to basic health care, so the rights to basic health care are also provided to the persons serving imprisonment sentence, detained persons, if they are not insured on any other basis, and minors serving a correctional measure of referral to youth detention centre. For this category of citizens the right to enjoy health care has been regulated by the Law on Execution of Sanctions which

¹³ Source: Quarterly Report on the Human Rights in the Republic of Macedonia, July – September, 2012, p. 7-8, last visit: 9/11/16.

¹⁴ See: Арнаудовски Љ., Груевска Дракулевски А., Закон за извршување на санкциите, Интегрален текст со предговор, кратки објаснувања и регистар на поимите, со прилози, p.208.

provides for that the health care of the convicts shall be organised according to the general regulations in the area of health care.¹⁵

III. Health Care – Essential Right of the Prisoners in Macedonia

The health care is legally defined right in our penal law system, but how much it is observed? According to the regulations of the Law on Execution of Sanctions of the Republic of Macedonia¹⁶ every convict during his/her serving of the imprisonment sentence, besides the right to work and compensation for the performed work, right to rest, education, etc. is compulsory entitled to *pension insurance and health care* i.e. the convicts are entitled to insurance just as the persons working in freedom. In this manner, in the Republic of Macedonia, the time continuously spent on full time work shall be recognised as years of service to the convict according to the general regulations¹⁷ if they pay the determined contributions from the wages.¹⁸

When serving the sentence the convicts are entitled to health care and medical treatment conducted in the institutions or if necessary the convicts are sent to appropriate health institution.¹⁹

1. Reports on the Health Condition of the Convicts in the Republic of Macedonia

When the country convicts a person and sends him/her to an institution, it undertakes the responsibility for this person, *undertakes the “custody”* and it is obliged to meet their basic needs and to provide every kind of care, first of all health care.²⁰

1.1. The most realistic findings for the position of the convicts serving a sentence in the penitentiary institutions throughout the country can be obtained from the annual reports of *the National Preventive Mechanism (NPM)*.²¹ In the period of 2010-2014 the NPM established an overcrowd of the capacities, as well as not meeting the national and international standards for accommodation of persons deprived of liberty whereas the provisions of the Law on Execution of Sanctions, by laws and protocols have not been completely implanted into practice. The rights of the convicts have been violated on a daily basis.

The disrespect of the right to education is just one of the many violations and disrespects of the rights of the convicts. The situation in the school unit, the stationary where the persons

¹⁵ For additional information see: Посебен извештај за остварувањето на правото на здравствена заштита на осудените и притворените лица и во казнено - поправните и воспитно - поправните установи, Народен правобранител, pp.1-2.

¹⁶ Law on Execution of Sanctions, Official Gazette of the Republic of Macedonia, No. 2/06 and 57/10.

¹⁷ More precisely stipulated by the Law on Pension and Disability Insurance.

¹⁸ Article 123 of the Law on Execution of Sentence.

¹⁹ Articles 124-134 of the Law on Execution of Sentence.

²⁰ For the issue of convicts with SMI see: Psychiatric Services in Correctional Facilities, p.3 etc.

²¹ The National Preventive Mechanism (NPM) in line with the obligations arising from the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) is a national body set to regularly examine the treatment of the persons deprived of their liberty in places of detention, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment; to make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations; as well as to submit proposals and observations concerning existing or draft legislation. See more at: http://ombudsman.mk/EN/national_preventive_mechanism/npm_in_rm.aspx, last visit: 11/11/2016.

with health problems are accommodates, as well as the admission unit were especially alarming. Not all detention and rehabilitation institutions have employed a physician although the employment of a physician in the institutions is compulsory obligation in accordance with the Law on Execution of Sanctions. Also, the NPM expresses its concern in the Annual Reports about the efficient implementation of an investigation by the prison authorities when there is a slightest suspicion for any kind of physical assault or violence among the convicts, as well as violence committed by the authorities to the convicts and/or detainees.²²

The violations of the rights of the convicts create additional problems in the implementation of the process of resocialisation especially for the persons who are serving short sentences. In any case the convicts must obey the prescribed rules and regulations, the house rules, orders of the competent persons and rules of conduct and the work discipline which is a step forward towards the adaptation to the life at freedom. In this manner the sense of personal responsibility is developed among them, working habits are acquired and the level of personal discipline is raised – characteristics that are missing among the persons deprived of liberty which ultimately hinders their accommodation in the society.

1.2. The most realistic review of the situation in the penitentiary institutions in Macedonia can be obtained from *the former Yugoslav Republic of Macedonia Progress Reports (2007-2015) of the European Commission*.²³ Every year the Reports describe the relations between the Republic of Macedonia and the Union, analyse the political and economic membership criteria, examine the capacity of the country for undertaking the membership obligations, i.e. *acquis* expressed in the Treaties, the secondary legislation and the policies of the Union. The comments on the situation in the penitentiary institutions in the country are component part in Chapter 23 referring to the judiciary and the respect of the fundamental rights.

Thus, in 2007 relatively positive comments were given i.e. there was certain progress in the area of judiciary and gradual solving of the shortcomings in the judicial system with the undertaken steps from 2006 in accordance with the 2004 Strategy on the Reforms in the Judicial System.²⁴

Furthermore, In 2008 the negative comments and the need of quick reaction for elimination of inhumane and degrading conditions in prisons began.²⁵ In 2009 the comments on the inhumane and degrading conditions, inappropriate health care and non-applying efficient mechanisms for the prevention and combating corruption among the prison staff and political involvement in the appointment of the management positions in certain prisons continued.²⁶ The 2010 Report states that the degrading conditions and the dreadful situation are the most concerning issues.²⁷ The 2011 Report indicates again the negative conditions in the prisons (especially the closed unit of the PCI Idrizovo which is below the necessary standards), and the overcrowding and the low level of health care are also issues of concern.²⁸

²² Source: Annual Reports of the Ombudsman, National Preventive Mechanism, available at: www.ombudsman.mk, last visit: June, 2016

²³ Available at: <http://www.pravdiko.mk/izvestai-od-ek/>, last visit: 11/11/2016.

²⁴ Working Document of the EC, {COM (2007) 1432}, p.61-63.

²⁵ Working Document of EC {COM(2008)674}, p.13,50.

²⁶ Commission Staff Working Document {COM (2009) 533}, p.16.

²⁷ Commission Staff Working Document, {COM(2010)660}, p.13-14.

²⁸ Commission Staff Working Document, {COM(2011)666}, p.14.

The situation in 2012 is not very different, so the Reports comment on the bad management, poor living conditions, limited health care, lack of education and rehabilitation facilities, etc.²⁹

In 2013 the comments that an employee in the prison was suspended and put under house arrest for excessive use of force, as well as about the faults in the implementation of the formal protective measures, and the disrespect of the zero-tolerance strategy for ill-treatment in prisons and police stations can be singled out of the Report.³⁰ The information of the European Commission from the 2013 The Republic of Macedonia Progress Report stating, among other things, that *"...the programs for care of vulnerable groups needs yet to be implemented in practice; systematic appropriate health care has not been provided, and inhumane living conditions still exist in certain facilities including the detention facilities and correctional centres; the right of the minors to primary education is still not being guaranteed...(p. 58)"* is very shameful.

Finally, the 2014 Report appeals on the critical situation in prisons which do not have sufficient means and staff, constantly increasing the total number of prisoners which means that the system continues to suffer from overcrowding.³¹ The criticism that there are evident flaws in several areas, especially in the prison reform continues in the last 2015 Report.³²

1.3. The Situation in Idrizovo via the Reports of the European Committee for the Prevention of Torture and Inhumane and Degrading Treatment or Punishment – CST (2007-2014). In 2007 the Delegation stated a number of negative comments and indications regarding the situation in Idrizovo including: from the visits conducted in the Prison Idrizovo it was obvious that there are no improvements from the periodic visit in 2006; there is deep concern as a result of the constant inappropriate provision of health care in the prisons in Idrizovo (p. 14); significant number of cases of ill-treatment of the prisoners by the staff in the prison Idrizovo have been reported (p. 16); furthermore, as was the case during the visit in 2006, the Committee Delegation obtained information that intimidation and violence among the prisoners are very common in the Prison Idrizovo (p.18), etc.³³. That same year the Delegation called the state authorities to undertake necessary measures in Idrizovo to improve the quality of the management surveillance and to contribute the prison to be safe both for the prisoners and the staff (p. 19).

The following 2008 the same concern of the CST Delegation continues, stating in the Republic of Macedonia Progress Report that the conditions in Idrizovo for which they had previously pointed out to be inhumane and degrading, *have not been improved*; the authorities had not undertaken any follow-up measures regarding the repeated allegations for ill-treatment of prisoners by the prison guards; the organisation of the medical services in the prison remained unsatisfactory; the living conditions in the prison Idrizovo had deteriorated compared to the visits in 2006 and 2007. ***The non-existence of any activities for the prisoners etc. can be added to the terrible conditions.***³⁴ The same issues were indicated in 2010³⁵ with an appeal to

²⁹ Commission Staff Working Document, {COM(2012)600, p.16.

³⁰ Commission Staff Working Document, {COM(2013)700, p.57.

³¹ Commission Staff Working Document, {COM(2014) 700 p.50.

³² Commission Notification .. {SWD(2015) 210} p.23.

³³ Report to the Government of "FYROM" on the visit to FYROM" carried out by the CPT of 10/10/2008.

³⁴ Report to the Government of "FYROM" on the visit to FYROM" carried out by the CPT, November 2009.

³⁵ Report to the Government of "FYROM" on the visit to FYROM" carried out by the CPT, from 21 September to 1 October 2010.

undertake urgent measures for providing appropriate conditions of the prisoners and for appropriate treatments, as well as for providing a programme for the reduction of the number of prisoners which has been emphasized in the Reports for the previous visits.

The next visit of Idrizovo was in 2011³⁶. The Delegation continues to send notes and indications of concern, and it stated in the Report that small steps have been taken in correcting this situation through renovation of certain wings from the closed unit of the prison (par.21). In this Report the Delegation sends ultimate request to obtain responses to the comments regularly sent to the Government of the Republic of Macedonia within one month since it is more than obvious that the written indications have not been fruitful (par. 24, etc.).

The last Report is from 2014³⁷. The Idrizovo Report is included in item 4, a (i), par.44-51, and begins with indicating that the most serious comments of the Delegation date back to 2006 and no significant improvements have been noticed in the last decade. They describe the situation in Idrizovo as unacceptable! The negative comments continue to the extent that they are no longer negative criticism but it has been emphasized that every prisoner should have his/her own bed, daily meal should be provided to him/her (especially emphasizing that the newly admitted prisoners are entitled to have a meal on the day of their arrival in the prison) etc. so it can be concluded that the living conditions in Idrizovo have long overstepped the line of “unsatisfying and degrading”.

The president of CST personally presented the Report of 2014 to the competent authorities of the Republic of Macedonia in the period of 30-31 March 2015 wanting to *emphasize the importance of the written comments in the Report*.

IV. Conclusion

The opinions about “...*facilitating the position of the convicts since they are deprived from one of the fundamental human rights – right to free movement and action...*” may be found in the older legal literature³⁸, which I cannot completely agree with today, since their bad estimation and the decision to object the social norms has led them to not observe the laws and break them, so consequently their isolation from the society follows. As a result of such behaviour the tendency for “*equal rights and facilitated position*” of the convicts and the rights and freedoms of the citizens observing the previously prescribed norms and rules of behaviour cannot be supported!

Ultimately, we can confirm that all modern penal systems have been established on the basis of humanism and resocialisation and they must realise their objectives in manners that does not include an application of repressive and inhumane means. Hence, when serving the imprisonment sentence the convicts enjoy certain rights but they must simultaneously respect the rights and obligations resulting from their status of convicts.

On the other hand, due to the increased inflow of convicts throughout the prisons in the country in need of necessary health care the number of employees in the penitentiary institutions, especially the health care sector³⁹, should be revised since it is inappropriately low that in no way is in favour of the improvement of the overall functioning of the prison system in the Republic of

³⁶ Report to the Government of “FYROM” on the visit to FYROM” carried out by the CPT, from 21 to 24 November 2011.

³⁷ Report to the Government of “FYROM” on the visit to FYROM” carried out by the CPT, from 7 to 17 October 2014.

³⁸ See: Milutinović M., Penologija - nauka o izvršenju krivičnih sankcija i resocijalizaciji osuđenika, p.291-292.

³⁹ See: <http://tv21.tv/mk/?p=106752>, last visit: 11/11/2016.

Macedonia. At the same time conditions for accommodation and work of the convicts and the employees in the penitentiary institutions throughout the country should be created, as well as compulsory strengthening of the health care and employment of new staff and their proper training.

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