

HUMAN RIGHTS-BASED MONITORING ASSESSMENT OF PLACES OF DETENTION THROUGH THE COVID-19 PANDEMIC

THE CASE OF ALBANIA



Organization for Security and
Co-operation in Europe
Presence in Albania

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The views expressed in this publication do not necessarily reflect those of the OSCE Presence in Albania.

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Acronyms and Abbreviations

CPT	Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
ECHR	European Convention on Human Rights and Fundamental Freedoms
GDP	General Directorate of Prisons
HJC	High Judicial Council
ICCPR	International Covenant on Civil and Political Rights
IECD	Institutions for the Execution of Criminal Decisions
IPC	Infection prevention and control measures
NPM	National Preventive Mechanism
SPT	UN Subcommittee on Prevention of Torture to States Parties
WHO	World Health Organization

Executive summary

The year 2020 found the entire world confronting the Coronavirus (COVID-19) outbreak. The COVID-19 crisis took its toll on the global economy, public health and people's lifestyle. The virus brought a new regime of social and physical distancing, infected 33,777,641 million people worldwide, killed over 1,009,097, and led Governments to taking drastic quarantine and lockdown measures to limit the spread of COVID-19.¹

Isolation, restriction of movement, quarantine, and complete lockdown measures have impacted widely people's way of life, attitude, and behaviour. The nexus of COVID-19 pandemic and deprivation of liberty has given rise to many considerations, risks, and challenges. What impact did such crisis have on the fundamental human rights? How did it change the lives of those in detention? This is the kind of questions this review addresses, analysing Albania's context and the institutional response to the pandemic crisis.

The Albanian prison system introduced a number of regulatory acts, orders, guidelines and action plans, prioritizing preventive and isolation measures. In order to reduce actual prison overcrowding, the Ministry of Justice adopted a normative act enabling a three-month conditional release of 392 prisoners, who pose low risk to society, elderly detainees, non-violent, and those with severe medical conditions². The prison lockdown impacted the work of the legal counsels, whose visits to prisons were *de facto* suspended. The prisoners' family visits and other outdoor activities were also suspended. The same happened with detention monitoring mechanisms, creating thus difficulties in providing prompt replies to prisoners' complaints. Under such circumstances, the General Directorate of Prisons (GDP) reconsidered the ban on the use of internet and telecommunication within the prison regime, allowing for video-calls and online meetings to replace in-person visits.

¹ Source of data World Health Organization (WHO) updates on corona virus situation (as of September 30th, 2020), [website]: <https://covid19.who.int/>

² Normative Act No. 7/2020 "On granting conditional permits to convicted prisoners who are allowed to stay at home for a period of three months".

The impact of the complete lockdown on fundamental human rights affected mostly the protection of detainees' health, and especially the principles of equivalence of care and access to health care³. The lockdown resulted positive, as it contributed to keeping the epidemic isolated in a few prisons. According to the GDP, there are 71 infected inmates out of 289 tested, and 76 infected staff members out of 423 tested.⁴

Based on the above findings, the report makes recommendations for short and mid-term interventions to ensure that prisoners and pre-trial detainees are treated in compliance with the internationally accepted principles and standards. It also highlights the right to prompt and updated information on the epidemic or medical isolation to reduce uncertainties, and ensure that mental health care is available for inmates in the long term. Finally, it provides some recommendations for ensuring an increased level of vigilance among the prison staff, proper access to health care, legal counsel (particularly for remand detainees), and prompt and up-to-date information in case of any potential new wave of the epidemic. The report may form the basis for documenting trends over the coming months, and for enabling training and capacity building for effective management.

Introduction and background

People deprived of liberty, such as people in prisons and other places of detention, are considered to be more vulnerable to the Coronavirus disease (COVID-19) outbreak than the general population, because of the confined conditions where they live together for prolonged periods of time. Moreover, experience shows that places of detention (*i.e., prisons and pretrial detention facilities*), where people are gathered in close proximity, can easily act as a source of infection, amplification, and spread of infectious diseases within and beyond prisons.

People detained are vulnerable for several reasons, especially due to the proximity of living (or working) closely to others – in many cases in overcrowded, cramped conditions with little fresh

3 Idem, paragraph 6.

4 Data provided from the General Prisons Directorate. Data as of 30 September 2020.

air. They also have common demographic characteristics, with generally poorer health than the rest of the population, often with underlying health conditions. Hygiene standards are often below those found in the community and sometimes security or infrastructural factors reduce opportunities to wash hands or access to hand sanitizer. Any Coronavirus outbreak in prisons should - in principle - not take prison management by surprise, as contingency plans for the management of outbreaks of communicable diseases should be in place. This is an essential part of the obligation of the state to ensure the health care of people in prison required by international human rights law.

Albania has 24 penitentiary institutions, including 17 high-level and normal level security prisons, with dedicated pretrial detention sections (Tirana, Fushe-Kruja, Rrogozhina, Peqini, Shkodra, Lezha, and Korça); pretrial detention centres (Tirana, Elbasan, Lushnja, Berat, Vlora); one special institution dedicated to persons under compulsory treatment and elderly convicts older than 65 (Kruja); one juvenile rehabilitation centre (Kavaja), one women's prison and one prison hospital (Tirana).⁵ Not long ago, the penitentiary sector was challenged by emergency measures taken due to numerous earthquakes hitting the country.

The prisons' response to COVID-19 has shown that, in order to be effective, the approach taken needs to involve the whole government and the whole society, for a number of reasons:

- Widespread transmission of an infectious pathogen affecting the community at large poses a threat of introducing the infectious agent into places of detention; the risk of rapidly increasing transmission of the disease within prisons or other places of detention is likely to have an amplifying effect on the epidemic, with the number of people affected being swiftly multiplied⁶.
- Efforts to control COVID-19 in the community are likely to fail if strong infection prevention and control (IPC) measures, adequate testing, treatment and care are not also carried out in prisons and other places of detention.

⁵ Information is accessible in the GDP website (last accessed 17 June, 2020): <http://www.dpbsh.gov.al/newweb/?fq=brenda&m=shfaqart&gj=gj1&aid=836>

⁶ 2019 Novel Coronavirus (2019-nCoV): Strategic Preparedness and Response Plan. Geneva: World Health Organization; 2020 (https://www.who.int/docs/default-source/coronaviruse/srp-04022020.pdf?sfvrsn=7ff55ec0_4&download=true)

- Responsibility for healthcare in prisons and other places of detention lies with the Ministry of Health and Social Protection. The Ministry of Justice/General Prisons Directorate are responsible for complying with the protocols developed and establishing an Inter-Government Committee for managing the emergency situation. The coordination and collaboration between health and justice sectors are paramount if the health of people in prisons and other places of detention and the wider community has to be protected.
- People in prisons and other places of detention are already deprived of their liberty and may react differently to further restrictive measures imposed upon them. All actions further limiting detainee freedoms (e.g. medical isolation, reduced visits, etc.) should:
 - a. have a legal basis
 - b. be limited in scope and duration
 - c. be necessary and proportionate based on the best science available
 - d. not be, or appear to be, punitive

Methodology

The prisons and detention facilities are likely to act as amplifiers of infectious diseases such as the Coronavirus, because social distancing is impossible within closed institutions and movement in and out of these facilities is common. And yet, state authorities have the primary responsibility to ensure that essential health conditions are put in place and maintained even in those circumstances.

This assessment is based on an analysis of the prison regulations and normative acts, information provided by the GDP through written reports, meetings, video-calls, and official online data. Due to prison lockdown, independent monitoring in prisons and pretrial detention centres was not allowed by an order of the Minister of Justice.

The comparative components of this report are based on the newly adopted CPT Statement of Principles relating to the treatment of persons deprived of their liberty in the context of the

Coronavirus disease (COVID-19) pandemic⁷, WHO guidelines on prevention and preparedness against COVID-19⁸, the SPT Advice to State Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic⁹, the Mandela Rules¹⁰, the European Prisons Rules¹¹ in terms of the basic rights for the treatment of prisoners, and the European Convention on Human Rights and Fundamental Freedoms¹².

The conclusions of the assessment serve to come up with recommendations designed to strengthen compliance of existing practices with human rights standards in cases of emergency; but they are also aimed to improve future responses with particular focus on proportionate and effective protective measures, access to information, and independent prison monitoring.

Analysis of the national legal and regulatory framework and prison conditions

The assessment review was based on a combination of desk research and legal analysis. Desk research was based on relevant literature, national legislation and normative acts, international legal instruments regulating treatment of detained population and access to fundamental rights (i.e. health care, right to information, access to legal counsel, etc.).

Primary sources for the review were the normative acts that regulate the state of emergency in prisons; official reports of the Ministry of Justice and the GDP. Additionally, information was collected through meetings, video calls, and official data, accessible in the website of the Ministry of Justice and the GDP. The normative acts that regulate the state of emergency in prisons are listed in hierarchic level below:

⁷ <https://rm.coe.int/16809cfa4b>

⁸ http://www.euro.who.int/__data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1

⁹ <https://www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf>

¹⁰ For more information on the Nelson Mandela Rules: <https://www.penalreform.org/issues/prison-conditions/standard-minimum-rules/>

¹¹ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d8d25

¹² Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5

- Ministry of Justice:
 - Orders No. 91 and No. 92, dated 09.03.2020 "*On preventive measures against COVID-19 in Institutions for the Execution of Criminal Decisions (IECD)*".
 - Normative Act No.15, dated 15.04.2020 "*On amendments to Law No.88/2019 "On the implementation of the budget for year 2020"*
 - Order No. 95, dated 10.03.2020 "On Measures taken regarding desk services".
 - Order No. 90, dated 14.03.2020 "On measures for creation of quarantine infrastructure within the prison Hospital".
 - Order No. 103, dated 16.03.2020 "On the approval of an organizational and administrative action plan for the operation and functioning of the Ministry of Justice and its subordinate institutions, as part of the preventive measures *against COVID-19*".
 - Instruction Order no. 6, dated 19.03.2020 "On measures for the quarantine service of COVID-19 cases within penitentiary system".
 - Normative Act Nr.7, date 23.03.2020 of the Council of Ministers on the temporary home release for prisoners for a period of three months"
- General Directorate of Prisons:
 - Order No. 2729, dated 09.03.2020 "*On hygienic and sanitary measures to prevent acute respiratory infections, including COVID*".
 - Order No. 2846, dated 11.03.2020 of the General Director "*On the establishment of the penitentiary system Task Force for Implementation of preventive measures against COVID-19*".
 - Order No. 2986, dated 14.03.2020 "On visits and inspections in the IECD for the implementation of *preventive measures against COVID-19*".
 - Order No. 2729/1, dated 27.03.2020 of the Director General "On additional protocol measures against COVID-19".
 - Order No. 2729/2 Prot, dated 20.06.2020 of the Director General "On the implementation of additional protocol measures for the prevention of the virus COVID-19".

Main findings

- **Compliance with international human rights standards against COVID response**

Whilst acknowledging the clear imperative to take firm action to combat COVID-19, the preconditions for full respect for the fundamental rights - such as the absolute prohibition of torture and inhuman or degrading treatment, right to life and security, right to privacy and confidentiality, legal assistance, access to information and functional complaint mechanisms – remain fundamental when considering complete prison lockdowns as protective measures.¹³ Such situations call for special vigilance to ensure that the measures are a proportionate and necessary response to the evolving pandemic and especially that such measures do not adversely affect the rights of those, who are already in vulnerable situations, such as prisoners.

According to the relevant human rights standards, as indicated by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in its COVID-19 Statement of Principles, the resort to alternatives to deprivation of liberty is imperative in situations of overcrowding and even more so, in cases of emergency.¹⁴ The decrease of prison population is indispensable to ensure the effective implementation of the sanitary regulations and to ease the mounting pressure on prison personnel and the penitentiary system as a whole. The application of “do-no-harm” principle can also be adapted to the fast-evolving situation with COVID-19 by reducing the number of people in detention facilities.

The Albanian prison system responded by implementing a number of regulatory acts, orders, guidelines and action plans that prioritized the preventive and isolation measures.

In order to reduce actual prison overcrowding, the Ministry of Justice adopted a normative act allowing for a three-month conditional release for 392 prisoners, who pose low risk to society, including older, nonviolent prisoners, and those with severe medical conditions.¹⁵

¹³ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT): Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic, March 2020. Accessible: <https://rm.coe.int/16809cfa4b>

¹⁴ Principle #5, Idem

¹⁵ Normative Act No. 7/2020 "On granting conditional permits to convicted prisoners who are allowed to stay at home for a period of three months". Data as of 30 September 2020.

The General Directorate of Prisons issued an order, transforming two sections in quarantine pavilions within the Prison Hospital. This work was accompanied by the preparation of medical protocols and action plans on preventive hygienic measures in the entire prison system adopted by the Minister of Justice. A dedicated task force was established to follow up the implementation of the emergency framework, collect and respond to prisoners' complains, as well as review and adapt emergency interventions based on the alerts coming from internal communication with the prison administration.¹⁶ The adopted measures mainly focused on the protection of detainees' health, and especially on ensuring compliance with the principles of equivalence of care and access to health care.¹⁷ The lockdown resulted positive, as it managed to keep the epidemic isolated in a few prisons. According to the GDP, there are 71 infected inmates out of 289 tested, and 76 infected staff members out of 423 tested.¹⁸

According to Principle 9 of the CPT COVID-19 Statement of Principles, fundamental safeguards against the ill-treatment of persons in the custody of law enforcement officials, such as access to a lawyer or notification of custody, must be fully respected in all circumstances and at all times. Principle 10, on the other hand, emphasizes the importance of detention monitoring performed by independent bodies, such as the National Preventive Mechanisms (NPMs) and the CPT, as an essential safeguard against ill-treatment, by taking every precaution to observe the 'do no harm' principle.

The Albanian prison lockdown affected legal counsels and legal representatives, whose visits to prisons were *de facto* suspended. The prisoners' family visits and other outdoor activities were suspended. The same applies to detention monitoring mechanisms, creating this way difficulties with prompt replies to prisoners' complaints. The situation was quite challenging in the so-called "red zone" regions, where penitentiary institutions were forced to suspend every transfer of prisoners.

¹⁶ Report of the GDP to the Albanian Parliamentary Committee on National Security.

¹⁷ *Idem*, paragraph 6.

¹⁸ Data provided by the General Directorate of Prisons. Data as of 30 September 2020.

- **Prohibition of torture:**

The prohibition of torture, cruel inhuman or degrading treatment or punishment cannot be derogated from, even during exceptional circumstances and emergencies which threaten the life of the nation.¹⁹ The closed and isolated nature of prisons might offer an opportunity for abusive action by prison administration or by prisoners against each other. People who are detained or imprisoned do not cease to be human beings, no matter the crime they have been accused of, or convicted for.

The universally accepted principle of absolute prohibition of torture, inhuman and degrading treatment does not allow for any circumstance, where such acts can ever be justified. The European Court of Human Rights offers an extensive case law that can be referred to in terms adequacy of care,²⁰ frequency and quality of care,²¹ fight against discriminatory, acts and other forms of negligence that can amount to inhuman and degrading treatments. In compliance with the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), preventing torture and ill-treatment by excessive use of restrictive isolation measures and excessive use of power or violence, means being able to have access to monitoring by independent bodies, given that such places are under the state responsibility. No exception against such universal principle is accepted.²²

In the Albanian context, there are no allegations of torture, inhuman and degrading treatment reported by the prisoners. While the lack of proper prison monitoring makes it difficult to reach conclusions, concerns were nevertheless raised regarding the increased number of disciplinary measures, particularly for pre-trial detainees. Such fact is at times explained by prison staff as a

¹⁹ Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic (adopted on 25th March 2020); [internet] <https://www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf> (last accessed in July 1st 2020)

²⁰ Amirov v. Russia, 2014, § 9; Mustafayev v. Azerbaijan, 2017, § 53 and Jasinskis v. Latvia, 2010, § 60; https://www.echr.coe.int/Documents/Guide_Prisoners_rights_ENG.pdf

²¹ Article 3 imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty by, among other things, providing them with the requisite medical care (Kudła v. Poland [GC], 2000, § 94; Paladi v. Moldova [GC], 2009, § 71; Blokhin v. Russia [GC], 2016, § 136). Thus, the Court has held on many occasions that lack of appropriate medical care may amount to treatment contrary to Article 3 (Ibid.; Wenerski v. Poland, 2009, §§ 56-65); disclosing serious failings in the applicant's medical care (Krivolapov v. Ukraine, 2018, § 76, with further references).

²² UNCAT, Article 2(2) and ICCPR, Articles 4 and 7.

result of an increased level of insecurity by inmates who, under regular conditions, would never act by breaking internal prison regulations. In addition, some concerns were raised with regards to the implementation of the principle of proportionality.²³

- **Reduced prison overcrowding:**

The application of “do-no-harm” principle becomes vulnerable when applying the Coronavirus-related sentences. While the need to prevent state-imposed quarantines from being broken is undisputed, the answer does not come from threatening or imposing long sentences. As underlined by the United Nations High Commissioner for Human Rights, quarantine measures can have dire consequences for people who are already barely surviving economically: ‘[such preventive measures] may result in lost pay or a lost job, with far-ranging consequences for people's livelihoods and lives.’²⁴ In turn, criminalizing/detaining individuals for violating quarantine aiming to protect society from the spread of COVID-19 might create an extra burden for the penitentiary system by increasing the number of individuals put in obligatory quarantine for 14 days once in pre-trial. Furthermore, in cases of emergency, the presumption of innocence is a paramount principle that should be considered prior to any possible penal measure. In this context, detention should be a measure of last resort and every judgment should consider the conditions and the reasons for which a particular individual has violated a preventive measure. Detaining individuals for violating quarantine can negatively impact the measures to reduce prison overcrowding and the conditions of pretrial detention facilities.

During the state of emergency, the Albanian penitentiary system faced an increased number of pre-trial detainees.

According to the GDP official statistics, the number of people in pre-trial detention compared to prisoners and the number of facilities goes 52 - 58% of the prison population:

Month	Pre-trial detention	Prison
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23 Principle #4, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT): Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic, March 2020. Accessible: <https://rm.coe.int/16809cfa4b>

²⁴ ‘Coronavirus: Human rights need to be front and center in response, says Bachelet’, 6 March 2020, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25668&LangID=E>.

January 2020	2286	2777
February 2020	2326	2760
March 2020	2192	2644
April 2020	2979	2622
May 2020	1929	2545
June 2020	2002	2502
July 2020	2060	2448
August 2020	2181	2452
September 2020	2347	2402

Note: Number of persons under compulsory treatment is not calculated.

- **Prisons' material conditions:**

Principle #1 of the CPT Statement of principles related to the treatment of persons deprived of liberty in the context of the Coronavirus disease (COVID-19) pandemic stresses out the importance of all possible actions to protect the health and safety of all persons deprived of their liberty. Taking such action also contributes to preserving the health and safety of the prison staff.

In the Albanian context, this was done through Orders No. 91 and No. 92, dated 09.03.2020 "*On preventive measures against COVID-19 in Institutions for the Execution of Criminal Decisions (IECD)*" and Order No. 103, dated 16.03.2020 "On the approval of organizational and administrative action plan for the operation and functioning of the Ministry of Justice and its subordinate institutions, as part of the preventive measures *against COVID-19*". Through such actions, the prisons were called to contemplate the regulatory framework with guidelines and protocols to address the emergency, manage the quarantine within the prison hospitals and furthermore, prioritize special categories of inmates that can be entitled to conditional releases.

The situation of the epidemic called for budgetary reallocations and some amendments as there was a need for sanitary measures. Access to (hot) water in prisons is limited due to lack of infrastructure to provide for taps in each prison cell. Such concern applies equally to existing and newly built facilities. Hand sanitizers and sanitary disinfectants were reported readily available

in the majority of prisons. This was a responsibility of the prison authorities due to alcohol contents and related elements of internal security.

The physical distancing within the Albanian prisons remains a challenge in most of the prisons/pretrial facilities in Albania such as Fushë-Kruja, Fier, Shën Koll, “Jordan Misja”, “Ali Demi”, Peqin, Rrogozhina, and others, particularly when cases of infected inmates and/or prison staff were detected. Lack of space per person is a concern that is constantly raised by the CPT visits to Albania. When combined with WHO requirements on the two-meter social/physical distancing rule, such situation becomes a human rights’ violation.

The prison authorities prepared Order No.90, dated 14.03.2020 "On measures for creation of quarantine infrastructure within the Prison Hospital" and Instruction Order No.6, dated 19.03.2020 "On quarantine measures for the COVID-19 cases in the penitentiary system". These normative acts, consecutively, guided the preparation of intervention protocols with regards to quarantine regime within prison settings.

The Prison Hospital was granted the status of COVID-19 quarantine facility by a GDP Order. Apart from this status, it operates as a facility for any other emergency cases as well as for accommodating inmates under compulsory medical treatment. This special status increases the workload of both the medical and prison staff.

- **Access to legal counsel**

According to Principle #9 of the CPT Statement of principles relating to the treatment of persons deprived of their liberty in the context of the Coronavirus disease (COVID-19) pandemic, fundamental safeguards against the ill-treatment of persons in the custody of law enforcement officials (access to a lawyer, access to a doctor, notification of custody) must be fully respected in all circumstances and at all times.

The HJC Decision on suspension of all judicial activities and services in all courts of the country, created difficulties in accessing legal aid. Such decision, taken right after the Government announced the state of a natural disaster, resulted in an increased number of persons held in pre-

trial facilities, and more concerns about the management of the epidemic within the prison system.²⁵

The prison lockdown affected the work of the legal counsels, whose visits to prisons were *de facto* suspended. The prisoners' family visits and other outdoor activities were also suspended. The same applied to detention monitoring mechanisms, creating this way difficulties with ensuring prompt replies to prisoners' complaints. In such conditions, the General Directorate of Prisons reconsidered the ban regarding the use of internet and telecommunication within the prison regime, allowing video-calls and online meetings to replace in-person visits.

Detaining individuals during the state of emergency under conditions of no independent prison oversight may be considered a violation of Principle#10 on independent monitoring of the CPT Statement of principles relating to the treatment of persons deprived of their liberty in the context of the Coronavirus disease (COVID-19) pandemic.

The CPT calls for precautionary measures (such as requiring persons with symptoms to wear protective masks, or providing glass divisions) may be appropriate in some circumstances.²⁶

- **Access to information:**

Despite the levels of emergency, all measures regarding changes in the prison regime affecting the entire penitentiary institutions (prisoners and prison staff) need to be communicated promptly, with clear information on the restrictions and time periods for review or lifting of such policies and opportunity to complaints.²⁷ In the Albanian case, there are no clear deadlines on the application of restrictive measure and the prison lockdown. This information cannot be found in any of the normative acts that were prepared for the management of COVID-19 epidemic.²⁸

25 High Judicial Council, Decision Nr. 127, dated 10.03.2020 "On suspension of the judicial activities and service in all courts in the Republic of Albania". Accessible at <http://klgj.al/wp-content/uploads/2020/03/127.-vendim-pezuillim-veprimtarie-ne-gjykata.pdf>

26 Principle#9, CPT' Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic

27 Principle #4, CPT' Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic

28 This information refers to Order no. 2729, dated 09.03.2020 "On hygienic and sanitary measures to prevent acute respiratory infections, including COVID"; the Order no. 2846, dated 11.03.2020 of the General Director "On

The process of conditional three-month home release for 392 prisoners, who pose less risk of harm to society, including the elderly, nonviolent and low-risk prisoners, and those with severe medical conditions was a good opportunity to manage the level of overcrowding, as well as an opportunity for these prisoners to restore connections with their families. Twenty three out of 392 prisoners, returned to detention as a result of violation of their conditional home release. By the end of September 2020, prisoners with special leave were returned to detention facilities as a result of ending the second three-month leave. Following the end of special leave, only two prisoners did not return to prison, they are still on the run by the authorities.

Taking into consideration the continuation of the pandemic, such initiatives are useful. In case of other such initiatives, the GDP will again face the return of this category of prisoners. This will practically mean that there will be a need for an allocation plan, quarantine and proper accommodation in full compliance with the international standards. Returning from conditional home release should mean proper accommodation and adequate health screening by prison authorities rather than simply isolation.

In cases of medical separation, inmates should be properly informed. In the event of isolation or placement in quarantine of a detained person, who is infected, or is suspected of being infected by SARS-CoV-2 virus, the person should be provided with meaningful daily human contact.²⁹ The need for continuation of the rehabilitation programmes, psychological treatment and therapies remains relevant for all persons deprived of liberty. Though psychosocial and educational staff have been present with individual support and counselling, the pressure of prolonged isolation measures has had an impact on the prisoners.

Information and protective measures for family relatives of the prison staff should also be essential. So far, there are no normative acts or instructions addressing the additional need for

establishment of the Penitentiary system Task Force for Implementation of preventive measures against COVID-19 " and Order no. 2996, dated 14.03.2020 "On visits and inspections in the IECD for the implementation of preventive measures against COVID-19 ".

²⁹ Principle #8, CPT' Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic.

protection of the family relatives of prison staff, as well as prisoners under conditional home release. Addressing the rights to additional protective measures for family relatives of the prison staff should be taken into consideration by the GDP, by amending Order No.103, or by issuing a dedicated specific normative act describing protocols of care and additional examinations.

- **Prisons' human resources and emergency**

In every penitentiary facility, staff is required to maintain security and assist the people they supervise. In case of prison lockdown or quarantine in a wing or facility, prison staff is also required to be isolated. Prison staff members need paid sick leave to avoid situations where, due to financial needs, they work while they are unwell. Similar provisions on sick leave were foreseen by Order No. 103, dated 16.03.2020 "On the approval of an organizational and administrative action plan for the operation and functioning of the Ministry of Justice and its subordinate institutions, as part of the preventive measures against COVID-19 ". The COVID-19 emergency has shown the need for permanent medical and nursing staff, as well as well trained to respond to cases of emergency and provide adequate support to inmates.

The adopted protocols were distributed to all institutions, requiring interventions from a multidisciplinary team that appeared untrained to fully understand and implement such measures. The continuous need for tailored and professional training regarding the rigorous implementation of protective and preventive measures should be maintained as a priority. Some online training on the rehabilitation programmes have recently started, provided by nongovernmental organizations. The professional information and knowledge about infections and transmittable diseases, as well as medical emergencies must be frequent and multi professional if further threats will be present to the prison system in Albania.

Recommendations and lessons learnt

- The complex challenge of fighting the Coronavirus outbreak in places of detention has required an immediate response by the penitentiary system in Albania, by adopting numerous normative acts and instructions as part of a comprehensive prevention plan. Such extended legal framework calls for adequate human and financial resources, medical supplies and staff training that is consistently addressing governmental and nongovernmental sources. Effectiveness of measures relies on access to prompt and up-to-date information that should be provided to every incarcerated person, his/her legal counsel, or family representative.
- The prohibition of torture, cruel inhuman or degrading treatment or punishment cannot be derogated from, even during exceptional circumstances and emergencies which threaten the life of the nation.³⁰ The closed and isolated nature of prisons can offer the opportunity for abusive action by prison administration or by prisoners against each other.
- The process of conditional home release for incarcerated individuals who pose less risk of harm to society, including the elderly, nonviolent and low-risk prisoners, and those with severe medical conditions was a good opportunity to manage the level of overcrowding as well as an opportunity for these prisoners to restore connections with their families. This will practically mean that there will be a need for an allocation plan, quarantine and proper accommodation in full compliance with international standards. Returning from conditional home release should mean proper accommodation and adequate health screening by prison authorities rather than simply isolation.
- Detaining individuals during the state of emergency under conditions of no independent prison oversight may be considered a violation of Principle#10 on independent monitoring of the CPT' Statement of principles relating to the treatment of persons deprived of their liberty in the context of the Coronavirus disease (COVID-19) pandemic. Access to monitoring bodies to all places of detention, including places where persons are kept in quarantine should be guaranteed, under precaution to observe the 'do no harm'

³⁰ Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic (adopted on 25th March 2020); [internet] <https://www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf> (last accessed in July 1st 2020)

principle in particular when dealing with older persons and persons with pre-existing medical conditions”.

- The medical separation should be properly informed. In cases of isolation or placement in quarantine of a detained person who is infected, or is suspected of being infected by SARS-CoV-2 virus, the person should be provided with meaningful daily human contact.
- Although psychosocial and educational staff have been present with individual support and counselling, the pressure of prolonged isolation measures has had an impact on all prisoners.

Rehabilitation programmes, psychological treatment and therapies in the prison context play a crucial role for the prisoner’ own wellbeing. They remain important for a safe and secure prison environment. In compliance with Law No. 81/2020 “On the rights and treatment of prisoners and pre-trial detainees,” rehabilitation is at the core of incarceration and as such, reactivating these programmes by addressing individual needs might reduce, among others, inter-prisoner violence and other prison regime violations.

- Taking into consideration long working hours and the difficult working conditions, prison staff performance and personal well-being remain a priority. With the present and future threats of potential epidemic waves, there is a remaining need for professional and tailored training, dedicated not only to medical and psychological and psychiatric staff but also to security and high-level management. Such training might be beneficial for the human resource management, financial allocations and priority settings, as well as emergency responses.

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