

Appeal by European NGOs involved in the field of prison health and in the defence of the right to health protection for prisoners¹

COVID-19: in view of the seriousness of the health risk and the specific dangers posed by the pandemic in prisons, international organisations must take immediate action.

The signatory organisations, which are involved on a daily basis in the protection of the right to health of prisoners, are alarmed at the unpreparedness of penitentiary administrations to deal with the spread of the coronavirus on the continent and, in most countries, the lack of consideration of the specific situation of prisons in national preparedness plans and systems for dealing with public health incidents. They recall that more than 1.5 million people are detained in prison facilities on the continent on any given day and that under international treaties, States are obliged to take the necessary measures to protect the life and health of those they detain.

The deficiencies observed pose a threat not only to prisoners and staff working in the institutions but also to the general population². Prisons are generally considered to be amplifiers in the spread of infectious diseases³.

Although levels of exposure to the health crisis vary greatly from one country to another, due to the great disparities in the characteristics of prison systems and the performance of national hospital systems, it appears that, overall, the prison issue is too largely ignored at European level, even though prisons are places with a high risk of transmission. Moreover, some states are tempted to adopt measures to isolate detainees from the rest of the population, in disregard of the rights of detainees and their relatives, and at the risk of preventing the population's adherence to health instructions given by authorities.

Consequently, taking account of the risk factors in the prison context, the signatory NGOs intend to alert the international organisations concerned, first and foremost WHO and the Council of Europe, to the serious shortcomings observed on the ground and urge them to put pressure on governments to take special health measures and reduce significantly the prison population as soon as possible.

Once again, the national contexts are highly contrasted and the picture drawn below should not be interpreted as reflecting a uniform situation. However, in view of the urgency of the situation, it is intended to underline the seriousness of the consequences that would result from failure to manage the coronavirus disease outbreak in prison and the imperative need for international organizations to act immediately to redirect national policies in this area.

1. Prisons represent high-risk environments for the transmission of infectious diseases

1.1 Conditions of occupancy and organization of prison facilities. Prisoners are permanently in a situation of great promiscuity, whether in cells, production workshops, yards, etc. All aspects of prison life involve the movement of prisoners in groups, in more or less large numbers. The facilities are often poorly ventilated. In many European states, this situation is aggravated by regional or national situations of prison overcrowding⁴. From this point of view, the risks of spreading of the virus in the prison systems of post-soviet countries are particularly significant: i.) the prison population there is particularly large; ii.) remand prisons are often overcrowded and organised in

¹ Document completed with an update on documents and statements issued by the CPT, UNAIDS and WHO on 20 and 23 March 2020 respectively

² WHO, *Prison and Health*, Genève, 2014

³ The Lancet, HIV and related infections in prisoners, Sep 10, 2016 Volume 388 Number 10049 p1025-1128, e2-e3

⁴ Prison population brief. See also CoE, *White Paper on Prison Overcrowding*, CM(2016)121-add3

collective cells, while correctional institutions are mostly organised in barracks housing 80-150 convicts, if not more; iii.) once convicted, prisoners are transported for weeks or even months to their assigned correctional institutions; these transports take place in appalling hygienic conditions and involve repeated stops along the route.

1.2 A population at high risk of communicable disease and facing serious risk factor for coronavirus severity. In particular, the notification rates of tuberculosis in European prisons are up to 30 times higher than in the general populations. Several countries in Europe, especially in Eastern Europe report HIV prevalence among prisoners at rates greater than 10 %⁶. Prison populations in Europe are aging at an unprecedented rate⁷.

1.3 A frequently failing medical system. Although the level of development of prison medicine varies greatly, the organisation of care in prisons is never designed to deal with a crisis situation. Even more critically, especially in Eastern Europe, services are very often under-equipped, understaffed and unable to cope adequately with the ordinary burden of common diseases. Moreover, they generally suffer from a very poor linkage with the general health system, leading to significant delays. Almost everywhere, the unavailability of escorts is a recurrent problem for the transfer of patients to the hospital.

2. WHO guidance against COVID-19 spread are hardly implemented in prison.

WHO has provided States with guidance for public health measures that can slow the transmission and spread of COVID-19⁸. Accordingly, many States have taken measures to prohibit gatherings, to close down most public places and impose quarantine on the population to ensure social distance. However, although all countries are not on an equal footing in this respect, most measures recommended by the WHO are not, for the most part, implemented in prisons⁹.

2.1 The reduction of prisoners' contact with their relatives: mostly adopted response by prison administrations. Domestic authorities have generally limited themselves to providing information about the virus and drastically limiting prisoners' contact with the outside world¹⁰. Some, like France, have suppressed collective activities within the prisons. However, these measures do not appear to be of such a nature as to adequately prevent the risks of contamination, which may be caused by new entrants, extractions of prisoners to the courts, staff working in the prison, etc. These measures can have perverse effects: prisons are particularly vulnerable to fake information/myths that may circulate by word-of-mouth or online. The increasing isolation of the prison environment accentuates the impact of rumours¹¹.

⁵ WHO Europe, *Good practices in the prevention and care of tuberculosis and drug-resistant tuberculosis in correctional facilities* (2018)

⁶ The Lancet, HIV and related infections in prisoners, Sep 10, 2016 Volume 388 Number 10049 p1025-1128, appendix p8

⁷ For instance, a report by Public Health England (PHE) showed that the proportion of people in prison aged 50 or older has increased by 150 per cent between 2002 and 2017.

⁸ <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance> [Update: On 23 March, WHO have issued interim guidance on Preparedness, prevention and control of COVID-19 in prisons and other places of detention.]

⁹ In France, the National Preventive Mechanism stated on 16 March that the safety of persons in remand detention centres was no longer guaranteed and that the administration will therefore fail in its obligation to protect the persons under its control if it does not take the necessary measures as a matter of urgency. It called for a reduction in the prison population by encouraging prison exits and limiting entries.

¹⁰ In addition to visitations restrictions, the Irish Prison Service planned on a number of contingency measures to reduce the number of people in custody in a controlled manner.

¹¹ In Italy the lack of medical information and miscommunication resulted in panic and false myth.

2.2 *The maintenance of recurrent situations of regrouping of people: a favourable environment for the spreading of the virus.* At present, detainees are generally still faced with multiple and routine gathering situations, for roll call, work, showers, etc.. Prison staff are in daily contact with a large number of detainees, conduct body and cell searches.

2.3 *Failure to implement the required prevention interventions.* From this point of view also, authorities do not seem to consider the risks of internal propagation within the prison. Detainees are frequently not in a position to observe hand hygiene instructions¹². Masks for symptomatic individuals or health staff are not available¹³. Environmental cleaning is done under usual conditions.

3. COVID-19 case management

The laconism of the prison preparedness and response plans disseminated, or even the absence of any public information on the subject, indicates that prison medical services have not, at this stage, been prepared for an influx of COVID-19 cases. In view of the serious failures of the services concerned in the management of common pathologies in ordinary times, the lack of preparedness suggests an improvised and therefore potentially chaotic management of COVID-19 cases.

3.1 *Intervention protocol and articulation with civil medicine.* In most of the countries, no information was available on the intervention protocols defining the division of roles between prison medicine and civil medicine.

3.2 *Capacities of penitentiary medical facilities.* Apart from exceptions¹⁴, the available information does not show any reinforcement of the medical units in terms of personnel and equipment, particularly respiratory equipment. It does not appear that guidance to health providers for COVID-19 and severe acute respiratory infections has been disseminated.

3.3 *Conveyance and stay of detained patients in hospital.* No increase in the number of medical personnel was reported, nor were escorts provided to transport patients with Covid-19 to civilian hospitals. No legal measures to ease the transfer and hospital stay appear to have been envisaged.

4. Measures liable to infringe fundamental rights.

Several countries have taken, or are about to take, drastic measures to limit the prison population's contact with the rest of the world. Some countries have decided to completely suspend family visits¹⁵, others have imposed severe restrictions in this area. Some States have provided for compensatory measures, such as increased telephone¹⁶ or video conferencing facilities¹⁷.

Several UN experts¹⁸ and the Council of Europe have urged States to avoid overreach of security measures in their response to the coronavirus outbreak. When it comes to prison, the NGO Penal

¹² For instance, hydroalcoholic gel is prohibited for detainees.

¹³ In Italy, according to the NGO l'Altro Diritto, ombudsmen have expressed high concerns for the lack of masks, gloves or sanitizer. In Belgium, the guidelines for the management of suspected or actual cases of contamination recall the shortage of means of protection (masks, disinfectant gel) and recommend their use only when necessary.

¹⁴ In Moldova, the texts dated 12 March foresee the supply of equipment stocks (protective masks, multifunctional electronic thermometers, etc.), medicines, biodestructive preparations, etc.;

¹⁵ Including Belgium, Spain, Italy, France, Russia, Ukraine, Moldova, Bulgaria

¹⁶ Belgium has granted a 20 euro telephony credit to all detainees.

¹⁷ On 8 and 9 March, the Italian authorities authorised wide access to video calls to offset the effects of the suspension of visits. However, these instructions were unevenly applied, contributing to the outbreak of trouble.

¹⁸ COVID-19: States should not abuse emergency measures to suppress human rights – UN experts, GENEVA (16 March 2020)

Reform International has recalled the requirements of necessity and proportionality of measures limiting visiting rights in this context¹⁹.

While limitations on contact with the outside world may be justified where they are proportionate to the risk and accompanied by adequate compensatory measures, it must be stressed that closing prisons on themselves increases the risk of ill-treatment, especially in crisis and panic situations. Limitations on visits and activities will inevitably lead to situations of great tension²⁰. Prison administrations will face unprecedented pressure. If relief measures are not taken swiftly, particularly in terms of the number of detainees, they may find themselves facing situations that are very difficult to manage. Furthermore, it is essential that NPMs retain their right of access to prisons and that detainees have the possibility of contacting them by telephone, under appropriate conditions of confidentiality.

[UPDATE: The Council of Europe’s Committee for the Prevention of Torture (CPT) has published ON 20 March a statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic. It recalls that “*any restrictive measure (...) should have a legal basis and be necessary, proportionate, respectful of human dignity and restricted in time. While it is legitimate and reasonable to suspend nonessential activities, the fundamental rights (...) must be fully respected. This includes in particular the right to maintain adequate personal hygiene (...) and the right of daily access to the open air (of at least one hour). Further, any restrictions on contact with the outside world, including visits, should be compensated for by increased access to alternative means of communication (such as telephone or Voice-over Internet-Protocol communication)*”. In cases of isolation or placement in quarantine of a detained person who is infected or is suspected of being infected by the SARS-CoV-2 virus, the CPT considers that the person concerned should be “provided with meaningful human contact every day. Finally, the CPT stresses that States should continue to guarantee access for monitoring bodies to all places of detention, including places where persons are kept in quarantine.]

5. An indispensable intervention at the international level

The Signatories urge international governmental organizations to take full account of both the major health risk associated with the spread of COVID-19 in prisons and the inertia shown by States, and consequently to take measures to ensure that States act effectively and with full respect for the fundamental rights of detained persons.

5.1 Health measures of prevention, early detection and control of COVID-19. International organizations must act swiftly to get States to develop the required prevention and response plans. WHO must play its leading role in this area and provide support to authorities for preparation and response. However, the technical support approach is not enough, and WHO and the relevant United Nations and Council of Europe bodies must use all their influence to bring States to meet their international obligations to protect the life and health of detained persons.

[UPDATE: In a publication released on 20 March, entitled *Rights in the time of COVID-19 — Lessons from HIV for an effective, community-led response*, UNAIDS emphasized that “it is imperative that the health services in prisons are at least commensurate to those outside and that people are able to protect their health and access diagnostics and treatment, in a manner

¹⁹ Penal Reform International, *Coronavirus: Healthcare and human rights of people in prison*, briefing paper, 16 March 2020.

²⁰ Riots or protests have been taking place in 27 prisons throughout Italy. In this context, 13 prisoners died on 7 March 2020.

that respects confidentiality and medical ethics. Measures should be taken to strengthen the health sector in prisons.

On 23 March, WHO have issued interim guidance on *Preparedness, prevention and control of COVID-19 in prisons and other places of detention*. It insists to the domestic authorities that *the response to the disease requires “a whole-of-government and whole-of-society approach”*. According to WHO, *“the risk of rapidly increasing transmission of the disease within prisons (...) is likely to have an amplifying effect on the epidemic, swiftly multiplying the number of people affected.”* Consequently, it stresses that *“efforts to control COVID-19 in the community are likely to fail if strong infection prevention and control (IPC) measures, (...) are not carried out in prisons and other places of detention as well”*. The document contains a series of technical recommendations for health and prison authorities and public health agencies at local, regional and national levels. It explains state authorities need to establish an up-to-date coordination system that brings together health and justice sectors, keeps prison staff well-informed, and guarantees that all human rights in the facilities are respected.]

5.2 *Avoid the spread of COVID-19 by significantly reducing the prison population.* Whatever measures may be taken by the prison authorities to adapt to life in detention, the configuration of the premises and the organization of the prisons do not allow for the implementation of preventive measures, and in particular of social distance. Unless there is a clear reduction in the number of detainees, the virus will spread rapidly within the facilities and the prison and medical services will be overwhelmed. The national authorities must take urgent measures to seriously reduce the number of prisoners. In this respect, Council of Europe bodies, and in particular the Committee of Ministers, the General Secretary, the Committee for the Prevention of Torture (CPT) and the Commissioner for Human Rights, which play an important role in guiding penal and prison policies, must rapidly adopt recommendations to bring states to take these decisive steps. States have at their disposal a wide range of measures that can produce rapid effects, from penal policy guidelines provided to prosecutors' offices to exceptional measures of pardon and amnesty. It is essential that an impetus be given very quickly at European level to steer national policies in this way.

[UPDATE: In its publication on 20 March, UNAIDS stated that is *“critical to review broader criminal justice policies to reduce overcrowding and, ultimately, reduce the number of people in prison, and reduce the pre-trial detention period, adopting alternatives to incarceration for certain crimes or, where appropriate, decriminalizing certain acts altogether. In situations of acute epidemics, broader reform may not be possible in a short space of time. However, where it is not possible to assure the health of prisoners within the prison itself, steps should be taken (before the epidemic is in the prisons) for the early/ temporarily release of prisoners, as appropriate and according to the national standards, particularly those who are in pre-trial detention, and ensuring linkages with health facilities upon release.”*

On its side, the CPT emphasized that *“As close personal contact encourages the spread of the virus, concerted efforts should be made by all relevant authorities to resort to alternatives to deprivation of liberty. Such an approach is imperative, in particular, in situations of overcrowding.]*

5.3 *Monitor respect for fundamental rights.* The mechanisms for monitoring respect for fundamental rights should take exceptional organisational measures in order to be able to fully play their role. First, the ECtHR should strengthen its capacity to deal with requests for interim measures under Rule

39. In ordinary times, these are already very often necessary in some countries, such as Russia or Ukraine, in order to obtain acts of care which are essential for the protection of life. It is likely that the number of well-founded requests will increase significantly. Moreover, for legal or practical reasons, prisoners' access to their lawyer or to NGOs will become acute. The Court should adopt practical instructions adapting the formal requirements resulting from Article 47. The other relevant bodies of the Council of Europe and the United Nations should organise the monitoring of the measures taken by states to combat the pandemic.

[UPDATE: On its 20 March Statement, the CPT stressed that “*monitoring by independent bodies, including National Preventive Mechanisms (NPMs) and the CPT, remains an essential safeguard against ill-treatment. States should continue to guarantee access for monitoring bodies to all places of detention, including places where persons are kept in quarantine. All monitoring bodies should however take every precaution to observe the ‘do no harm’ principle, in particular when dealing with older persons and persons with pre-existing medical conditions*”]

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Signatories :

European Prison Litigation Network - EPLN
Eurasian Network of People who use Drugs – ENPUD
Helsinki Foundation for Human Rights (Poland)
Altro Diritto (Italy)
PromoLex (Republic of Moldova)
MdM - Médecins du Monde International Network
Antigone (Italy)
Belgian Bar (French and German speakers bars) – Avocats.be (Belgium)
Kharkiv Human Rights Protection Group – KHPG (Ukraine)
Ukrainian Human Rights Institute (Ukraine)
Bulgarian Helsinki Committee (Bulgaria)
Public Verdict Foundation (Russia)
Russia Behind Bars (Russia)
Ban Public (France)
Observatoire International des Prisons – Section française (France)
Observatoire International des Prisons – Section belge (Belgium)
Prison Archive/Strafvollzugsarchiv e.V. (Germany)
AFEW International (Netherlands)
Legal Basis (Russia)
Agora International Human Rights Group (Russia)
Zona Prava (Russia)
Association for Human Rights of Andalusia (Spain)
Iridia – Center for the Defense of Human Rights (Spain)
Centre de la protection internationale (France/Russia)
Siberia Without Torture (Russia)
Man and the Law (Russia)

Ural Human Rights Group (Russia)
 Civil Activists (Russia)
 Tatort Zukunft (Germany)
 Kosova Rehabilitation Centre for Torture Victims – KRCT (Kosovo)
 Avocats sans Frontières – ASF (Belgium)
 La Ligue des droits humains – Section belge (Belgium)
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 «New Life » (Russia)
 «All-Ukrainian League «Legalife» (Ukraine)
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 Initiative Group PULS (Moldova)
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 Forum PUD (Russia)
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