

CZU: 343.8

INTERNATIONAL STANDARDS ON ENSURING THE RIGHTS OF PRISONERS WITH PHYSICAL AND MENTAL DISABILITIES

Simion CARP,
PhD, University Professor,
Senior Scientific Researcher, Department of Science,
"Stefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0000-0003-4772-8325

Oleg RUSU,
PhD, Associate Professor,
Head of the Department of Science,
"Stefan cel Mare" Academy of the Ministry of Internal Affairs,
Republic of Moldova
ORCID: 0000-0002-0879-4154

Summary

According to the authors, providing prisoners with physical and mental disabilities with adequate treatment and adequate medical care is of particular importance to ensure the health and safety of sick prisoners and of all others. Thus, they must be provided with the minimum security necessary to ensure their safe detention. Also, when assigning prisoners with disabilities, the risk of ill-treatment by other prisoners should be taken into account in order to ensure their protection.

Therefore, this category of convicts requires a special approach when interacting with them. The problem is that prison officials are not always psychologically prepared to solve these complex professional problems. In this challenging context, prison systems must develop and implement effective strategies to protect prisoners with mental and behavioral disabilities. It is essential to adopt a multidisciplinary approach, which includes continuous training of custody staff in the field of mental health and disabilities, improving their access to specialized mental health support and services, as well as implementing robust abuse reporting mechanisms designed to protect victims of violence.

Keywords: international standards, prisoners' rights, prison, physical disabilities, mental disabilities.

Introduction. Convicts with physical and mental disabilities represent a particularly vulnerable group. Despite the introduction of international provisions and rules regarding this category of convicts into national legislation, the practice of their implementation demonstrates the difficulties that persons from this category face in everyday life in places of detention.

Within the context of international legal instruments, the issue of prisoners with disabilities is linked to their various physical limitations, which create a particular sensitivity to violence, discrimination, exploitation and inadequate conditions of detention. In addition, prisoners with disabilities may feel "inferior" to other prisoners because they cannot work or perform certain types of work and have difficulties with movement and care. People with disabilities may also face basic neglect from those around them due to their medical and psychological difficulties.

Thus, the problems faced by these people in society are amplified in the penitentiary environment, as it cannot adequately respond to their needs. In this regard, society's attention should focus on cases of discrimination against prisoners with disabilities, paying particular attention to the way the penitentiary, with its closed environment, is adapted to their special needs.

Methods and materials applied. Within the study limits of this article, the following methods were applied: analysis, synthesis, comparison and logical awareness. The materials used are the publications of scholars in the field.

Discussions and results obtained. According to the Convention on the Rights of Persons with Disabilities, persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others [1, Art.1].

As mentioned in the Manual for the Treatment of Prisoners with Special Needs, the problems faced by people with disabilities in the community are often exacerbated in prisons due to the specifics of the closed and restricted environment and the violence resulting from prison overcrowding and the lack of an adequate system of differentiation between prisoners and their appropriate supervision [2, p.104]. Therefore, any physical or other disabilities must be analyzed and taken into account during the placement and assessment process, when making classification decisions, and in the overall analysis of the case.

The detention of physically disabled, sick and elderly people in prison raises a whole range of problems. Due to their physical limitations, these prisoners are particularly vulnerable to violence, discrimination, exploitation and harsh conditions of detention. Physical problems and limitations can affect their ability to follow routine procedures and meet the normal demands of prison. Sometimes the elderly, sick, and disabled are prevented from participating in physical exercise and other activities due to a lack of adequate facilities. Sometimes their medical or psychological problems are left unnoticed [3, p.40].

Persons with physical disabilities (especially those with long-term disabilities) may face various obstacles that prevent them from being on an equal level with other prisoners. It is also important to ensure that laws and procedures are in place to ensure that persons accused of or convicted of a crime are not discriminated against on the basis of their physical disability. Increased attention is paid to physical disability in places of detention due to the existing closed and restricted environment [4, p.65].

Like all prisoners, persons with disabilities must be provided with the minimum security necessary to ensure their safe detention.

Prisoners with physical disabilities should be placed in accommodation that is appropriate to their needs. Where necessary, accommodation should be modified to help prisoners adapt to new conditions. For example, cells can have handrails, steps can be brightly colored and marked to make them visible to people with visual impairments, and portable ramps can be used to facilitate access for wheelchair users. It is necessary to ensure unhindered access to health services [5, p.51].

When assigning prisoners with disabilities, the risk of ill-treatment by other prisoners should be taken into account to ensure their protection.

As regards assessment, then upon placement in prison, where possible, impediments to the prisoner's participation in its implementation should be revealed. The identifica-

tion of these problems should be part of the assessment of pressing needs. Along with this, it is necessary to develop strategies to resolve them. For example, if there are forms or questionnaires that need to be completed by prisoners, people with visual or motor impairments will need the assistance of a staff representative to read their questions and record their answers, or a computer system capable of handling such tasks. Similarly, if a person has a mental disorder, an attempt should be made to simplify questions and provide repetition, if necessary [6, p.35].

With regard to classification and allocation, it is essential that prisoners with disabilities are placed in conditions that meet their needs and protect them from victimization by other prisoners. Prisoners should be allowed to carry any assistive devices relevant to their disability (e.g. wheelchairs and crutches), unless there are exceptional reasons for prohibiting them for security reasons. Where a particular risk is identified, an appropriate alternative should be provided [5].

The structure and architecture of the place of detention may also make it difficult for prisoners with reduced mobility to access dining rooms, toilets, recreation and visiting facilities. Prisoners with visual impairments may not be able to read personal correspondence or prison rules and regulations unless they are assisted or the material is presented in Braille. Prisoners with hearing or speech impairments may be denied interpreter services and may be unable to participate in various activities.

In short, to ensure equal treatment of prisoners with disabilities and protect their fundamental rights, prison authorities must have special policies and strategies that will address the needs of this vulnerable group. These policies must address as a priority issues such as staff training, classification, accommodation, medical care, access to programs and services, safety, etc. [4, p.66].

Prison authorities should carefully consider the need to detain elderly, sick and disabled people. When such people are imprisoned, special measures should be taken to ensure that their specific physical and mental health needs are met, particularly those related to memory loss, which may affect the appeal process. These prisoners need additional protection from prison staff to ensure that they are not abused by other prisoners. Creating an atmosphere of mutual respect and tolerance will allow these prisoners to live in a safe and healthy environment [3, p.40].

Furthermore, in order to overcome the problems faced by prisoners with disabilities, the following recommendations can be highlighted:

- Facilitating access for people with disabilities to the devices they need, such as: wheelchairs, crutches, braces, hearing aids, glasses, etc.;
- Ensuring access for prisoners with disabilities to all activities and programs in the prison, including education and vocational training and recreation;
- Collaborating with relevant civil society organizations working with people with disabilities to implement programs that meet the needs of prisoners with disabilities;
- placing information about organizations that provide assistance to people with disabilities in places accessible to prisoners, as well as distributing information brochures (in accessible format) to prisoners with disabilities upon placement in detention.

Prisoners with mental disabilities. Health services in penitentiary institutions have been a constant concern for national, regional and international human rights mechanisms and in most cases, their concerns coincide. Recommendations on improving prisoners' access to medical, mental health and psychosocial services have been repeatedly

addressed to the Government of the Republic of Moldova [7].

In many prison systems, a significant number of prisoners suffer from various mental disorders. Many prisoners had psychological problems before being placed in prison. Others, especially those sentenced to life imprisonment or long-term imprisonment, developed mental disorders during detention, as a reaction to the stress caused by the prison environment. These problems are aggravated by the lack of adequate treatment and assistance programs in prisons [3, p.38].

Global data consistently indicate that a significant number of prisoners suffer from serious mental disorders. According to the World Health Organization [8], prevalence studies in many countries have shown that 10-15% of the prison population suffers from severe and persistent mental illness, including mental disorders such as schizophrenia and bipolar disorder. Mental disorders often coexist with other health problems, such as substance abuse. Mental health and substance use disorders are even more prevalent among female prisoners: available evidence suggests that prevalence rates for this group are at least four times higher than for the general population as a whole. Both North American and European data indicate that approximately 75% of women in prison suffer from substance use disorders [9].

According to information provided by the Medical Department of the National Penitentiary Administration, "mental disorders occupy the first or second place in the morbidity structure, with approximately 3.000 diagnoses recorded annually. This figure must be evaluated in relation to the total number of people in detention: in 2022 – 6.084 people, and in 2023 – 5695 people" [7].

Despite the fact that the penitentiary system provides outpatient services in the medical departments of each penitentiary, inpatient medical services in Penitentiary No.16 – Pruncul, and outpatient medical services under contracts provided by the Clinical Psychiatric Hospital and the Balti Psychiatric Hospital, there are significant gaps in the approach and treatment of prisoners [7].

Mental abnormalities are a factor that negatively influences the behavior of the convicted person, aggravating his tendency to various types of deviations, complicating the processes of resocialization and social adaptation. Therefore, this category of convicts requires a special approach when interacting with them. The problem is that the employees of places of detention are not always psychologically prepared to solve these complex professional problems. In most cases, without having special knowledge and skills, employees treat prisoners with personality disorders in the same way as everyone else, without taking into account their characteristics. As a result, the operational situation in the place of detention becomes more complicated, the number of crimes committed by convicts with mental disorders increases, and the effect of the influence of resocialization decreases.

In this challenging context, prison systems must develop and implement effective strategies to protect prisoners with mental and behavioral disabilities. It is essential to adopt a multidisciplinary approach, which includes continuous training of custody staff in the field of mental health and disabilities, improving their access to specialized mental health support and services, as well as implementing robust abuse reporting mechanisms designed to protect victims of violence. It is clear that increased investment in human and financial resources is crucial to improving conditions in the prison system, ensuring adequate care and respect for the fundamental rights of people with mental disorders.

Reforms in this regard would not only improve the quality of life of affected prisoners, but would also contribute to reducing recidivism and their reintegration into society after release [7].

It should be noted that any mistreatment of prisoners with mental disorders, any failure to comply with relevant norms and standards, as well as violation of prisoners' rights regarding mental health and treatment of mental disorders constitutes a violation of Article 3 of the European Convention on Human Rights [10], according to which: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

In this regard, the case law of the European Court of Human Rights can be exemplified. Thus, in the case of *Țîcu v. Romania* [11], the applicant, who had delays in physical and mental development, complained about the poor conditions in the prisons where he was held, in particular due to overcrowding. The Court held that there had been a violation of Article 3 of the Convention because the conditions of detention in prison were not suitable for any prisoner with medical conditions such as the applicant, who should be provided with appropriate medical care and assistance in a specialized residential institution.

The *Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care* state: "All persons with or perceived to have a mental disorder have the right to be treated with humanity and with respect for their inherent human dignity [12, para.(2)]. All persons with or perceived to have mental disabilities have the right to protection from economic, sexual and other forms of exploitation, physical or other forms of violence and degrading treatment [12, para.(3)].

The *United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)* also provide that persons with mental disabilities should not be detained in prison and that "prisoners suffering from other mental illnesses or disabilities should be monitored and treated in special institutions under the supervision of doctors [13, rule 82-83].

Mental illness refers to various forms of disorders that affect the ability to think or act correctly. Severe mental illness involves significant disturbances in thinking or mood that affect behavior, reasoning, awareness, or the way to cope with the needs of daily life and is characterized by pain or disability. The most common forms of mental disorders are anxiety, depression, schizophrenia, and suicidal tendencies [3, p.38].

People with mental retardation have below-average intellectual abilities and understand or perceive the reality around them differently than other people. Prison staff often treats this category of prisoners in the same way as people with mental illness, although their problems are completely different and require different solutions. People with mental retardation tend to have difficulty performing everyday tasks. Mental illness, in turn, involves disorders of thought or mood that affect judgment, behavior, the ability to understand reality, and cope with the demands of everyday life [3, p.38].

Mental disabilities encompass a wide range of profoundly different conditions. They are distinguished by their different causes and effects, in particular the way in which a prisoner's right to health should be interpreted and implemented. These differences have essential relevance for the way in which such a prisoner should be treated, including the implementation of any security measures [4, p.62].

Thus, whenever possible, a distinction should be made between prisoners with:

- Intellectual disabilities (including persons with mental retardation);
- Mental illnesses (such as affective, psychotic or neurotic disorders);

- Mental and behavioral disorders due to the use of psychoactive substances;
- Personality disorders [4, p.62].

In this regard, prison staff needs to have an understanding of mental health issues in order to be able to identify problems and difficulties as they arise. They play a crucial role in the early identification of prisoners with mental health problems. They need to be able to distinguish prisoners with mental illness from prisoners with intellectual disabilities. For both categories of prisoners, the prison environment is often a source of increased stress. This can exacerbate an existing mental illness or cause it to develop. In addition, people with mental retardation are likely to suffer abuse and mistreatment in prison which will make their lives even more difficult. In this regard, the behavior of prison staff and the prison environment are important factors in maintaining the mental health of prisoners and can contribute to reducing the stress and anxiety caused by imprisonment. Prison staff has a responsibility to protect both groups of prisoners from abuse and to create an environment that is conducive to working with people with mental health problems and their rehabilitation [3, p.38].

The treatment of prisoners with intellectual disabilities should be based on providing a safe and secure environment, preferably by separating them from other prisoners, because people with mental retardation are at greater risk of exploitation and physical or sexual abuse. Adaptive behavior is always impaired, but in protected social environments where support is provided, this impairment may not be at all evident in subjects with mild mental retardation [4, p.63].

The process of health screening on admission to prison (the first 24 hours of admission are the most risky) and subsequent assessments at regular intervals are key components of self-harm and suicide prevention strategies. Training of staff in mental health, which includes risk assessment and prevention, is essential. In short, mental health promotion in prisons should be a key element of prison management and health care policies [4, p.65].

At the national level, among the basic problems revealed in this area are the following:

- Incidence of mental disorders combined with systemic problems;
- Increased prevalence of mental disorders in detention;
- Vulnerability and dangers of violence for detainees with disabilities or mental disorders;
- Poor medical infrastructure;
- Insufficient budget;
- Acute shortage of specialists [7].

Dealing with prisoners suffering from mental disorders is a challenge for any prison system. However, early identification and provision of appropriate mental health services are essential to meet the special needs of these individuals. For this reason, the assessment and classification of prisoners should include, at a minimum, a process of screening and identification of those with serious mental health problems and those at risk of suicide and self-harm, which should be carried out as soon as possible after their placement in the appropriate institution. These prisoners may be particularly vulnerable to victimization in ordinary prison environments or, conversely, pose a risk to prison staff and other prisoners due to behaviors associated with their condition. In view of the above, especially in the case of serious mental disorders, the needs of these individuals should, where

possible, be met in specialized psychiatric or medical units or facilities, where qualified doctors can conduct an examination, assess the situation and provide treatment [6, p.34].

In this regard, the Committee for the Prevention of Torture (CPT) has found that “a mentally ill prisoner should be accommodated and cared for in a hospital unit with sufficient equipment and suitably trained staff. Such an institution could be an ordinary psychiatric hospital or a specially equipped psychiatric institution within the prison system” [14]. The treatment of a mentally unstable and violent patient should be carried out under close supervision, with the provision of medical care and, if deemed necessary, in combination with the use of sedatives.

The use of physical restraint should only be justified in rare circumstances and, where such measures are proposed, should always be at the direct request of a physician or with his/her approval. The means of physical restraint should be removed as soon as possible. All instances of the use of physical restraint should be recorded in writing [14].

According to the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), prison staff must undergo, before entering service, a course of general and special training based on contemporary evidence-based best practices in criminal science. Only candidates who have successfully passed the theoretical and practical tests after completing the training will be allowed to enter service. In this regard, training must also include training in the field of first aid, the psychological needs of prisoners and the corresponding dynamics in the prison environment, as well as medical care and assistance, including early detection of mental health problems [13, rule 76].

Every prison must have a health care service responsible for the assessment, promotion, protection and improvement of the physical and mental health of prisoners, with particular attention being paid to prisoners with special health care needs or with health problems that hinder their rehabilitation. The health care service must include an interdisciplinary team with sufficient qualified personnel, acting independently and having sufficient experience in psychology and psychiatry [13, rule 25].

Every prison shall also have at least one qualified medical officer, who shall have knowledge of psychiatry. The medical service shall be organized in close conjunction with the general administration of the community or National Health Service. It shall include a psychiatric service for the diagnosis and, where appropriate, the treatment of cases of mental deficiency [13, rule 22].

According to the recommendations of experts in the field, “it is imperative to intensify efforts to improve access to mental health services, develop comprehensive education and awareness programs to combat stigma, and invest significantly in the training and development of mental health professionals”. Close collaboration between healthcare institutions is essential to create a robust support system capable of responding effectively and promptly to the complex needs of people affected by mental and behavioral disorders. Immediate and coordinated action is crucial to transform these alarming statistics and significantly improve the quality of life for all citizens” [7].

Conclusions. Therefore, each case of detention of persons with disabilities and those suffering from serious illnesses, as well as their placement in places of detention, requires special attention and an individual approach. This is especially true for the creation of conditions for maintaining health, respecting the dignity of a person who is already limited in their capabilities, which is perceived by them especially acutely. One of the most important tasks of detention facilities is to avoid harming the health of the person

during his temporary isolation from society. It is also important to remember that the health status of persons in detention is one of the most important indicators of respect for human rights in places of detention in general and for vulnerable groups in particular.

Under these conditions, convicts suffering from mental disorders constitute a special group in the general mass of convicts, who are very sensitive to the unfavorable factors of the penitentiary environment, poorly adapt to new conditions, are prone to exhibiting victimization traits or, on the contrary, manifest aggression and pose a threat to others. Consequently, this category of convicts requires special attention and a special approach from the staff of the detention institution.

Achieving the goal established by law of correcting convicts in the respective category and preventing the commission of new crimes is possible by solving a number of complex tasks, among which, of particular importance, are the following:

- Providing assistance to convicts in adapting to the conditions of the place of detention, as this process is difficult due to the vulnerability of their psyche to the unfavorable factors of the penitentiary environment;
- Preventing failures in the adaptation of a convict with a mental disorder, which lead to a deepening of the mental disorder and various types of deviations;
- Facilitating the process of integrating them into the convict community, preventing harassment and aggression by other convicts;
- Taking into account the characteristics of the convicted person's mental disorder in the process of involving him in work and socially useful activities;
- Individualization of educational work with the respective convicts depending on the nature of the mental anomaly;
- Constant monitoring and control of the behavior of convicts with mental disorders to prevent the commission of disciplinary offenses and criminal acts;
- Early identification of convicts with mental disorders and their referral to a specialist (psychologist, psychiatrist).

The practical component of the professional competence of an employee working with mentally ill convicts consists of the ability to apply knowledge in specific professional situations. In this context, the following skills are of particular importance:

- Determining the pathological mental state of the convicted person based on external signs;
- Predicting the behavior of a convict with a mental disorder and assess the degree of danger he poses to others and to himself;
- Conducting a constructive dialogue with the convicted person, taking into account his or her mental state and the type of mental disorder.

Consequently, the professional and psychological training of future employees of places of detention to work with convicts with mental abnormalities should be carried out by a wide range of specialists from various fields of scientific knowledge (in particular, clinical psychologists, psychiatrists).

Bibliographical references

1. Convenția privind drepturile persoanelor cu dizabilități nr.320 din 30.03.2007. Semnat la Chișinău, 30 martie 2007. În: Tratate Internaționale Nr.50/30.12.2016, art.320. În vigoare din 21 octombrie 2010. Accesibil: <https://www.legis.md/cautare/getRe>

sults?doc_id=117839&lang=ro (Accesat la 05.03.2025)

2. UNODC. Handbook on Prisoners with Special Needs. Criminal Justice Handbook Series (United Nations Publication, Sales No.E.09.IV.4). Accesibil: https://www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoners_with_Special_Needs.pdf (Accesat la 05.03.2025).
3. Международная тюремная реформа. Учебный ресурс: Защита прав лиц, приговоренных к смертной казни, пожизненному или длительному сроку лишения свободы. Available: https://cdn.penalreform.org/wp-content/uploads/2011/05/Training-resource-Protecting-the-Rights_Russian.pdf (Accessed on 05.03.2025).
4. Murdoch J., Jiricka V. Combaterea relelor tratamente în penitenciare. Manual pentru colaboratorii sistemului penitenciar privind prevenirea relelor tratamente în penitenciare. Consiliul Europei. Chișinău: S. n., 2016 (F.E.-P. „Tipografia Centrală”). 104p.
5. Handbook on Prisoners with Special Needs. United Nations, New York, 2009. Available: https://www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoners_with_Special_Needs.pdf (Accessed on 10.03.2025).
6. Справочник по классификации заключенных. Серия справочников по уголовному правосудию. Управление организации объединенных наций по наркотикам и преступности. Вена, 2020. Available: https://www.unodc.org/documents/dohadeclaration/Prisons/HandBookPrisonerClassification/20-01923_Classification_of_Prisoners_RU_e_book.pdf (Accessed on 10.03.2025).
7. Detinuții cu tulburări mintale și dizabilități: o provocare majoră pentru sistemul penitenciar. Accesibil: <https://juridicemoldova.md/18447/detinutii-cu-tulburari-mintale-si-dizabilitati-o-provocare-majora-pentru-sistemul-penitenciar.html> (Accesat la 10.03.2025).
8. Всемирная организация здравоохранения. Темы и вопросы здравоохранения. Детерминанты здоровья Тюрьмы и охрана здоровья. Данные и статистика: ВИЧ/СПИД. Available: <https://www.who.int/ru/health-topics> (Accessed on 02.02.2025).
9. Gregory P. Brown and others. Prevalence of Mental Disorder among Federally Sentenced Women Offenders: In Custody and Intake Samples. Research Report, No.R-420. Ottawa: Correctional Service of Canada, October 2018. Available: https://publications.gc.ca/collections/collection_2018/scc-csc/PS83-3-406-eng.pdf (Accessed on 18.03.2025).
10. Convenția Europeană a Drepturilor Omului. Accesibil: https://www.echr.coe.int/documents/d/echr/convention_ron.
11. Affaire Ticiu v. Roumanie. Requête No.24575/10. Available: <https://hudoc.echr.coe.int/eng?i=001-126563> (Accessed on 02.04.2025).
12. Principii pentru protecția persoanelor cu boli mentale și îmbunătățirea îngrijirilor de sănătate mintală. Adoptate de Rezoluția Adunării Generale nr.46/119 din 17 decembrie 1991. Accesibil: <https://www.refworld.org/policy/legalguidance/unga/1991/en/20291> (Accesat la 22.03.2025).
13. Ansamblul de reguli minime ale Națiunilor Unite pentru tratamentul deținuților (Regulile Nelson Mandela). Rezoluția adoptată de Adunarea Generală la 17 decembrie 2015 privind Raportul Comitetului Trei (A/70/490). Accesibil: https://avp.ro/wp-content/uploads/2020/07/ansamblu_reguli_mnp.pdf (Accesat la 17.03.2025).
14. Normele Comitetului pentru Prevenirea Torturii (CPT). Capitolele din Rapoartele Generale ale CPT. /Inf/E (2002) 1 – Rev. 2015. Accesibil: https://avp.ro/wp-content/uploads/2022/01/norme_cpt_mnp.pdf (Accesat la 19.03.2025).