Prison management and Human Rights in Europe

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Mr President, distinguished audience,
This conference on 'How to manage the execution of penal sanctions' covers an extremely important subject. I would like to thank the organizing Committee of this Conference for inviting me to address this distinguished audience from a human rights perspective. I do realize, of course, that the task prison management has to perform is impressive, considering budgetary limits, lack of human resources, insufficient training facilities for staff and perhaps occasionally, political pressure following incidents. Is the duty to observe human rights an additional constraint in the execution of penal sanctions? On the contrary, I would think it is a relief.

People are convicted to imprisonment for having committed crimes. The sanctions should lawfully be executed respecting human rights. [1] All European governments have agreed to that to point of departure. In the context of the Council of Europe the mechanism for supervising the protection of human rights is attributed to the European Court of Human Rights (Article 19). The Convention-system further includes advisory bodies like the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) as well as institutional actors like the Commissioner for Human Rights and the Committee of Ministers. All act in realizing the effective protection of Human Rights. The Council of Europe has been developing standards concerning prison matters for over half a century. Many Recommendations (formerly called Resolutions), concerning aspects of prison life, prison regimes, management and staff issues, testify the dedication of the Council of Europe in these matters.

Lawful detention
Legally spoken matters of detention appear to be quite simple. The lawfulness of detention should prevent arbitrariness. The Court has reiterated on many occasions that paragraph 1 of Article 5 makes it clear that the guarantees it contains apply to "everyone". Sub paragraphs (a) to (f) of Article 5 § 1 contain an exhaustive list of permissible grounds on which persons may be deprived of their liberty. Compliance with national law is essential but not sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness and the application of the law must be foreseeable. Lawfulness is primordial, but the lawfulness of the deprivation of liberty as such does not guarantee that the conditions and manner of its execution is acceptable.

Absolute and relative rights
Since human dignity of the detained should be respected in the execution of a prison sentence, human rights under the Convention are in principle applicable. The Convention cannot stop at the prison gate.[2] There are of course different categories of human rights. One important distinction concerns the difference between absolute and relative rights. Absolute rights like the right to life (Article 2) and the right not to be subjected to inhuman or degrading treatment or torture (Article 3) may not be restricted on any ground. So-called relative rights on the other hand are possibly subject to restrictions. These relative rights, like the right to family life, the right to correspondence, freedom of religion, freedom of expression and voting rights, are subject to restrictions but only

[1] As is well-known European human rights law prohibits certain other forms of punishments, such as the death sentence (Protocol No. 13 to the Convention on Human Rights concerning the abolition of the death penalty in all circumstances) or corporal punishment, Tyrer v. UK, no. 5856/72, ECHR 25 April 1978.
[2] See Hirst v. the United Kingdom (no. 2) ECHR 6 October 2005 [GC], no. 74025/01, § 70, ECHR 2005-IX.

according to the law, with a legitimate aim and in proportion to the circumstances of the case. I will first go into absolute rights and then turn to relative rights.

Absolute Rights
The right to life
The right to life and the right not to be treated inhuman or degrading implies a duty of care in prisons. The right to life requires by implication that there should be some form of effective official investigation into the cause of death. This obligation is not confined to cases where it is apparent that the killing was caused by an agent of the State. In Salman vs. Turkey the applicant and the father of the deceased lodged a formal complaint about the death with the competent investigation authorities, alleging that it was the result of torture.[3] Moreover, the mere fact that the authorities were informed of the death in custody of Agit Salman gave rise ipso facto to an obligation under Article 2 to carry out an effective investigation into the circumstances surrounding the death (see, mutatis mutandis, the Ergi v. Turkey judgment of 28 July 1998, Reports 1998-IV, p. 1778, § 82). This involves, where appropriate, an autopsy which provides a complete and accurate record of possible signs of ill-treatment and injury and an objective analysis of clinical findings, including the cause of death.

Disappearance of prisoners
The obligation on the authorities to account for the treatment of an individual in custody is of course particularly stringent where that individual dies. [4] Whether the failure on the part of the authorities to provide a plausible explanation as to a detainee's fate, in the absence of a body, might also raise issues under Article 2 of the Convention (right to life) depends on all the circumstances of the case, and in particular on the existence of sufficient evidence from which it may be concluded that the detainee must be presumed to have died in custody (see Çakıcı v. Turkey [GC], no. 23657/94, ECHR 1999-IV, § 85; Ertak v. Turkey no. 20764/92 (Sect. 1) ECHR 2000-V, § 131, and Timurtaş v. Turkey no. 23531/94 (Sect. 1) ECHR 2000-VI, §§ 82-86).

Prisons and human dignity
Article 3 of the Convention protects the individual against ill-treatment. The State must ensure that a person is detained in conditions which are compatible with respect for his human dignity. The manner and method of execution of the measure of detention may not subject detainees to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. Given the practical demands of imprisonment, health and well-being of detainees must be adequately secured.[5] When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant.[6] A serious lack of space in a prison cell weighs heavily as a factor to be taken into account for the purpose of establishing whether the detention conditions described are "degrading" from the point of view of Article 3.[7] In a number of cases the Court has found that the overcrowding was so severe as to justify in itself a finding of a violation of Article 3 of the Convention.[8] Of course overcrowding is among other factors which may lead to inhuman and degrading circumstances in prisons. Other aspects of physical conditions of detention which are also relevant for its assessment of compliance with article 3

[3] Salman v. Turkey, no. 21986/93, ECHR 27 June 2000 [GC].
[4] Akdeniz vs. Turkey, no. 23954/94, ECHR 31 May 2001, § 85.
[5] See Valašinas v. Lithuania, no. 44558/98, § 102, ECHR 2001-VIII, and Kudła v. Poland [GC], no. 30210/96, § 94, ECHR 2000-XI.
[6] See Dougoz v. Greece, no. 40907/98, § 46, ECHR 2001-II.
[7] See Karalevičius v. Lithuania, no. 53254/99, § 39, 7 April 2005.
[8] For example: Kalashnikov v. Russia, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; Ciorap v. Moldova, no. 12066/02, § 70, 19 June 2007; Răcăreanu v. Romania, no. 14262/03, §§ 49-52, 1 June 2010; and Ali v. Romania, no. 20307/02, § 83, 9 November 2010.

include the availability of ventilation, access to natural light, adequacy of heating arrangements, compliance with basic sanitary requirements and the possibility of using the toilet in private. Thus, even in cases where a larger prison cell was at issue, the Court found a violation of Article 3 since the space factor was coupled with the established lack of ventilation and lighting or the lack of basic privacy in the prisoner's everyday life.[9]

Overcrowded prisons

Persons in custody are in a vulnerable position. Authorities are therefore under a duty to protect their physical well-being.[10] To fall under Article 3 of the Convention ill-treatment must attain a minimum level of severity. The standard of proof relied upon by the Court is that "beyond reasonable doubt".[11] Where the events in issue lie wholly or in large part within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation.[12] Where allegations are made of overcrowding in prison, the State authorities alone have access to information to corroborate or refute them. The documents they produce must be found to be sufficiently reliable. Failing this, the allegations will be deemed to be credible.[13] Where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, there should be an effective official investigation.[14] Such an obligation to investigate "is not an obligation of result, but of means": it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible.[15] The investigation of arguable allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, inter alia, a detailed statement concerning the allegations from the alleged victim, eyewitness testimony, forensic evidence and, where appropriate, additional medical certificates capable of providing a full and accurate record of the injuries and an objective analysis of the medical findings, in particular as regards the cause of the injuries. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard.[16] The Court

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[9] See Babushkin v. Russia, no. 67253/01, § 44, 18 October 2007; Ostrovar v. Moldova, no. 35207/03, § 89, 13 September 2005; and Peers, cited above, §§ 70-72) and Belevitskiy v. Russia, no. 72967/01, §§ 73-79, 1 March 2007; Valašinas, cited above, § 104; Khudoyorov v. Russia, no. 6847/02, §§ 106-107, ECHR 2005-X; and Novoselov v. Russia, no. 66460/01, §§ 32 and 40-43, ECHR 2 June 2005

[10] Cucu v. Romania, ECHR 13 November 2012, no. 22362/06; Gladyshev v. Russia, no. 2807/04, § 51, 30 July 2009; Sarban v. Moldova, no. 3456/05, § 77, 4 October 2005; and Mouisel v. France, no. 67263/01, § 40, ECHR 2002-IX.

[11] See Avşar v. Turkey, no. 25657/94, § 282, ECHR 2001-VII.

[12] For example: Gladyshev, cited above, § 52; Oleg Nikitin v. Russia, no. 36410/02, § 45, 9 October 2008; and Salman v. Turkey [GC], no. 21986/93, § 100, ECHR 2000-VII.

[13] See Idalov v. Russia, [GC], no. 5826/03, 22 May 2012. In this case, the overcrowding was such that the applicant's detention did not conform to the minimum standard of three square meters per person established by the Court's case-law. In the same case the Court held that a prisoner had been subjected to inhuman and degrading treatment because of the overcrowding of the vans transferring him to the courthouse and the conditions in which he had been held at the court on hearing days.

[14] Assenov and Others v. Bulgaria, 28 October 1998, § 102, Reports of Judgments and Decisions 1998-VIII.

[15] See Paul and Audrey Edwards v. the United Kingdom, no. 46477/99, § 71, ECHR 2002-II; Mahmut Kaya v. Turkey, no. 22535/93, § 124, ECHR 2000-III; and Mikheyev v. Russia, no. 77617/01, § 107, 26 January 2006.

[16] See Mikheyev, cited above, § 108, and Nadrosov v. Russia, no. 9297/02, § 38, 31 July 2008.

applies a particularly thorough scrutiny even if certain domestic proceedings and investigations have already taken place.[17]

High security and human dignity

While measures depriving a person of his liberty often involve an element of suffering or humiliation, it cannot be said that detention in a high security prison facility in itself already ill-treatment. The Court emphasized in Lorsé vs. the Netherlands that in high security detainees should be treated with respect for his human dignity. In this context, the Court had previously held that complete sensory isolation, coupled with total social isolation, can destroy the personality and constitutes a form of inhuman treatment which cannot be justified by the requirements of security or any other reason. On the other hand, the removal from association with other prisoners for security, disciplinary or protective reasons does not in itself amount to inhuman treatment or degrading punishment (see Messina v. Italy (dec.), no. 25498/94, ECHR 1999-V). In assessing whether such a measure may fall within the ambit of Article 3 in a given case, regard must be had to the particular conditions, the stringency of the measure, its duration, the objective pursued and its effects on the person concerned (see Dhoest v. Belgium, application no. 10448/83, Commission's report of 14 May 1987, Decisions and Reports (DR) 55, pp. 20-21, §§ 117-18; McFeeley et al. v. the United Kingdom, application no. 8317/78, Commission decision of 15 May 1980, DR 20, p. 44). For Mr Lorsé, the repetitive strip-search was one of the features of the regime which was hardest to endure. The Court had previously found that strip-searches may be necessary on occasions to ensure prison security or to prevent disorder or crime.[18] So-called "close body" searches, including anal inspections, may be needed in situations where dangerous objects had in the past been found concealed in the recta of protesting prisoners. In the case of Lorsé, the Court was struck by the fact that Mr Lorsé was submitted to the weekly strip-search in addition to all the other strict security measures within the high security institution. In view of the fact that the domestic authorities were well aware that Mr Lorsé was experiencing serious difficulties coping with the regime. In the absence of convincing security needs, the practice of weekly strip-searches that was applied to Mr Lorsé for a period of more than six years diminished his human dignity must have given rise to feelings of anguish and inferiority capable of humiliating and debasing him.

In two recent Polish cases the Court has held, that keeping detainees under a regime for several years, in isolation, without sufficient mental and physical stimulation, and without examining if there were concrete reasons for the prolonged application of that regime, was not necessary in order to ensure safety in prison.[19] Under the rigid domestic rules for the imposition of the special regime, the authorities had not been obliged to consider any changes in the applicants' personal situation. They had never referred to the likelihood of the applicants' escaping in the event of being detained under a less strict regime. Apart from the original grounds based essentially on the serious nature of the charges against the applicants, the authorities had not found any other reasons for classifying them as "dangerous detainees".

Duty of Care in prisons

Prison authorities are under a duty of care for a prisoner. There is an additional duty of care for particularly vulnerable detainees, for example suicidal prisoners.[20] Precautionary measures within the scope of the power of the prison authorities may be expected to avoid the risk of detainees sharing their cell with a person known to be dangerous at the time.[21] The duty of care includes the

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[17] For example, McKerr v. the United Kingdom (dec.), no. 28883/95, 4 April 2000, and Cobzaru v. Romania, no. 48254/99, § 65, 26 July 2007.

[18] See Valašinas v. Lithuania, no. 44558/98, § 117, ECHR 2001-VIII; Iwańczuk v. Poland, no. 25196/94, § 59, 15 November 2001, unreported; McFeeley et al. v. the United Kingdom, cited above, §§ 60-61.

[19] Piechowicz v. Poland,no. 20071/07and Horych v. Poland, no. 13621/08, ECHR 17 April 2012.

[20] Keenan v. UK, no. 27229/95, ECHR, 3 April 2001.

[21] Edwards v. UK, no. 46477/99.

providing of adequate medical facilities.[22] In an Albanian case the Court found a violation of the Convention because the authorities did not respond adequately in a life-threatening situation. [23] The Court noted that evidence from various medical sources confirmed that the applicant had several serious medical problems requiring regular medical care, which he had not received. Indeed, a medical report had confirmed that his disease had progressed as a result of the lack of proper care. Even while in the prison hospital, the applicant had clearly suffered from the physical effects of his condition. As to the mental effects, he must have known that he risked a serious medical emergency at any time without qualified medical assistance being available. The fact that he was held under a high-security regime with no contact with his representatives must have added to his anxiety and it was alarming that it had been left to the discretion of the prosecutor, not the doctors, to decide whether he needed additional medical examinations. Nor could the Court accept the Government's argument that his treatment with the interferon-beta his doctors had prescribed would place a huge burden on the State budget, as the drug was available free of charge in hospitals and there was no legitimate reason why the applicant should have been treated differently from other members of the public. He suffered from a very serious disease, multiple sclerosis that was capable of causing disability and death. The risk of the disease, associated with the lack of adequate medical treatment and the length of his prison term, had served to intensify his fears. In these circumstances the absence of timely medical assistance, added to the authorities' refusal to offer him the prescribed medical treatment, had created a strong feeling of insecurity which, combined with his physical suffering, had amounted to degrading treatment.

Mental disorders

In a recent Belgian case the Court observed structural problems resulting in a prisoner suffering from mental disorders being held for more than fifteen years in a prison psychiatric wing with no hope of change or appropriate medical care.[24] The applicant, who had raped his underage sisters in 1978, was not held criminally responsible for his actions by the criminal court. The applicant, who has an intellectual disability, was held continuously in the psychiatric wing of a prison from 1994 onwards, with the exception of a single period of twenty-two months outside prison. No specific treatment or medical supervision had been prescribed for the applicant. Despite observed an improvement in his condition; he had remained in the psychiatric wing until 2009. This long-lasting situation had clearly had a detrimental effect on the applicant's psychological state. The Court did not underestimate the efforts made within the prison to improve the support provided to persons in compulsory confinement. Nevertheless, the applicant's allegations were corroborated by unanimous findings at both national and international level with regard to the unsuitability of psychiatric wings for the detention of persons with mental health problems because of widespread staff shortages, the poor standard and lack of continuity of care, the dilapidated state of premises, overcrowding and a structural shortage of places in psychiatric facilities outside prison. Likewise, the Court did not underestimate the steps taken by the authorities on a regular basis from 1998 onwards to find the applicant a place in an external facility geared to dealing with his disorder. However, the applicant's situation stemmed from a structural problem. The support provided to persons detained in prison psychiatric wings was inadequate and placing them in facilities outside prison often proved impossible either because of the shortage of places in psychiatric hospitals or because the relevant legislation did not allow the mental health authorities to order their placement in external facilities. Accordingly, the national authorities had not provided the appropriate treatment for the applicant's condition in order to prevent a situation contrary to Article 3 from arising in his case. Whatever obstacles may have been created by the applicant's own behavior, they did not dispense the State from its obligations in his regard.

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[22] Aerts v. Belgium, no. 25357/94, ECHR 30 July 1998.
[23] Grori v. Albania - 25336/04, ECHR 7 July 2009.
[24] Claes v. Belgium - 43418/09, ECHR 10 January 2013.

Relative rights
Family life and visits
In the recent Polish cases, just cited before, the Court found also violations of the right to family life following refused visits in prison. Mr Piechowicz had been unable to see his son, a small child at the time of his detention, for several months, and he had not been allowed to receive visits from his common-law wife for about two years and three months. The Court accepted that the authorities had to restrict the contact between Mr Piechowicz' and his common-law wife, who had been charged and indicted in the same proceedings, in order to secure the process of obtaining evidence. However, the prolonged and absolute ban on contact with her had to have had a particularly serious and negative impact on his family life. If the authorities had been convinced that an "open visit", allowing direct physical contact and unrestricted conversation, could not be permitted to ensure the interests of the proceedings, they could have allowed a supervised visit without the possibility of direct contact.
Mr Horych, the second of these Polish cases, had received regularly monthly visits only during the first six months after his arrest. During the following years he was only allowed to receive between five and ten visits per year, and most of them were closed visits without the possibility of direct contact, as he was separated from the visitors by a partition. While the Court accepted that certain restrictions on contact with his family had been inevitable, it did not find that those restrictions, overall, struck a fair balance between the requirements of the special detention regime and his right to respect for his family life. The Court therefore concluded in both cases that the prolonged restrictions on family visits had violated the applicants' rights under Article 8.

Being detained may have far-reaching implications. In the case of Dickson vs. UK the Court dealt with a refusal to grant artificial insemination facilities to enable a serving prisoner to father a child [25] The applicants in the case are a married couple who met through a prison correspondence network while serving prison sentences. The husband was convicted of murder and was not scheduled for release before 2009, the Grand Chamber dealt with the case in December 2007. The applicant had no children. His wife had completed her sentence and had three children from other relationships. The applicants requested artificial insemination facilities to enable them to have a child together, arguing that it would not otherwise be possible, given the husband's earliest release date (2009) and his wife's age (she was born in 1958). The Secretary of State refused their application. The grounds given for refusal were that the applicants' relationship had never been tested in the normal environment of daily life, that insufficient provision had been made for the welfare of any child that might be conceived, that mother and child would have had only a limited support network and that the child's father would not be present for an important part of her or his childhood. It was also considered that there would be legitimate public concern that the punitive and deterrent elements of the first applicant's sentence were being circumvented if he were allowed to father a child by artificial insemination while in prison. The applicants appealed unsuccessfully on the domestic level. The Court noted that while the inability to beget a child was a consequence of imprisonment, it was not an inevitable one as it had not been suggested that the grant of artificial insemination facilities would have involved any security issues or imposed any significant administrative or financial demands on the State. As to the question of public confidence in the prison system, while accepting that punishment remained one of the aims of imprisonment, the Court underlined the evolution in European penal policy towards the increasing relative importance of the rehabilitative aim of imprisonment, particularly towards the end of a long prison sentence. Lastly, although the State had obligations to ensure the effective protection of children, that could not go so far as to prevent parents from attempting to conceive in circumstances like those in the applicants' case, especially as the wife was at liberty and could have taken care of any child conceived until her husband was released. Contracting States could enjoy a wide margin of appreciation in balancing the conflicting interests. While the Court had expressed its approval for the evolution in several European countries

[25] Dickson v. the United Kingdom, no. 44362/04, ECHR 4 December 2007 [GC].

towards conjugal visits, which could obviate the need for artificial insemination facilities, it had not yet interpreted the Convention as requiring Contracting States to make provision for such visits. The Court found a procedural violation of family and private life in this case because no proper balance of interest had taken place.

In Khodorkovsky and Lebedev v. Russia the Court clarified its interpretation of the right to family life for a prisoner, specifically in relation to the selection of the geographical place of detention.[26] As a starting point, the Court accepts that the authorities had a wide discretion in matters related to execution of sentences. However there is no question that a prisoner forfeits all of his Article 8 rights merely because of his status as a person detained following conviction (see Ploski v. Poland, no. 26761/95, 12 November 2002). It is an essential part of a prisoner's right to respect for family life that the prison authorities assist him in maintaining contact with his close family (see Messina v. Italy (no. 2), no. 25498/94, § 61, ECHR 2000-X). Limitations on contacts with other prisoners and with family members, imposed by prison rules, have been regarded by the Court as an "interference" with the rights protected by Article 8 of the Convention (see Van der Ven v. the Netherlands, no. 50901/99, § 69, ECHR 2003-II). Thus, placing a convict in a particular prison may potentially raise an issue under Article 8 if its effects for the applicant's private and family life go beyond "normal" hardships and restrictions inherent to the very concept of imprisonment. As the Commission already observed in Wakefield v. the United Kingdom : "Article 8 requires the State to assist prisoners as far as possible to create and sustain ties with people outside prison in order to promote prisoners' social rehabilitation. In this context the location of the place where a prisoner is detained is relevant".[27] On the facts in the Khodorkovsky case, the Court found it hardly conceivable that there were no free places in any of the many colonies situated closer to Moscow, and that the only two colonies which had free space were located several thousand kilometers away from the applicants' home. According to the Court the interference with the family life of the applicant was disproportionate.

The right to correspondence

Prisoners have a right to correspondence, but that does not exclude their duty to obey to a requirement to conduct correspondence through the prison administration.[28] In 1999, while serving a sentence in prison, a prisoner signed a letter on behalf of a prisoner's assistance organisation complaining about the conditions of detention and about various allegedly unlawful acts of the prison administration. The complaint was addressed to State officials and media representatives and was sent via an inmate who had been released from the prison, in order to avoid censorship. The prison department director held that the sending of the complaint through channels other than the prison administration had breached the Prison Code and punished the applicant by prohibiting him from receiving a parcel during a personal visit. The director also held that the applicant could only send the complaint to the State authorities, not to other organisations or persons and that the Prison Code prohibited complaints on behalf of other prisoners. The applicant's appeal against the penalty was rejected by the administrative courts. The courts held that he had been punished not for corresponding with representatives of the media, but for a breach of the requirement to conduct such correspondence through the prison administration which had deprived the latter of the right to submit their comments as to the issues set out in his complaint. The Court held that the ordinary and reasonable requirements of imprisonment may justify a system of internal inquiry into prisoners' complaints about their treatment and conditions of detention. The applicant's complaints had received an adequate judicial review and the penalty imposed on him had been of a minor nature. His possible fear of censorship had not been a valid excuse for circumventing an apparently legitimate prison rule regarding the channels of complaint. In the specific circumstances of the case,

[26] Khodorkovsky and Lebedev v. Russia, nos. 11082/06 and 13772/05, ECHR 25 July 2013.
[27] Wakefield v. the UK, no. 15817/89, Decision of 1 October 1990, DR 66, p. 251.
[28] Puzinas v. Lithuania (no. 2) - 63767/00, ECHR, 9 January 2007.

the authorities had not overstepped their margin of appreciation and the interference had been proportionate and necessary in a democratic society.

In the case of Mr Piechowicz vs. Poland, cited before, the Court found a violation of Article 8 on account of the censorship of his correspondence. He had submitted several envelopes of letters he had received from various national and international institutions and his defence counsel bearing the stamp "censored". The Court had already held on many occasions that as long as the Polish authorities continued the practice of marking detainees' letters with the "censored" stamp, it had to presume that those letters had been opened and their contents read. There had accordingly been an interference with Mr Piechowicz' right to respect for his correspondence, which was not in accordance with the law, as under the Polish Code of Execution of Criminal Sentences a detainee had the right to conduct uncensored correspondence with the investigating authorities, the courts and other authorities. While under that Code a detainee's correspondence with his defence counsel could be monitored, the Court did not see any reason to believe in Mr Piechowicz' case that the letters from his counsel constituted a danger to prison security.

The right to manifest religion or belief

Appeal to the right to manifest religion or belief by prisoners may pose the prison management for additional problems. A case before our Court concerned a refusal to provide Buddhist prisoner with meat-free diet. In his application to the European Court, the applicant, a practising Buddhist who was serving a prison sentence, complained that he was unable to obtain a meat-free diet in prison. [29] The applicant's decision to adhere to a vegetarian diet could be regarded as motivated or inspired by a religion (Buddhism) and was not unreasonable, according to the Court. Consequently, the refusal of the prison authorities to provide him with a diet fell within the scope of Article 9 (freedom of religion). The applicant had merely asked to be granted a diet without meat products. His meals did not have to be prepared, cooked and served in a prescribed manner, nor did he require any special products. He was not offered any alternative diet, and the Buddhist Mission was not consulted on the issue of the appropriate diet. The Court was not persuaded that the provision of a vegetarian diet would have entailed any disruption to the management of the prison or a decline in the standards of meals served to other prisoners and noted that Committee of Ministers' Recommendation Rec (2006)2 on the European Prison Rules advised that prisoners should be provided with food that took into account their religion. It therefore concluded that the authorities had failed to strike a fair balance between the applicant's and the prison authorities' interests.

Voting rights

Currently one of the most controversial issues is the prisoner's right to vote. In Hirst vs. UK (2005) the Court found that any limitations on the right to vote for convicted persons had to be imposed in pursuit of a legitimate aim, be proportionate to that aim and not thwart the free expression of the people in the choice of the legislature. [30] Prisoners generally continued to enjoy all the fundamental rights and freedoms guaranteed under the Convention, except for the right to liberty, where lawfully imposed detention expressly fell within the scope of Article 5. The severe measure of disenfranchisement was not to be undertaken lightly and the principle of proportionality required a discernible and sufficient link between the sanction and the conduct and circumstances of the individual concerned. The Court accepted that the domestic legislation might be regarded as pursuing the legitimate aim of preventing crime and enhancing civic responsibility and respect for the rule of law. As to the proportionality of the voting ban, 48,000 prisoners barred from voting was a significant figure which included a wide range of offenders and sentences, from one day to life and from relatively minor offences to offences of the utmost gravity. Nor was it apparent that there was

[29] Jakóbski v. Poland - 18429/06, ECHR, 7 December 2010.

[30] Hirst v. the United Kingdom (no. 2) [GC] - 74025/01 ECHR, 6 Octover 2005 [GC]; see also Scoppola c. Italie, ECHR 22 May 2012 (n° 3) [GC].

any direct link between the facts of any individual case and the removal of the right to vote. There was no evidence that Parliament had ever sought to weigh the competing interests or to assess the proportionality of a blanket ban on the right of a convicted prisoner to vote. The domestic courts, for their part, did not undertake any assessment of the proportionality of the measure itself.

While the margin of appreciation in this field of depriving prisoner's voting rights was wide, it was not all-embracing. The law in question remained a blunt instrument, applied automatically to convicted prisoners in prison, irrespective of the length of their sentence and irrespective of the nature or gravity of their offence and their individual circumstances. Such a general, automatic and indiscriminate restriction on a vitally important Convention right had to be seen as falling outside any acceptable margin of appreciation, however wide that margin might be, and as being incompatible with Article 3 of Protocol No. 1. British parliament is currently seriously reflecting on the consequences of not accepting the principles laid down in this judgment of the Court.

Freedom of expression

In the case of Marin Kostov vs. Bulgary the applicant complaint about violation of his right to freedom of expression.[31] Marin Kostov was punished by the prison administration with fourteen days' confinement in a disciplinary cell for having made a complaint to the public prosecutor that was perceived as defamatory. There was therefore interference with his right to freedom of expression (see Skałka v. Poland, no. 43425/98, § 30, 27 May 2003, and Yankov v. Bulgaria, no. 39084/97, § 126, 11 December 2003). Such interference entails a violation of Article 10 of the Convention unless it is prescribed by law and is necessary in a democratic society in pursuance of a legitimate aim. In the context of prison discipline, regard must be had to the particular vulnerability of persons in custody and therefore the authorities must provide particularly solid justification when punishing prisoners for having made allegedly false accusations against the penitentiary authorities. In exercising its supervision, the Court had to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based themselves on an acceptable assessment of the relevant facts. The Court noted that the applicant's statements were made in the context of a dispute between him and the prison administration on the restriction of a clearly personal right, which is the right to receive a parcel from his family. They were made in a letter to the public prosecutor, who is competent to supervise penitentiary institutions and deal with such disputes. The Court noted that the applicant first tried to obtain information about the parcel from the prison administration but was told that no such parcel had arrived. He then decided to write to the public prosecutor and ask him to investigate the matter. Thus, it appears that the applicant acted in the belief that the information disclosed in his letter was true. There is nothing to suggest that he did not act within the framework established by law for making such complaints or that he had other intentions than to have the alleged unlawful conduct of the prison authorities examined. The fact that he showed his letter to the prison officials also supports the finding that he acted in good faith. The Court observed that complaining to the public prosecutor was, under domestic law, an appropriate manner to challenge restrictions on prisoners' personal rights. In particular, prisoners could not refer matters such as the one at issue – about a parcel – to the courts. The Court considers that this fact is of crucial importance to its assessment of the proportionality of the interference. In his decision of 16 March 2007 the Deputy Minister of Justice stressed that the disciplinary liability of prisoners should not be used to restrict their right to petitions and complaints and considered that, by punishing the applicant, the authorities of Belene Prison had betrayed his confidence and jeopardised his correction. The Court subscribes to this view of the domestic authorities, which is also in line with the Recommendation of 11 January 2006 (Rec(2006)2) on the European Prison Rules. It considers that punishment for non-abusive complaints filed by prisoners could have a serious chilling effect and discourage them from reporting irregularities in prison. As to the proportionality of the sanction, the Court notes that the applicant

[31] Marin Kostov v. Bulgaria, no. 13801/07, ECHR, 24 July 2012.

was punished by the maximum period of isolation permissible by law and that that punishment entailed restrictions of his visiting rights, correspondence and human contact, which adversely affected his private life. The severity of this punishment is, in the Court's view, particularly striking and clearly disproportionate in the light of the facts on which it was based – the applicant having sent to the relevant authorities a complaint about a missing parcel and, allegedly, in the past, many other unidentified complaints. It found that in the present case the domestic court failed to examine the question whether the punishment had been imposed in view of defamatory or insulting statements and whether it had been necessary and proportionate to the achievement of the alleged aim of protecting the prison officials' reputation. It failed, moreover, to have regard to the applicant's right to freedom of expression.

Legitimate penological grounds

Deprivation of liberty should not only stand the test of lawfulness and must not only be executed in a dignified manner with consideration of the well-being of the detained. There should also be relevant and sufficient penological grounds for continued deprivation of liberty. That sound penological grounds for detention are essential, is already noted in The United Nations Standard Minimum Rules for the Treatment of Prisoners (1957) [32] In Vinter and Others v. the United Kingdom[33], dealing with life imprisonment and the demand of a perspective of review of the sentence, the Court has reasoned that it was axiomatic that a prisoner could not be detained unless there were legitimate penological grounds for that detention.[34] According to the Court incarceration

[32] The United Nations Standard Minimum Rules for the Treatment of Prisoners (1957) include the following guiding principles on sentenced prisoners:

"58. The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.

59. To this end, the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners.

60. (1) The regime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.

(2) Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release regime organized in the same institution or in another appropriate institution, or by release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid.

61. The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff of the institution in the task of social rehabilitation of the prisoners ...

...

Treatment

65. The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility.

66. (1) To these ends, all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his social and criminal history, his physical and mental capacities and aptitudes, his personal temperament, the length of his sentence and his prospects after release."

[33] Vinter and Others v. United Kingdom, 66069/09, 130/10 and 3896/10, ECHR 9 July 2013 [GC].

[34] See also Kafkaris v. Cyprus [GC], 21906/04, 12 February 2008.

without any prospect of release or review carried the risk that the prisoner would never be able to atone for his offence, whatever he did in prison and however exceptional his progress towards rehabilitation. It was considered incompatible with human dignity for the State forcefully to deprive a person of his freedom without at least providing him with the chance to someday regain that freedom. The Court found there was now clear support in European and international law for the principle that all prisoners, including those serving life sentences, should be offered the possibility of rehabilitation and the prospect of release if rehabilitation was achieved.

In *James, Wells and Lee v. the United Kingdom,* the Court dealt for the first time with the issue of programs in prison to address offending behavior.[35] The case concerned the rehabilitative courses offered to prisoners serving indeterminate sentences for the protection of the public. The judgment is significant as it establishes benchmarks with regard to the rehabilitative part of sentences being served by offenders considered a danger to the public. In the Court's view, where a prisoner was in detention solely on the grounds of the risk he posed to the public, regard had to be had to the need to encourage his rehabilitation. In the applicants' case, this meant that they had to be given reasonable opportunities to undertake courses aimed at addressing their offending behavior and the risks they posed to society. However, very lengthy periods of time had elapsed before the applicants had even been able to embark on the rehabilitative part of their sentences, despite the clear instructions in force. In programs of rehabilitations prisons leaves often play an important role. But there is no European consensus that prisoners can claim such leaves as a civil right.[36] Although the Court had recognized, in Boulois v. Luxembourg (just cited), the legitimate aim of a policy of progressive social reintegration of persons sentenced to imprisonment, neither the Convention nor the Protocols thereto expressly provided for a right to prison leave.

Conclusion

Respecting Human Rights is not sufficient to solve problems of executing sanctions. But it is vital to understand that without respect for human rights the execution of penal sanctions is neither just nor contributive to the well-being of society.

Thank you for attention.

[35] James, Wells and Lee v. the United Kingdom*, n*os. 25119/09, 57715/09 and 57877/09, 18 September 2012

[36] See Boulois v. Luxembourg [GC], *no. 37575/04,*3 April 2012.