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European NPM Forum

Dear reader

You are about to read a new issue of the European NPM newsletter which brings to you fraction of the news about things happened in the month of May in Europe.

In comparison to previous newsletters, you might notice a few changes. For example, given that NPMs are more and more active in various areas you might want to submit your opinions to international organisations about various themes. There are also possibilities to apply for funding to enhance your capabilities in prevention of torture or share your experiences with other countries – please see the relevant section about funding below.

Besides news from various stakeholders you find two sections dedicated to special topic, in this issue telemedicine and data collections. You are invited to submit your opinions and feedback, as well as share your experiences about those two matters and a summary of your input will be published in the next issue. In addition – feel free to indicate any areas of your interest that can be reflected in the thematic sections in the future.

Finally and regrettably you might notice that the present issue lacks a section dedicated to NPM news. In order to remedy this shortcoming please do share your news and other communications to be included in the next issues.

Enjoy your reading!

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I International news

I.I United Nations

I.I.I Budget of Treaty Bodies

UN budget shortfalls seriously undermine the work of the Human Rights Treaty bodies (17.05.2019)

Ten United Nations human rights treaties are legally binding treaties, adopted by the UN General Assembly and ratified by States. Each Treaty establishes a treaty body. In April this year, the Chairpersons of all 10 treaty bodies were informed that six of them are very likely to have sessions in 2019 cancelled for financial reasons – an unprecedented consequence of some UN member States delaying payments due to the organisation. The cancellation of sessions will have numerous negative consequences and will seriously undermine the system of protections which States themselves have put in place over decades.

The full text of the news item can be found here: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24621&LangID=E>.

I.I.II UN Human Rights Committee - Spain

Torture is never allowed, including in the fight against terrorism, UN human rights experts tell Spain (20.05.2019)

Spain violated the human rights of an individual who suffered torture and incommunicado detention. Therefore, the Committee urged that allegations of torture must be investigated promptly, thoroughly and impartially by the competent authorities. To prevent similar violations in the future, the Committee suggested Spain to take legislative measures aimed at ending incommunicado detention as it served to create an atmosphere more conducive to acts of torture.

The full text of the news item can be found here: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24629&LangID=E>.

I.I.III UN special rapporteurs - Italy

UN experts condemn bill to fine migrant rescuers (20.05.2019)

UN human rights experts have condemned a proposed draft decree by Italy's interior minister, Matteo Salvini, to fine those who rescue migrants and refugees at sea and urged the Government to halt its approval. The UN experts said that, should the decree enter into force, it would seriously undermine the human rights of migrants, including asylum seekers, as well as victims of torture, of trafficking in persons and of other serious human rights abuses.

The full text of the news item can be found here: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24628&LangID=E>.

UN CAT has published its concluding observations regarding Germany and the UK (17.05.2019)

Germany: In its concluding observations CAT welcomed the increase of resources for the NPM as well as the translation into German of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

Criticism was expressed with respect to the following: torture is still not criminalised; lacking fundamental legal safeguards from the beginning of detention; insufficient facilitation of the NPM; impossibility for the NPM to publish information about its visits to privately run institutions; over reliance on assurances given by countries of origin in cases of extraditions; scarce medical checks on asylum-seekers; routine detention of asylum-seekers; inconsistent use of solitary confinement in prisons and use of solitary confinement regarding young detainees; insufficient regulation of the use of physical restraints and insufficient training for those who apply restraints; insufficient investigation of allegations of criminal conduct by police officers; human rights of terrorism suspects; insufficient access to redress and rehabilitation for the victims of torture or ill-treatment; insufficient availability of torture prevention and Istanbul Protocol related training to personnel of the places of detention.

The full text of concluding observations can be found here: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fDEU%2fCO%2f6&Lang=en

UK: In its concluding observations CAT stressed the following areas of concern: legal justifications to torture; lack of comprehensive statistics about cases of torture and ill-treatment; lacking legal framework and resourcing for the NPM; poor prison conditions and violence; low minimum age of criminal responsibility; availability of human rights training for detention officers; use of tasers; safeguards in immigration detention.

The full text of concluding observations can be found here: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fCO%2f6&Lang=en .

I.I.V UN Committee Against Torture - submissions about Armenia, Finland, Greece, Poland, Cyprus, Portugal, Uzbekistan

According to the CAT the ways in which NPMs may engage with the Committee include:

- Written information for the LOI¹s and LOIPR²;
- Written information for the examination of the State party's report;
- NPM briefings;
- Written information for the follow-up to the Committee's concluding observations and recommendations.

The next deadlines for submissions are as follows:

¹ The lists of issues (LOI) are intended for States parties to clarify and update certain questions and issues as well as to focus, without restricting, the dialogue with the States on matters of particular interest for the Committee.

² A list of issues prior to reporting (LOIPR) is transmitted to States parties prior to the submission of their reports to guide the preparation and content of their periodic report, facilitate the reporting process of States parties and strengthen their capacity to fulfil their reporting obligation in a timely and effective manner.

- **24 July 2019** for LOIPR - Armenia, Finland.
- **22 June 2019** for written information for the examination of the State party's report – Greece, Poland.
- **14 October 2019** for written information for the examination of the State party's report – Cyprus, Portugal, Uzbekistan.

Therefore, respective NPMs could consider providing relevant information to CAT within deadlines listed above.

More information about submissions can be found here: <https://www.ohchr.org/EN/HRBodies/CAT/Pages/NGOsNHRIs.aspx> .

I.I.VI UN Subcommittee on Prevention of Torture - upcoming visits 2019

In the Council of Europe region the SPT will visit the following states in 2019: Bulgaria and the UK.

NPMs of corresponding states are encouraged to provide the SPT with information at their disposal that is relevant to the mandate of the SPT. Also civil society partners and similar should be informed about the possibility to provide their input to visiting body.

The contact details of the SPT secretariat can be found here: <https://www.ohchr.org/EN/HRBodies/OPCAT/Pages/Contact.aspx> .

I.I.VII UN High Commissioner for Human Rights - UN Human Rights Report 2018

Ms. Michelle Bachelet, High Commissioner for Human Rights, has presented the UN Human Rights Report 2018 - OHCHR's latest yearly report on its human rights work around the world. Analysis of the activities and outcomes in European region can be found from page 279 onwards.

Text of the report can be found here: <https://www.ohchr.org/Documents/Publications/OHCHRreport2018.pdf> .

I.I.VIII Universal Periodic Review - Kyrgyzstan, Spain, Armenia, Sweden, Turkey

The UPR process provides for the participation of all relevant stakeholders, including national human rights institutions (NHRIs) and regional mechanisms. Stakeholders can submit written information for the report containing a summary of information. To do this [technical guidelines for stakeholders submissions for the 3rd cycle](#) should be followed.

The next deadline for submissions is **18 July 2019** for countries that will be reviewed in early 2020. From Council of Europe region such countries are: **Kyrgyzstan, Spain, Armenia, Sweden and Turkey**. Therefore, respective NPMs could consider participating in UPR process in role of stakeholder.

More information about submissions can be found here: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/NgosNhris.aspx> .

I.II Council of Europe

I.II.I Committee for the Prevention of Torture – Germany, Georgia, Turkey, the United Kingdom, Iceland

Germany: *Council of Europe anti-torture Committee says Germany needs to ensure better treatment of foreign nationals being removed by air (09/05/2019)*

The main purpose of the visit to Germany was to examine the treatment of foreign nationals during a removal operation by air³ (charter flight from Munich to Kabul (Afghanistan)) implemented by the German Federal Police and coordinated and co-financed by Frontex. The CPT also observed preparations for the return flight, including the transfer of returnees to the airport.

Keywords: ongoing legal proceedings as a reason for non-removal; timely information about removal, sufficient time for preparations to returnee; access to lawyer, interpreter, efficient complaints mechanism; comprehensive medical assessment prior to removal; dual loyalty of examining medical practitioners; adaptation of prisons to immigration centres; healthcare provision and confidentiality, dual-loyalty of health care staff; placement into security cell.

Takeaway messages:

- states need to negotiate that independent monitoring bodies could observe the handover procedure to the authorities in the country of destination (par 7);
- there must be dedicated trauma register in immigration detention facility, routine medical screening should be carried out if a returnee is brought back to the establishment following an aborted return operation (par 72).

The full text of the news item can be found here: <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-says-germany-needs-to-ensure-better-treatment-of-foreign-nationals-being-removed-by-air> .

Please consult also statement of CoE Commissioner of Human Rights about similar issues. The full text of the news item and letter can be found here: <https://www.coe.int/en/web/commissioner/-/commissioner-urges-german-parliament-to-increase-the-human-rights-safeguards-of-the-bill-for-improving-the-implementation-of-expulsion-of-migrants> .

Georgia: *anti-torture committee commends authorities for combatting ill-treatment, urges to address informal prisoner hierarchy and lack of out-of-cell activities, improve mental health care (10.05.21019)*

Delegation of the CPT carried out a visit to Georgia from 10 to 21 September 2018, visiting law enforcement, immigration detention, penitentiary and psychiatric establishments.

Keywords: duration of CCTV footage preservation; presence of doctors and nurses in all police detention facilities; access to translation for foreigners; tailor-made activity programs for prisoners; informal prison leaders; limits to using security guards in psychiatric institutions.

Takeaway messages:

³ See also CPT guidelines about deportation of foreign nationals by air. [CPT/Inf \(2003\) 35](#), paragraphs 27 to 45

- reiteration of the standard of 4m² living space in shared cell, 7m² in single cell during police custody (6m² in prisons) and right to have a shower during any form of detention longer than 24 hours (p 30);
- prisoner risk classification should be reviewed at least every 6 months (p 74);
- state should elaborate program of incentives for young graduate doctors and nurses to work in prisons (p 76);
- if injuries are found doctors should use the “body charts” and take photographs (p 80);
- list of issues that the guidelines on the use of restraint should include (p 134).

The full text of the report can be found here: <https://rm.coe.int/1680945eca> .

Turkey: Council of Europe anti-torture Committee visits Turkey (20.05.2019)

Main objective of the ad-hoc visit was to examine police facilities. Besides also several prison establishments were visited to pay particular attention to the communal activities offered to the prisoners and the application in practice of their right to receive visits from relatives and lawyers. During the visit CPT met also with Turkish NPM.

The full text of the news item can be found here: <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-visits-turk-2> .

UK: Council of Europe anti-torture Committee visits the United Kingdom (28.05.2019)

Main objective of this ad hoc visit was to follow up to committee’s previous recommendations by paying specific attention to issues concerning violence, segregation, the use of force and means of restraint in local male prisons and juvenile detention establishments. During the visit CPT met also with chair of the NPM.

The full text of the news item can be found here: <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-visits-the-united-kingd-2> .

Iceland: Council of Europe anti-torture Committee visits Iceland (29.05.2019)

The main objective of the visit was to review the measures taken by the Icelandic authorities in response to the recommendations made by the Committee after previous visits. Particular attention was paid to the treatment and conditions of detention of persons in police custody and penitentiary establishments, also treatment, conditions and legal safeguards offered to psychiatric patients were examined. During the visit CPT had talks also with the NPM.

The full text of the news item can be found here: <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-visits-iceland> .

I.II.II Committee for the Prevention of Torture - upcoming visits 2019

CPT will visit 2019 following states: **Armenia, Bosnia and Herzegovina, France, Iceland, Ireland, North Macedonia**. NPMs of corresponding states are encouraged to provide CPT with information in their disposal relevant to the mandate of the CPT. Also civil society partners and similar can be informed about the possibility to provide their input to the visiting body.

Contact details of the CPT secretariat can be found here: <https://www.coe.int/en/web/cpt/contact-us> .

I.II.III Commissioner for Human Rights – Hungary, Poland

Hungary: Council of Europe Commissioner for Human Rights has published on May 21st report on her visit to Hungary. The report focuses on the human rights of asylum seekers and refugees; human rights defenders and civil society; independence of the judiciary; gender equality and women's rights.

The full text of the news item and link to the report can be found here: <https://www.coe.int/en/web/commissioner/-/hungary-should-address-interconnected-human-rights-issues-in-refugee-protection-civil-society-space-independence-of-the-judiciary-and-gender-equality>

Poland: The Commissioner regrets that the Polish Sejm and Senate adopted amendments to the Criminal Code, despite the concerns she had raised with regard to these amendments previously. The adopted changes deprive certain categories of life prisoners of eligibility for conditional release.

The full text of the news item and link to the letter can be found here: <https://www.coe.int/en/web/commissioner/-/the-commissioner-regrets-the-adoption-by-the-polish-sejm-and-senate-of-legislation-on-life-imprisonment-which-is-contrary-to-the-case-law-of-the-europ> .

I.II.IV Standards of imprisonment

Within the framework of recent Multilateral meeting on Management of Prisoners' Regime there is a concept paper produced that discusses over issues of relevance when applying certain regimes in prison to different categories of detainees. It also gives links to relevant Council of Europe documents.

The full text of the paper can be found here: <https://rm.coe.int/concept-paper-multilateral-meeting-2-/16809460ef>

Within the framework of the 24th Council of Europe Conference of Directors of Prison and Probation Services a very useful Compendium of Conventions, Recommendations and Resolutions relating to Prisons and Community Sanctions and Measures has been issued. This compendium contains full texts of all relevant Council of Europe legal documents concerning imprisonment.

The full text of the compendium can be found here: <https://rm.coe.int/compendium-e-2019/16809372d2> .

I.II.V Annual Statistics on Probation

This survey contains data on probationers serving different kinds of community sanctions and measures such as electronic monitoring, community service, home arrest, treatments, as well as persons in semi-liberty or conditional release.

The full text of the news item and the survey can be found here: <https://www.coe.int/en/web/portal/-/council-of-europe-publishes-annual-penal-statistics-survey> .

I.III European Union

I.III.I Detention of applicants for international protection in the context of the Common European Asylum System

New Professional Development Series contains chapter on detention of applicants for international protection in the context of the Common European Asylum System

The new PDS chapter, which is the 9th of the relevant series, analyses the legal framework pertaining to detention and addresses relating key issues, such as the definition of detention and the definition of an applicant for international protection, the legal grounds for detention and relating evidential issues, the duration and conditions of this measure as well as alternative measures to detention and specific safeguards for applicants.

The newly published judicial analysis on detention can be found here: <https://www.easo.europa.eu/sites/default/files/Detention-JA-EN-PDF.pdf> and the compilation of jurisprudence can be found here: <https://www.easo.europa.eu/sites/default/files/Detention-CJ-EN-PDF.pdf> .

I.III.II Western Balkan country reports

The European Commission has published 2019 Enlargement Package that contains the Reports in which the Commission services present their detailed assessment of the state of play in each candidate country and potential candidate, what has been achieved over the last year, and set out guidelines on reform priorities. Such reports address also issues related to fight against torture, prisons etc.

Given the political importance of such reports to the accession process, NPMs and other stakeholders might be able to use Commission's findings also in their work.

Albania: overview of NPM activities in 2018 and overview of prison system can be found at page 24.

The full text of the report can be found here: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-albania-report.pdf>

Bosnia and Herzegovina: recommendation to designate NPM can be found at page 15.

The full text of the report can be found here: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-bosnia-and-herzegovina-opinion_en.pdf

Montenegro: areas for further development in NPM work can be found at pages 4, 24, 25. Overview of challenges in prison system can be found at page 26.

The full text of the report can be found here: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-montenegro-report.pdf>

North Macedonia: concerns with NPM as well as overview of prison system can be found at pages 25-26.

The full text of the report can be found here: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-north-macedonia-report.pdf>

Serbia: concerns with the NPM as well as overview of prison system can be found at pages 23-24.

The full text of the report can be found here: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf>

I.IV Civil society and other stakeholders

I.IV.I Association for the Prevention of Torture – Armenia

Strengthening the NPM's capacity to follow-up on its recommendations (13.05.2019)

Two representatives of the APT conducted a training workshop for the staff of the Armenian National Preventive Mechanism (NPM) and the wider ombuds institution on strategies and tools for follow-up to recommendations. Participants were able to discuss the Armenian NPM's existing practices and challenges, including: its strategy and planning; the way it conducts monitoring visits; the way it drafts and addresses recommendations; and the way it follows-up, through follow-up visits, dialogue with the authorities and by mobilising other stakeholders. Participants could then jointly identify further tools and strategies to strengthen their follow-up techniques.

The full text of the news item can be found here: https://apt.ch/en/news_on_prevention/armenia-strengthening-the-npm-s-capacity-to-follow-up-on-its-recommendations/

I.IV.II Association for the Prevention of Torture – lawyers and torture

GUEST BLOG: Yes, lawyers can prevent torture! (07.05.2019)

The intervention of a lawyer during the first moments of custody would immediately draw attention to the state of the person and the circumstances of the detention. It would also allow the monitoring of his/her transfer and avoid incommunicado detention and intimidation. Above all, it would replace the culture of secrecy - which often prevails in detention - by a culture of transparency.

Blog is provided by Samahanta Paredón Bautista, Legal Consultant for APT's project on access to a lawyer during the first hours of custody in Mexico. The full text of the blog can be found here: <https://apt.ch/en/blog/guest-blog-yes-lawyers-can-prevent-torture/> .

I.IV.III Penal Reform International - Global Prison Trends

PRI launched Global Prison Trends (21.05.2019)

Alongside the Thailand Institute for Justice, PRI launched the fifth edition of Global Prison Trends on Wednesday 21 May 2019, at the United Nations Commission on Crime Prevention and Criminal Justice.

The full text of the news item can be found here: <https://www.penalreform.org/news/pri-to-launch-global-prison-trends-on-21/>

I.IV.IV International Rehabilitation Council for Torture Victims – new issue of Torture journal

Current issue of Torture Journal contains a special section on 'Forensic documentation of torture: Reflections and learnings on the Istanbul Protocol'. It examines the impact of forensic documentation of torture in diverse settings around the world and identifies innovative rehabilitation approaches, as for example sport-based rehabilitation.

The full text of the journal can be found here: <https://tidsskrift.dk/torture-journal/issue/view/8271> .

In addition - Torture Journal special section on: 'Long-term effects of interventions: Torture survivors in the Balkans region as a paradigm of reflection' is calling for papers.

Text of call can be found here: <https://tidsskrift.dk/torture-journal/announcement/view/680> .

I.IV.V Geneva Academy – individual communication procedures

GA launched new publication “Treaty Bodies’ Individual Communication Procedures: Providing Redress and Reparation to Victims of Human Rights Violations”, which addresses the handling of individual communications and tackles efficiency questions related to this procedure.

The full text of the publication can be found here: <https://www.geneva-academy.ch/joomlatools-files/docman-files/UN%20Treaty%20Bodies%20Individual%20Communications.pdf> .

I.IV.VI Prison photo project

In Lisbon, the Portuguese prison photo project, an exhibition of photography on historical and contemporary Portuguese prisons, opened its doors on 10 May in the former prison of the political police P.I.D.E, today the Museu do Aljube Resistência e Liberdade. Exhibition will be presented until 29 September 2019. On 23 and 24 May, an international conference was held on *Regimes of detention and monitoring of regimes* with participation of members of SPT, CPT, NPMs, DGRSP, and universities.

Further information about the project can be found here: www.prisonphotoproject.international

II. Thematic discussion - usability of telemedicine in penal institutions for initial medical screening of detainees

The annual Conference of Directors of Prison and Probation Services of the Council of Europe, that took place in month of May in Cyprus, was dedicated to the advantages and pitfalls of using new technologies in the management of suspects and offenders and the central place of the human factor in dealing with persons in detention or under probation. More particularly - ethical implications of the use of new technologies were examined. It was also discussed how traditional working methods with suspects and offenders can be impacted by the digital transformation, as well as what are the safeguards that need to be put in place⁴.

Within this framework one of disputed themes in relevant communities has been a possibility to engage more telemedicine as an adequate alternative to on-site personal initial medical screening, as prescribed in rule 30 of United Nations Standard Minimum Rules for the

⁴ More information about the conference can be found at <https://www.coe.int/en/web/portal/-/using-technology-in-managing-offenders-in-prison-and-probation-conference-in-ayia-napa> .

Treatment of Prisoners, in penal institutions. Following discussion will give basic insight into the issue. All readers are called to submit their opinions to the editor.

I International legal framework

From the global layer certainly the most important document regulating the rights of prisoners is the Standard Minimum Rules for the Treatment of Prisoners as first adopted by the UN general assembly in 1957 and revised in 2015 as the Nelson Mandela Rules.⁵ The Standard Minimum Rules (SMR) are often regarded by states as the primary – if not only – source of standards relating to treatment in detention, and are the key framework used by monitoring and inspection mechanisms in assessing the treatment of prisoners.

Rule 30 of the SMR states that a physician or other qualified health-care professional is required to see the prisoner as soon as possible after admission. Assessment on admission is critical for the health of the individual. It should therefore be offered to prisoners on admission with health-care staff explaining the benefits to them of the assessment. Without knowing the state of an individual's health, it is not possible to take appropriate and medically necessary measures to protect, promote or improve his or her health. The World Health Organization and the European Committee on the Prevention of Torture (CPT) have both stated that 'as soon as possible' should be understood as within 24 hours⁶. This timeframe is not only important with regard to the prisoner's health and public health but also in order to identify possible signs of ill-treatment, signs of stress and the risk of suicide or self-harm.

According to the rule 34 examination must be done in accordance with the Istanbul Protocol⁷. **The Committee against Torture** has stated that medical examinations should be carried out in private by a health professional trained in the description and reporting of injuries, include an independent and thorough medical and psychological examination, and the results be kept confidential from police or prison staff, and shared only with the detainee and/or the detainee's lawyer.⁸

The Council of Europe has given its guidance about organising health care services in prison⁹. According to those rules prisoner should have unlimited access to health services if required by their state of health. Prison should be able to maintain enough medical specialists needed for upkeeping prison medical system. The Council of Europe has also stressed right for foreign prisoners to receive exactly the same level and format health services needed by

⁵ The United Nations Standard Minimum Rules for the Treatment of Prisoners. General Assembly resolution 70/175, annex, adopted on 17 December 2015. https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf

⁶ Council of Europe: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT standards, 2015 (CPT/Inf/E (2002) 1 - Rev. 2015). para. 73 p. 98. Available at: <http://www.cpt.coe.int/en/documents/eng-standards.pdf>

⁷ Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Submitted to the United Nations High Commissioner for Human Rights 9 August 1999. <https://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>

⁸ Essex paper 3: Initial guidance on the interpretation and implementation of the Nelson Mandela Rules. Penal Reform International / The Human Rights Centre, Essex University. London 2017. <https://cdn.penalreform.org/wp-content/uploads/2016/10/Essex-3-paper.pdf>

⁹ Recommendation N° R (98) 74 of the Committee of Ministers to member States concerning the ethical and organisational aspects of health care in prison. Adopted by the Committee of Ministers on 8 April 1998, at the 627th meeting of the Ministers' Deputies. Page 196 and following. <https://rm.coe.int/compendium-e-2018/16808ae2cf>

them as local community¹⁰. This includes language and cultural aspects of health care service, using interpretation etc.

II Regulation of telemedicine

In 2005, a **World Health Assembly** resolution¹¹ acknowledged e-health's potential for improving health systems and safety, quality and efficiency in health care. E-health can also improve health equity by facilitating access to health information and services¹².

As a follow up to previous instrument, the World Health Assembly in 2018¹³ acknowledged the potential of digital technologies in playing a major role in improving public health, when delegates agreed on a resolution on digital health. This resolution urges Member States to prioritize the development and greater use of digital technologies in health as a means of promoting Universal Health Coverage; promoting equitable, affordable and universal access to health for all, including the special needs of groups that are vulnerable in the context of digital health; and advancing the Sustainable Development Goals. Nevertheless, the resolution still recognises that while technology and innovations can enhance health service capabilities, human interaction remains a key element to patients' well-being.

Service providers have not been ignorant as well - **World Medical Association** adopted on 2007, during its 58th General Assembly, a Statement on the Ethics of Telemedicine. This was further amended and updated on 2018, during 69th WMA General Assembly¹⁴.

III Substance of telemedicine

Telehealth/telemedicine involves an interaction between a health care provider and a patient when the two are separated by distance. That interaction may take place in real time (synchronously), for example by telephone or by use of a video link. But it may also take place asynchronously (store-and-forward), when a query is submitted, and an answer provided later; (secure) email is an example of this technique. Therefore, it can be defined as the delivery of health care services, where patients and providers are separated by distance. Telehealth/telemedicine uses ICT for the exchange of information for the diagnosis and treatment of diseases and injuries, research and evaluation, and for the continuing education of health professionals¹⁵.

Real-time (or synchronous) telemedicine requires the immediate transmission of information through a communication device to allow real-time interaction between patient/ healthcare professional and other healthcare provider/ specialist, who are simultaneously present, but remotely. This allows interactive examinations that, with the help of peripheral devices

¹⁰ Recommendation [CM/Rec\(2012\)12](#) of the Committee of Ministers to member States concerning foreign prisoners. Adopted by the Committee of Ministers on 10 October 2012.

https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805c9df0

¹¹ 25 May 2005. Available at <https://www.who.int/healthacademy/news/en/>.

¹² Improving the credibility of electronic health technologies. JEWG van Gemert-Pijnen, S Wynchank, HD Coveyc & HC Ossebaard. Bull World Health Organ 2012;90:323–323A | doi:10.2471/BLT.11.099804 .

<https://www.who.int/bulletin/volumes/90/5/11-099804.pdf?ua=1>

¹³ Seventy-first world health assembly. 26 May 2018. Digital health

http://apps.who.int/gb/ebwha/pdf_files/WHA71/A71_R7-en.pdf?ua=1

¹⁴ WMA Statement on the Ethics of Telemedicine. 22nd October 2018. <https://www.wma.net/policies-post/wma-statement-on-the-ethics-of-telemedicine/>

¹⁵ Global diffusion of eHealth: making universal health coverage achievable. Report of the third global survey on eHealth . World Health Organization 2016.

<https://apps.who.int/iris/bitstream/handle/10665/252529/9789241511780-eng.pdf?sequence=1>

connected to a computer, PDA, smartphone or video-conferencing equipment, can provide valuable information to remote healthcare providers/ specialists¹⁶.

Part of such telemedicine intervention is also telediagnosis - determination of the nature of a patient's disease, at a remote location, based on the clinical data and information (i.e. data, images, and video records) transmitted through ICT using telescreening or telemonitoring.¹⁷

Clearly opinions about telehealth, more narrowly live interactive video visits, are controversial. For example whilst using Health-e-Access tool providers indicated they were comfortable collaborating with the telehealth assistants and confident that their telehealth communications met patients' needs; however, they felt slightly less confident in their remote diagnosis compared with in-person visits.¹⁸ At the same time study from Japan found that telediagnosis can provide the same level of diagnostic accuracy as face-to-face diagnosis among general medicine outpatients for adults¹⁹.

It can be said that the **US** is perhaps most developed regarding video visits. Study done in the US demonstrated that overall users of telehealth primary care video visits reported satisfaction with the exercise, with the majority interested in continuing to use video visits as an alternative to in-person visits. From European side it should be mentioned that in **Denmark** there have been successful projects of tele wound assessment as well as in other interventions.²⁰

The global prison population is increasing, especially in less-developed countries, and health problems need further attention. High costs of transporting and escorting sick inmates to the doctor is a deterrent²¹. Telemedicine can provide alternative to on-site health services offered to prisoners.

Again – pioneers in prison telemedicine have been **US** law and enforcement agencies. For example one among the corrections facilities offering telemedicine services is Rikers Island. Roughly 40 inmates have virtual visits each month with specialists in those same areas as well as infectious disease, urology, dermatology, pulmonology and gastroenterology²². Texas arranges 11,000 patient-doctor video conferences a month—second only to the U.S. military.⁴⁶

IV Room for discussion

¹⁶ Report on EU state of play on telemedicine services and uptake recommendations. Joint Action to support the eHealth Network. Page 14. https://ec.europa.eu/health/sites/health/files/ehealth/docs/ev_20171128_co09_en.pdf

¹⁷ Global Observatory for eHealth series - Volume 2. Telemedicine – Opportunities and developments in Member States. WHO. 13 January 2011 . P 15.

https://apps.who.int/iris/bitstream/handle/10665/44497/9789241564144_eng.pdf?sequence=1

¹⁸ Miranda A. Moore, Megan Coffman, Anuradha Jetty, Kathleen Klink, Stephen Petterson and Andrew Bazemore. J Am Board Fam Med May 2017, 30 (3) 320-330; DOI:

<https://doi.org/10.3122/jabfm.2017.03.160201>

¹⁹ Mitsuyasu Ohta, Yoshiyuki Ohira, Takanori Uehara, Kazunori Keira, Kazutaka Noda, Misa Hirukawa, Kiyoshi Shikino, Hideki Kajiwara, Fumio Shimada, Yusuke Hirota, Akiko Ikegami, and Masatomi Ikusaka. Telemedicine and e-Health. Volume: 23 Issue 2: February 1, 2017

<https://www.liebertpub.com/doi/abs/10.1089/tmj.2015.0245>

²⁰ Danish Centre for Health Telematics. The Funen telemedicine initiative 2004–2006. Telemedicine in practical application. December 2006. <https://www.medcom.dk/media/1163/telemedicin-eng-feb07.pdf> .

²¹ Ajami S, Arzani-Birgani A (2013) The Use of Telemedicine to Treat Prisoners. J Inform Tech Soft Engg S7:e002. doi:10.4172/2165-7866.S7-e002 <https://www.omicsonline.org/open-access/the-use-of-telemedicine-to-treat-prisoners-2165-7866.S7-e002.php?aid=12679>

²² Telemedicine Opening Doors to Specialty Care for Inmates. [Michelle Andrews, Kaiser Health News](https://www.scientificamerican.com/article/telemedicine-opening-doors-to-specialty-care-for-inmates/) on May 1, 2018. <https://www.scientificamerican.com/article/telemedicine-opening-doors-to-specialty-care-for-inmates/>

Hence – the question remains – can telemedicine replace or complement physical on-site health services in prisons (and other places of detention) where there is persistent problem with employing sufficient number or any health care specialists.

Readers of the newsletter are called to share experiences from their own countries or if there is none, their thinking about the topic.

Summary of inputs will be published in the next newsletter.

III. Jurisprudence

III.I Court of Justice of the European Union

Joined Cases C-391/16, C-77/17 and C-78/17 (Czech Republic, Belgium) (14.05.2019) – cases concerned the right to expel refugees who have committed offences but might face danger in their countries of departure. Court concluded it is apparent that, while, under the Geneva Convention, the persons covered by one of the scenarios described in Article 14(4) and (5) of Directive 2011/95 are liable, under Article 33(2) of that convention, to a measure whereby they are refouled or expelled to their country of origin, even though their life or freedom would be threatened in that country, such persons may not, by contrast, under Article 21(2) of that directive, be refouled if this would expose them to the risk of their fundamental rights, as enshrined in Article 4 and Article 19(2) of the Charter, being infringed. It is true that those persons may, in the Member State concerned, be the subject of a decision revoking their refugee status as defined in Article 2(e) of Directive 2011/95, or a decision refusing to grant that status, but the adoption of such decisions cannot alter the fact of their being refugees where they satisfy the material conditions necessary to be regarded as being refugees for the purposes of Article 2(d) of that directive, read in conjunction with the provisions of Chapter III thereof and, accordingly, Article 1(A) of the Geneva Convention.

The full text of the judgment can be found here: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=214042&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=975503> .

III.II European Court of Human Rights

P.H. and Others v. Italy (20.05.2019) - Italian Government must provide temporary accommodation for Roma children and their parents evicted from a settlement. The European Court of Human Rights has decided to apply an urgent measure in the case P.H. and Others v. Italy (application no. 25838/19) concerning three Bosnian citizens of Roma ethnicity who were evicted with their minor children from a settlement in Ponte Riccio in April of this year.

Chebab v. France (23.05.2019) - in Chamber judgment in the case of Chebab v. France (application no. 542/13) the European Court of Human Rights held, unanimously, that there had been: a violation of Article 2 (right to life) in its procedural aspects, of the European Convention on Human Rights. The case concerned the circumstances in which the applicant was shot by a police officer while being arrested. The Court noted that there had been numerous shortcomings in the investigation into the facts alleged against the applicant. Several procedural irregularities and the loss of evidence which was essential for establishing the truth had affected the adequacy of the investigation. The investigation itself was lengthy, taking almost eight years. The Court concluded that the investigative procedures concerning the incident of 8 March 2000 had been neither prompt nor effective. The French authorities had thus failed to comply with the procedural obligation arising from Article 2 of the Convention.

The full text of the judgment can be found here: <http://hudoc.echr.coe.int/eng?i=001-193082> .

Kancial v. Poland (23.05.2019) - in Chamber judgment in the case of Kanciał v. Poland (application no. 37023/13) the European Court of Human Rights held, unanimously, that there had been: a violation of Article 3 (prohibition of torture and inhuman or degrading treatment) of the European Convention on Human Rights, under its substantive and procedural heads. The case concerned the applicant's allegations of police brutality during a raid by law-enforcement officers, in particular the use of an electrical discharge weapon. The Court found in particular that the police had used excessive force against the applicant, who had already been immobilised at the time, and that a subsequent investigation into his allegations of ill-treatment had been lacking.

The full text of the judgment can be found here: <http://hudoc.echr.coe.int/eng?i=001-193080> .

Chaldayev v. Russia (28.05.2019) - In Chamber judgment in the case of Chaldayev v. Russia (application no. 33172/16) the European Court of Human Rights held, unanimously, that there had been: a violation of Article 8 (right to private and family life) of the European Convention on Human Rights, and a violation of Article 14 (prohibition of discrimination) read in conjunction with Article 8. The case concerned various restrictions on family visits to the applicant during his pre-trial detention. The Court observed that where visiting rights were concerned, the State did not have unfettered discretion to lay down general restrictions without allowing for flexibility in determining whether the restrictions imposed are appropriate or really necessary. The Court saw no objective and reasonable justification for subjecting persons held in pre-trial detention to the same type of restrictions as life prisoners.

The full text of the judgment can be found here: <http://hudoc.echr.coe.int/eng?i=001-193652> .

Clasens v. Belgium (28.05.2019) - in Chamber judgment in the case of Clasens v. Belgium (application no. 26564/16) the European Court of Human Rights held, unanimously, that there had been: a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, and a violation of Article 13 (right to an effective remedy) taken together with Article 3. The case concerned the deterioration in Mr Clasens' conditions of detention in Ittre Prison during a strike by prison wardens between April and June 2016. The Court found that Mr Clasens' conditions of detention during the prison wardens' strike amounted to degrading treatment, resulting from the cumulative effect of ongoing lack of physical exercise, repeated breaches of the hygiene regulations, a lack of contact with the outside world and the uncertainty about whether his basic needs would be met.

The full text of the judgment can be found here: <http://hudoc.echr.coe.int/eng?i=001-193261> .

IV. In focus – monitoring and prison statistics

Following text is provided by Daniel Fink, who is lecturer at the University of Lucerne, associated member at the University of Lausanne, member of the SPT and current head of its European regional team. If you have any issues you would like to further discuss with author, you may contact him directly at Daniel.Fink@unil.ch .

If you are preparing a visit to prison or writing report, it is essential to have data and use some ratio or rate. It is also important to compare the situation of imprisonment, structure of crime and the outcomes of judiciary in your country with similar countries. For that, you need data

collections, which, happily enough, are available in Europe. Here are a few hints on such databases which can easily be found with contemporary search applications.

The most comprehensive website for comparable, reliable and valid data on basic indicators on prison systems is the website **World prison brief** (WPB). The data are aggregated into 9 world regions, then presented individually for the specific countries. For each one, information is provided on the total prison population, the extent of pre-trial/remand prison, the number of prison places and occupancy levels. Trend data is also available as the WPB exists since over twenty years. Maps and charts, links to reports and media documentation, can also be found.

A larger data collection on Europe's prisons and prison population is available in the **Council of Europe Annual Penal Statistics**, better known as SPACE (Statistiques pénales annuelles du Conseil de l'Europe). It is made up of two data sets, a first one related to imprisonment and penal institutions and a second one to non-custodial sanctions and measures. The data are compiled at the University of Lausanne and are based on an extensive European network of national correspondents. Since 2018, the most important indicators on the previous year are available early in the following year. Furthermore, there are tables with data covering 10 years. However, this database cannot be interrogated interactively online and any data analyses needs to proceed manually by copying dozens of data sets.

Those who want to analyse the sanction system and the place of custodial sanctions in it or even the rate of offending and sentencing as indicators of the working of the judicial system can address the **Sourcebook of Crime and Criminal Justice Statistics**. It was launched in 1996, is managed by the University of Lausanne and has its own network of experts who participate in collecting the data. The new edition, the 6th, is currently in preparation, with efforts being made to link and adjust it with the SPACE data collection.

Most recently, the WHO's Regional Office for Europe published **Health in prisons: fact sheets for 38 European countries**. According to the abstract, the purpose of the fact sheets is to present a snapshot of what is currently known about prison health-care systems and services across the European Region. Each fact sheet provides a summary of selected indicators belonging to the eight domains of the *Health in Prisons European Database* (HIPED).