

MEDICAL CARE FOR PRISONERS IN THE CONTEXT OF HIV TREATMENT AND PREVENTION

Yuliia Levytska

Postgraduate Student at the Department of Criminology and Criminal Enforcement Law,
Yaroslav Mudryi National Law University, Ukraine
e-mail: yu.a.levytska@nlu.edu.ua, orcid.org/0000-0002-2297-3124

Summary

The article examines the general aspects of medical care for prisoners with HIV/AIDS as stated in international standards and Ukrainian legislation. Attention is paid to the prohibition of discrimination and stigmatisation of prisoners in the context of medical care.

The reports of the Ukrainian Parliament Commissioner for Human Rights during monitoring visits to penitentiary institutions were analysed. Data released by international organisations demonstrate the high prevalence of HIV among prisoners. The existence of such disease often causes violations of prisoners' rights, including access to health care.

During the survey, common problems, related to medical care, faced by detainees in the penitentiary system, were identified. Among these problems, the inability to receive antiretroviral therapy that should be used to treat HIV is recognised as the most significant. It was concluded that international standards, despite their implementation in national legislation, have not been successfully applied in practice.

Keywords: penitentiary institutions, healthcare provision, human immunodeficiency virus, immunodeficiency syndrome.

DOI <https://doi.org/10.23856/5130>

1. Introduction

The international community is concerned about the worldwide spread of HIV/AIDS, with a significant number of countries indicating an increase in HIV-positive cases. Governments are actively trying to implement international standards on HIV/AIDS prevention into national legislation, including in the sphere of penitentiary institutions. However, the activities of national monitors conducting visits to penitentiary institutions demonstrate insufficient implementation of the adopted standards in practice.

The spread of infectious diseases is a major problem in prison systems worldwide, as prisoners have a higher risk of contracting diseases such as tuberculosis, HIV or hepatitis than the general population. Discrimination and stigmatisation of people living with HIV/AIDS in prisons leads to a violation of the prevention measures, care and treatment of such people.

The purpose of the research is to analyse international standards and national legislation of Ukraine in the context of HIV/AIDS prevention and in comparison, with the state of healthcare provision for HIV-positive prisoners in the reports of the Ukrainian Parliamentary Commissioner for Human Rights.

2. The analysis of international standards

The United Nations General Assembly emphasizes the need to identify specific population groups that have a key role in the spread of and response to the epidemic, considering epidemiological data and national circumstances (para. 29). It is acknowledged that access to safe, effective, affordable and quality medicines is essential for the full realization of the right of everyone to the highest attainable standard of mental and physical health (para. 32). It is acknowledged that close cooperation with persons living with HIV and populations at higher risk of HIV will contribute to the adoption of more effective measures to combat HIV (para. 40) (*Political Declaration on HIV and AIDS, 2011: 5*).

Consolidated Guidelines on The Use of Antiretroviral Drugs for Treating and Preventing HIV Infection identifies people in detention as key populations, as they are at higher risk due to specific behaviours, compounded by structural problems such as criminalisation, violence, stigmatisation and discrimination, which affect their access to health services (para. 6.5.2).

It is acknowledged that there are still great risks of treatment interruption in penitentiary institutions, particularly during transfer or dismissal (para 7.2). As a preventive measure, safety measures to ensure continuity of assistance, such as provision of two-month ARV treatment to convicted prisoners who return to the community and face housing, health insurance and medical care problems are suggested (para. 7.6.1). Opioid substitution therapy should be free and accessible to all who require it, including in prisons and other places of detention (*Consolidated Guidelines on The Use of Antiretroviral Drugs for Treating and Preventing HIV Infection, 2016: 262, 346, 370*).

The commentary to the Standard Minimum Rules for the Treatment of Prisoners notes that these rules relate partly to specific human rights issues, it is possible to remedy various human rights violations in accordance with existing international or regional standards and norms (*Minimalni standartni pravyla povodzhennia z viazniamy, 1955*). In this context, consideration will be given to international rules and standards that specifically relate to people living with HIV/AIDS.

One of the international instruments for ensuring the rights of people with HIV is the International Guidelines on HIV/AIDS and Human Rights. They note that health legislation should expand the possibility of providing a full range of services for the prevention and treatment of HIV and AIDS, including access to voluntary testing and counselling, drug treatment, clean injection materials, etc. (para. 20 a). Separate recommendations for penitentiary institutions highlight the need to legalize and promote needle and syringe exchange programmes (para. 21 d). Prison administrations should ensure that detainees have access to information on HIV prevention, education, voluntary testing, means of prevention, treatment, voluntary participation in clinical trials.

It is also suggested that early release of prisoners with AIDS should be considered (para. 21 and). States should also take the measures necessary to ensure, on an ongoing and equitable basis, the availability and accessibility of quality HIV/AIDS prevention commodities, services and information, treatment, care and support, including antiretroviral and other safe and effective medicines (para. 24). Such interventions should have a special focus on vulnerable populations (*International Guidelines on HIV/AIDS and Human Rights, 2006*).

International Guidelines on Human Rights and Drug Policy contain a separate chapter on people who are deprived of their liberty. A key message is to ensure that all people who are incarcerated have access to health care, including drug treatment, as well as access to essential medicines, including HIV and hepatitis C treatment services, at a level equivalent to

that available in the community. There is a need to ensure that all services related to medicines and other health care are provided by qualified health professionals who can make independent, evidence-based decisions for their patients (*International Guidelines on Human Rights and Drug Policy, 2020: 20*).

To summarise the above, international organisations are concerned about the spread of HIV/AIDS and, by developing standards, are trying to coordinate the activities of all states in the struggle against the disease.

3. Normative regulations and practice in Ukraine

Ukraine is a participant in international cooperation in the sphere of health care, a member of the World Health Organization (WHO) and other international organizations. The state guarantees these organizations appropriate conditions for their activity on the territory of Ukraine and promotes the expansion and enhancement of Ukraine's participation in their activities (*Osnovy zakonodavstva Ukrainy pro okhoronu zdorovia, 1992: Art. 79*). One of the responsibilities of the authorities and administrators of detention facilities is to ensure respect for human and civil rights, the implementation of the legitimate rights and interests of detainees and the enforcement and serving of criminal sentences (*Pro Derzhavnu kryminalno-vykonavchu sluzhbu Ukrainy, 2005: Art. 18, para. 2*).

As noted earlier, prisoners have all the rights granted to the general population except for restrictions related to their status, so we will examine Ukrainian law in the context of HIV/AIDS prevention, diagnosis and treatment. The Human Rights Committee in 2006 expressed concern at the high rates of HIV/AIDS and tuberculosis in Ukraine and recommended that adequate sanitary and hygienic conditions, access to medical care and appropriate nutrition should be provided.

First of all, as provided by international standards, the right to receive ARV treatment for free is also legally mandated. Domestic law insists on equality under the law and the prohibition of discrimination against people living with HIV and those belonging to groups at higher risk of HIV infection (Article 14). Other rights also include free provision of antiretroviral medicines and pharmaceutical products for the treatment of opportunistic infections (Article 15) (*Pro protydiu poshyrenniu khvorob, zumovlenykh virusom imunodefitsytu liudyny (VIL), ta pravovyi i sotsialnyi zakhyst liudei, yaki zhyvut z VIL, 1991*).

Based on UNAIDS data, Ukraine experienced an increase in the number of prisoners with HIV (2017 - 3.3%; 2018 - 8%; 2019 - 7.2%). Meanwhile, there was a decrease in 2019, which is directly related to the implementation of prevention programmes in prisons, particularly there was a 50.19-fold increase in the number of issued condoms compared to 2016 (1.3 million and 25.9 thousand respectively), and antiretroviral therapy became available to 87.4% of detainees, compared to 50.3% in 2016 (*UNAIDS. The Key Populations Atlas*). Obviously, measures to counter and prevent the spread of HIV are effective.

In Ukraine, there is now a special package «Diagnosis, Treatment and Care for Persons with HIV Infection» in which the patient receives HIV testing, post-test counselling, ARV prescription, psychological support and laboratory tests. This package can be provided on an outpatient basis, with a referral from a family doctor (*Prohrama medychnykh harantii: likuvannia patsientiv z VIL-infektsiieiu*). Detainees in conditions of isolation face limited use of the telephone, which makes it impossible to contact the family doctor and sign a declaration. Thus, prisoners cannot be considered equal in their rights to healthcare.

The analysis of the national legislation in the sphere of execution of punishments leads to the conclusion that the procedure of HIV testing of detainees, their medical examination, check-ups and counselling is clearly regulated. However, monitors of the national preventive mechanism have been recording the same problems related to the provision of medical care to inmates during visits for 9 years. We will consider them in detail.

Firstly, one of the most frequent violations is interruption of highly active antiretroviral therapy, which, as noted earlier, is a key step in maintaining individuals who are HIV-positive. For example, in Odesa Penitentiary Institution (№ 21) a detainee with HIV-positive status reported that he had interruption of his ARVs from the time of his arrest until his referral to prison. Despite the fact that he had visible signs of secondary comorbidities, he did not receive any medical prescriptions (*Monitorynh mistis nesvobody v Ukraini, 2015: 60*).

Similar complaints were recorded during a visit to the Petrivsky Penitentiary Institution (№ 49), where an HIV-positive detainee also complained against medical staff because, according to medical indicators, he required antiretroviral treatment, which was not provided to him [c. 61]. The same situation was documented during visits to the Kirovograd Penitentiary Institution (№ 6) (*Monitorynh mistis nesvobody v Ukraini, 2017: 54*).

Detainees with HIV/AIDS are often addicted to drugs. Being in isolation, prisoners look for ways to obtain drug substances, thereby worsening their health status. Based on international practice, particularly in the United States, proven harm reduction measures include syringe exchange programmes and opiate substitution therapy. Where these measures have been introduced, rates of drug use among prisoners were decreased (*Global Prison Trends, 2015*).

One of the principles of overcoming drug addiction among prisoners is effective long-term drug treatment, even after release from prison. Drugs such as methadone, buprenorphine and naltrexone have been shown to reduce heroin use and should be available to those who can benefit from them (*Principles of Drug Abuse Treatment for Criminal Justice Populations, 2016*). The appropriateness of Substitution Maintenance Therapy (SMT) was noted by national scientists, classifying it as part of health care provision (*Avtukhov K. A., Bailov A. V., 2016: 180*).

4. Conclusions

Finally, the research confirms that the issue of ensuring the right of HIV-positive prisoners to health care in relation to their disease has been an actual one for many years. Given the growing number of people living with HIV/AIDS worldwide, the international community is concerned about this state of affairs and is developing ways to address this global problem. An analysis of international standards suggests that the implementation of international standards in national legislation could be the key to a significant reduction in the number of patients.

Persons who are detained in penitentiary institutions are recognised as a vulnerable group who are more likely to be HIV-positive. From this perspective, ensuring prisoners' right to health care is essential to addressing the epidemic. The conditions in which prisoners are held do not allow them to receive adequate quality and quantity of medical care.

The situation described in the article, which takes place in Ukrainian penitentiary institutions, leads to the conclusion that despite the successful implementation of international standards in the legislation, in practice these norms do not work. Detainees have no possibility to receive qualified treatment and maintain their health condition in connection with their illness. Consequently, the activity of medical personnel and administration of penitentiary institutions should change their approach to their practice.

References

1. Avtukhov K. A., Bailov A. V. (2016) *Zamisna pidtrymuiucha terapiia v mistsiakh nesvobody: mizhnarodnyi dosvid*, P. 180. [in Ukrainian]. Retrieved from: http://dspace.univd.edu.ua/xmlui/bitstream/handle/123456789/1097/zamisna_pidtrimuyucha_terapiya_v_miscyah_nesvobodi_mizhnarodnyi_dosvid.pdf?sequence=2&isAllowed=y (accessed 3.12.2021).
2. *Consolidated Guidelines on The Use of Antiretroviral Drugs for Treating and Preventing HIV Infection (2016) Recommendations for a Public Health Approach*, P. 262, 346, 370. Retrieved from: https://apps.who.int/iris/bitstream/handle/10665/208825/9789241549684_eng.pdf?sequence=1&isAllowed=y (accessed 20.12.2021).
3. *Global Prison Trends 2015. Special Focus Pull-out Section. Drugs and Imprisonment*. P. 4. Retrieved from: https://www.unodc.org/documents/ungass2016/Contributions/Civil/PenalReform/Drugs_and_imprisonment_PRI_submission_UNGASS.pdf (accessed 3.12.2021).
4. *International Guidelines on HIV/AIDS and Human Rights (2006) Consolidated Version*. Retrieved from: <https://www.ohchr.org/documents/publications/hivaidsguidelinesen.pdf> (accessed 20.12.2021).
5. *International Guidelines on Human Rights and Drug Policy (2020) UNDP*. P. 20. Retrieved from: <https://www.undp.org/publications/international-guidelines-human-rights-and-drug-policy> (accessed 26.12.2021).
6. *Minimalni standartni pravyla povodzhennia z viazniamy (1955)*. [in Ukrainian]. Retrieved from: https://zakon.rada.gov.ua/laws/show/995_212#Text (accessed 25.12.2021).
7. *Monitorynh mistv nesvobody v Ukraini: stan realizatsii natsionalnoho preventyvnogo mekhanizmu (2016) Dopovid za 2015 rik*, Kyiv. P. 59-61. [in Ukrainian].
8. *Monitorynh mistv nesvobody v Ukraini: stan realizatsii natsionalnoho preventyvnogo mekhanizmu (2017) Dopovid za 2016 rik*, Kyiv. P. 48-55. [in Ukrainian].
9. *Osnovy zakonodavstva Ukrainy pro okhoronu zdorovia (1992): Zakon Ukrainy № 2801-XII*. [in Ukrainian]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/2801-12#Text> (accessed 23.12.2021).
10. *Political Declaration on HIV and AIDS: Intensifying Our Efforts to Eliminate HIV and AIDS (2011) Resolution adopted by the General Assembly*. [in Ukrainian] Retrieved from:
11. https://www.unaids.org/sites/default/files/sub_landing/files/20110610_UN_A-RES-65-277_en.pdf (accessed 20.12.2021).
12. *Principles of Drug Abuse Treatment for Criminal Justice Populations. Research-Based Guide (2016)*. P. 3. Retrieved from: https://d14rmgtrwz5a.cloudfront.net/sites/default/files/txcriminaljustice_0.pdf (accessed: 3.12.2021).
13. *Pro Derzhavnu kryminalno-vykonavchu sluzhbu Ukrainy (2005): Zakon Ukrainy № 2713-IV*. [in Ukrainian]. Retrieved from: <https://zakon.rada.gov.ua/laws/card/2713-15> (accessed 23.12.2021).
14. *Prohrama medychnykh harantii: likuvannia patsientiv z VIL-infektsiieiu. Natsionalna sluzhba zdorovia Ukrainy*. [in Ukrainian]. Retrieved from: <https://nszu.gov.ua/vimogipmg-2021/daily-news/programa-medichnih-garantij-likuvannya-paciyentiv-z-vil-infe-9> (accessed 23.12.2021).
15. *Pro protydiu poshyrenniu khvorob, zumovlenykh virusom imunodefitsytu liudyny (VIL), ta pravovy i sotsialnyi zakhyst liudei, yaki zhyvut z VIL (1991): Zakon Ukrainy № 1972-XII*. [in Ukrainian]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/1972-12#Text> (accessed 23.12.2021).
16. *UNAIDS. The Key Populations Atlas*. Retrieved from: <https://kpatlas.unaids.org/dashboard> (accessed: 25.12.2021).