

DETENTION CONDITIONS REFLECTED IN THE JURISPRUDENCE OF ARTICLE 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

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Abstract

The number of convicted in prisons is growing worldwide and it is no secret that deprivation of liberty does not justify many of the objectives and material means assigned to it. Deprivation of liberty has several objectives: ensuring the security of society by isolating offenders, reducing recidivism and re-educating offenders. However, prison conditions, especially those in Eastern Europe, do not meet the standards imposed by international institutions. The specific international legislation is extremely concise with this field, given the fact that through its content and applicability it occupies a priority role in the policy of any rule of law. Because a rule of law, through its social protection components, manifests its concern for its citizens, and especially for those in vulnerable situations, and the execution of a custodial sentence is certainly among the vulnerabilities that require increased care for these categories of individuals. The purpose of this article is to study the theoretical, practical and legislative aspects regarding the legal interpretation of the human rights institution from the perspective of the existence of conditions of detention in prisons, aspects reflected in the jurisprudence of the European Court of Human Rights.

Keywords: *European Court of Human Rights, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, ill-treatment.*

JEL Classification: K33

1. Introduction

Protecting the rights of detainees against ill-treatment has become an important aspect of human rights protection. Thus, the state is responsible for enforcing international obligations regarding the observance of human rights through various organs of power. Undoubtedly, the European standardization system today is world-famous, but there are two European institutions that can take credit for this real progress. The first to ensure the constant and increasing protection of detainees is the European Court of Human Rights, and the second institution is the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which has accelerated the development of legal standards.

2. The European system of protection of persons deprived of their liberty

Given the growing awareness of detainees' rights, the protection of detainees from ill-treatment, European prisons are in a constant process of change. Thus, after many studies, examining the situation in penitentiaries, it is found that, due to the increasing number of detainees, most penitentiaries are under increasing pressure, the reason in most cases being the increase in the number of foreign detainees². At the same time, we note that the European penitentiary mechanisms are in a process of change for the better, and the measures taken to improve the internal monitoring of penitentiaries show a trend in this direction. With the awareness of the shortcomings and challenges specific to traditional judicial approaches, this is the case regarding the imposition of imprisonment. Penitentiaries are also changing at European level as awareness of detainees' rights increases. Protecting the rights of detainees against ill-treatment has become an important aspect of human rights protection. Thus, the state is responsible for enforcing international and national obligations regarding the observance of human rights through various organs of power³. Undoubtedly, the

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² J. Murdoch, *Combaterea relelor tratamente în penitenciare* (Combating ill-treatment in prisons), Chişinău: S.n., F.E.-P., Tipografia Centrală", 2016, p. 9.

³ FIDH, *Torture and ill-treatment in the Republic of Moldova, including in the Transnistrian region: Assumptions and responsibilities avoided*, edited with the support of the Promo-LEX Association, Moldova, 2013, p. 16, https://www.fidh.org/IMG/pdf/moldavie611_roumain2013.pdf.

European standardization system today is world-famous, but in particular, there are two European institutions that can take credit for this real progress. The European Court of Human Rights is the first to ensure the constant and increasing protection of detainees through progressive and creative interpretation.

A second institution, the European Committee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CPT), has accelerated the development of legal standards. But unlike the ECtHR, the CPT is not a control body, but provides a non-judicial preventive tool aimed at protecting detainees from torture or other ill-treatment. It thus complements the legal activity of the European Court of Human Rights. About half a century ago, the first ruling of the European Court of Human Rights was handed down; unlike, CPT which has only existed for about 25 years. Despite this, the ECtHR has over time begun to base its decisions on the Committee's reports issued following its visits to European prisons, both in terms of its standards and its findings in places of detention. In order to facilitate the interpretation of the obligations and responsibilities assumed by the states with the ratification of the ECHR. The gradual merging of legally binding standards with the CPT recommendations has come to explain why expectations in prisons and European standards have evolved from a fundamental ban on ill-treatment to a number of other requirements covering many aspects of everyday prison life. The protection of the detainee is being transposed to a new level. Also, in this way, the professionalization of the persons working in the penitentiary service can be favored to a certain extent⁴. Increasing emphasis is placed on such concepts as raising the level of activity of staff involved in providing healthcare in prisons and dynamic security.

As a result, one of the fundamental principles of this process is that ill-treatment is prohibited. There are key international treaties, such as the International Covenant on Civil and Political Rights (ICCPR), which emphasize that the right not to be subjected to torture, inhuman or degrading treatment or punishment is an absolute right. This approach is reflected at European level. According to the European Court of Human Rights, Article 3 of the ECHR Convention "enshrines one of the fundamental values of the democratic societies that make up the Council of Europe".⁵

Regarding the content of art. 3 ECHR, it is concise, and the wording prohibiting torture and degrading, or inhuman punishment or treatment excludes any exception. In addition to negative obligations to refrain from ill-treatment or torture, states have more positive obligations. For example, in the penitentiary, there is an obligation to protect detainees from risks posed by other detainees. The merging of these negative and positive obligations under international law, being a process influenced by the work of the CPT, has had a significant impact on the development of standards at European level.

In particular, European prison rules are intended to train and inform all those working in this field, whether they are decision-makers, prison staff or even prison directors. However, even if European expectations prevail worldwide, it cannot yet be said that these standards have been fully implemented at national level. Thus, both the rulings of the European Court of Human Rights and the CPT reports reject any suggestion that the full application of the standards is hindered by mere occasional failures. In contrast, the existing picture often indicates significant shortcomings in the achievement of standards due to inadequate training, lack of material resources and administrative and political leadership. Some shortcomings are more important than others⁶.

3. Legal obligations under the European Convention on Human Rights

The European Court of Human Rights has the ultimate role of protecting the fundamental human rights enshrined in the European Convention, including the obligation to ensure the protection of the mental and physical integrity of persons deprived of their liberty. The European Court of Justice is not a court of appeal or cassation, nor does it claim to be an international court, which is subject to international law. Like any such court, its role is only to find violations of international treaties,

⁴ J. Murdoch, *op. cit.*, p. 10.

⁵ Soering c. Regatul Unit (1989) A 161, para 88, <https://www.refworld.org/cases,ECHR,3ae6b6fec.html>.

⁶ J. Murdoch, *op. cit.*, p. 11.

without changing the domestic legal framework. That is why it does not offer framed defining solutions for a particular protected right or freedom. Its solutions relate to the specific circumstances of the cases before it and the purpose of its reasoning is to process the uniform perception of conventional values, which national authorities must take into account when making use of their margin of appreciation of restrictions on free exercise. rights and freedoms set out in the European Convention⁷.

However, the European human rights system is based on the expectation that Member States will provide the first line of defense. In particular, national courts are expected to reflect ECHR case law in their day-to-day practice. As such, the primary task of determining the scope of the rights rests with the national courts⁸. States are parties to the Convention and have an obligation of fidelity to this Treaty and to the case law of the Court, which is the official interpretation of this Treaty.

This inspires a constructive interaction of the jurisprudence of the European Court of Human Rights with the national legal system. However, the emphasis is clearly and firmly on the implementation of national human rights insurance. Certainly, if national mechanisms are found to be deficient, it may be necessary to exercise the right to submit individual applications to the European Court of Human Rights. However, if the European Court of Human Rights finds that a provision of the ECHR has been violated, the principle of subsidiarity reappears, because once the Court has taken a decision, the case remains open until the national authorities take the necessary measures to address the issues raised. by the European Court of Human Rights, to the satisfaction of the Committee of Ministers of the Council of Europe⁹. It is also noted in this context that the adoption of the necessary measures is the responsibility of the state, in collaboration with the Committee of Ministers, while the European Court of Human Rights cannot dictate to a state the specific measures to be taken. The primary level of human rights protection is the national level. National courts are to ensure that European standards are reflected and applied in the decisions of national courts.

4. Standardization provided by CPT¹⁰

The European system, which relies primarily on individual complaints to ensure effective respect for human rights, has inherent limitations due to practical difficulties, such as low awareness among people and excessive procedural mechanism in terms of duration and cost. The CPT Convention reflects the recognition that the protection of persons deprived of their liberty is often ensured more effectively by focusing on the root causes of ill-treatment rather than on providing, at a later stage, a remedy for their application. The body is established by an international CPT treaty, which aims to strengthen the protection of individuals, namely by monitoring on the spot and encouraging discussions and dialogue with civil servants. The specific activity of the CPT is the promotion of preventive control mechanisms such as visits to places of detention, to assess the situation of persons deprived of their liberty. These places include penitentiaries, re-education centers, pre-trial detention centers within the police, immigrant centers, psychiatric hospitals, social shelters, etc.

Following visits to places of detention, the CPT shall issue reports containing its recommendations. States, in turn, are to respond to his comments and suggestions¹¹. The information collected and the reports addressed to the States are confidential, subject to three exceptions: first, a State may request the publication of the report and any comments it may have on the report; secondly, if a state refuses to cooperate or improve on the issues set out in the CPT's recommendations, the latter may issue a public statement; and, thirdly, the CPT's annual ('general') reports to the Committee

⁷ M. Poalelungi (coord.), *Convenția Europeană a Drepturilor Omului: Comentariu asupra hotărârilor Curții Europene a drepturilor omului versus Republica Moldova/European Convention on Human Rights. Commentary on the rulings of the European Court of Human Rights v. The Republic of Moldova*, Tipografia Centrală, Chisinau, 2017, p. 13.

⁸ Ibid, p. 11.

⁹ J. Murdoch, *op. cit.*, p. 11-12.

¹⁰ The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment or shortly Committee for the Prevention of Torture (CPT) is the anti-torture committee of the Council of Europe.

¹¹ Ibid.

of Ministers of the Council of Europe provide sufficient details on the situation of detainees in certain states to form an overview¹².

At present the detailed reports drawn up following the visits are published practically without exception. Although the CPT reports are essentially consultative, the principle of mutual cooperation found in Article 3 of the CPT Convention implies, if not necessarily a legal obligation, then the presumption that the authorities concerned will take action to implement the recommendations (a presumption confirmed by the CPT). to make a public statement if there is a refusal). Despite the fact that the CPT is not a judicial body, it has nevertheless developed a set of standards that it constantly uses during visits to assess existing practices and encourage states to adhere to its principles on acceptable measures and conditions. Standardization aims to help prevent ill-treatment by providing states with methods that they and the CPT can use during a visit when assessing internal procedures or existing conditions, then this goal is effectively achieved. The CPT's perception that existing international and European instruments often do not have clear guidelines often serves as a justification for the development of this "corpus of standards" (as the CPT puts it).¹³

Despite being a non-judicial body, the CPT calls this set of standards "jurisprudence". These types of standards are published in the annual ("general") reports issued by the CPT, which contain statements that reflect both the accumulation, in the style of "jurisprudence", of the precedent found in the country reports and the development of the concerns on the agenda. CPT activity. Subsequently, adjustments to previous statements may also be made.

The 30th anniversary of the CPT took place in 2019, and to date it has carried out over 450 visits to all 47 member states of the Council of Europe and has carried out research in over 3,000 sections. police and in over 1,200 prisons¹⁴. All such visits may be "regular" (for example, in a regular schedule of visits to places of detention), or "ad hoc" (ie, to examine an institution or an issue that has come to the attention of the CPT). The Committee shall work in cooperation with the Member States. Its delegates have the right of free access to any place where persons are deprived of their liberty and the right to interrogate any individual detained person. The CPT is particularly concerned about the situation in which detainees face repressive or intimidating measures imposed by the authorities, either after or even before a visit. The CPT recently issued a statement on the phenomenon, condemning any attempt to interfere in its work in this way. The CPT also emphasized the importance of protecting officials who acted as "whistleblowers" in order to bring some issues to its attention.¹⁵

We also note here that the importance of the application of these standards by the Committee through its process of generating non-binding legal instruments is significant. This should come as no surprise to us, given the influence of the CPT's competence in formulating recommendations and overseeing their implementation, as well as its reports on regular visits to Council of Europe member states. The influence of the CPT jurisprudence on the ECtHR jurisprudence on the interpretation of art. 3 of the Convention was considerable. The tendency to refer to the content of CPT reports in proceedings before the Court is accelerated by the probative value of reports on visits to Member States, as well as the fact that they are a source of generally accepted requirements. Therefore, virtually every recent judgment of the Court that relates in particular to conditions of detention refers to CPT reports or standards¹⁶.

The active and conscious participation of the CPT in the protection of persons deprived of their liberty has a significant influence on the conduct of the cases examined by the Court, namely as regards the treatment of detainees.

¹² J. Murdoch, *op. cit.*, p. 13.

¹³ The first general report, CPT/Inf (91) 3, paragraphs 95-96, available at: <https://rm.coe.int/1680696a3e>, accessed on 18.11.2021.

¹⁴ 29th General Report, CPT/Inf (2020) 17, p. 5, available at <https://rm.coe.int/16809e80e1>, accessed on 18.11.2021.

¹⁵ 24th General Report, CPT/Inf (2015) 1, paragraphs 41-46, <https://rm.coe.int/1680696a9c>, accessed on 18.11.2021.

¹⁶ J. Murdoch, *op. cit.*, p. 15; AE. Svanidze, *The European Convention for The Prevention of Torture* in G. Alfredsson, J. Grimheden, B.G. Ramcharan and A. De. Zayas (editors) *International mechanisms for monitoring human rights: Essays in honor of Jakob Th. Moller*, second revised edition Martinus Nijhoff Publishers, 2009, pp. 493-502.

5. The work of the Committee of Ministers of the Council of Europe on persons deprived of their liberty

The Committee of Ministers of the Council of Europe also has an important role to play in defending human rights. It monitors Member States' compliance with their commitments and brings together the Member States' permanent diplomatic representatives or their foreign ministers. At the same time, the Committee of Ministers has a key role to play in the manner of implementation established under the Convention, which oversees all measures taken by Member States following the ECtHR's finding that they have failed to fulfill their legal responsibilities. It is also noted that the Committee has a broader role to play in facilitating the expression of agreed approaches to the problems facing Europe, and in this regard, the Committee of Ministers has the right to make recommendations to the Member States on certain issues. they fall under a mutually accepted common policy¹⁷.

Even if its recommendations are not binding on the Member States, the Committee of Ministers may request Member States to "inform it of the measures taken by them"¹⁸. The main idea is that a recommendation will be the expression of a high level of joint commitment between governments.

One of the recommendations of the Committee of Ministers of particular importance regarding persons deprived of their liberty is that which lays down the European Prison Rules. The original idea for the European Prison Rules is found in the 1957 United Nations Resolution on the set of minimum rules for the treatment of detainees¹⁹.

It should be noted that these rules were revised in 1987 and 2006. The 2006 rules mainly reflect the work of the CPT and as mentioned above, this has also influenced the jurisprudence of the ECtHR. These rules apply to every person deprived of liberty, regardless of the legal basis of deprivation, at the same time to be applied "impartially, without discrimination based on race, religion, sex, language, color, political or other opinion, social status or nationality, wealth, membership of a national minority, place of birth or otherwise" (Rules 11-13).

Of particular importance in protecting detainees from ill-treatment are the fundamental principles reflected in the Recommendation of the Committee of Ministers of the Member States on European Prison Rules. They are preceded by a statement of fundamental principles:

1. All persons deprived of their liberty shall be treated with respect for human rights.
2. Persons deprived of their liberty shall retain all their rights which have not been revoked by law, following the decision to sentence them to imprisonment or to pre-trial detention.
3. Restrictions on persons deprived of their liberty must be reduced to what is strictly necessary and will be proportionate to the legitimate aims for which they were imposed.
4. Conditions of detention that violate human rights cannot be justified by a lack of resources.
5. Life in prison should be as close as possible to the positive aspects of community life.
6. Each period of detention shall be managed in such a way as to facilitate the reintegration of persons deprived of their liberty into the free society.
7. Cooperation with external social services and the participation of civil society in prison life should be encouraged as much as possible.
8. Prison staff perform an important public service and their employment, training and working conditions must enable them to provide a high level of care to detainees.

All detainees must be subject to regular government inspection and control by an independent authority²⁰.

¹⁷ Statute of the Council of Europe, ETS no. 1, Article 15 letter (b), available at: <http://legislatie.just.ro/Public/DetaliiDocumentAfis/30114>, accessed on: 18.11.2021.

¹⁸ Ibidem.

¹⁹ Minimum set of rules for the treatment of detainees: United Nations (1957). International standards can now be found in the set of revised minimum standards for the treatment of detainees in the United Nations (the "Mandela Rules"), adopted in December 2015.

²⁰ Recommendation of the Committee of Ministers of the Member States on European Prison Rules adopted on 11.01.2006, Part I, point 2, available at: <https://rm.coe.int/16804c8d9a>, accessed 19.11. 2021.

6. Other bodies for standardization and monitoring of detention conditions

In fact, there are several other actors who have an equally important role in monitoring and standardizing prisons. The Committee of Ministers of the Council of Europe therefore works closely with the Parliamentary Assembly, which in turn is made up of representatives of the legislative bodies of each Member State. It may adopt its own resolutions and recommendations. Both bodies have played an active role in developing new initiatives relevant to the protection of persons deprived of their liberty.

At the same time, since 1999 the Council of Europe Commissioner for Human Rights has been given a general mandate to promote effective compliance with human rights standards through activities focused on raising awareness and issuing reports, opinions and recommendations, some of which relate to the protection of individuals deprived of liberty.

At the international level, the United Nations Subcommittee on Prevention of Torture ("SPT") now has a similar mandate to that of the CPT; and at the national level, the National Prevention Mechanisms ("MNPs") established under the Optional Protocol to the United Nations Convention against Torture (OPCAT), which help to monitor and report and to report on the torture and other cruel, inhuman or degrading treatment or punishment. In the Republic of Moldova, the National Mechanism for the Prevention of Torture (MNPT) was established in 2007. Since the beginning of this mechanism, in two previous mandates, more than 1200 visits have been made to places where private persons are or may be detained. These visits are aimed at preventing ill-treatment and making recommendations to improve the situation of persons in state custody²¹.

7. European penitentiary rules for the treatment of detainees

The penitentiary in the view of the authors in the field is a world in permanent psychological implosion, where the coordinates of existence are stress, despair, helplessness, failure, pathology, crime²². We can mention that the place where the staff provides services for detainees is specific to the penitentiary life, which at first sight seems simple: food, accommodation, hygiene, clothing, contact with the outside, training, security. But going deeper into these paths we see the norms and values, its dimensions and the structure of relationships, the balance of power, the system of privileges, the status and roles of each person involved in this system. The penitentiary space is considered a closed space of authority, an eternal realm in a misunderstanding based on strict regularity, with psychological consequences on the prison inmate and staff. As the author, associate professor, Dr. Octavian Pop, points out in his review of Penitentiary Law, the penitentiary is the place where convicts are isolated from society. This isolation can have a strong negative impact, which leads to the accentuation of certain peculiarities of the criminal life. Life in the penitentiary has repercussions not only on the convicted person's physique, but also on his soul. Man is a dynamic being, that is, he is made up of two elements: body and soul, therefore from a spiritual point of view, the condemned must be strong in order not to let the noblest feelings of the soul wither in such an environment infected with all sorts of vices²³.

The category of people in each penitentiary is an anonymous world, of private people of social prestige, with the conscience of their minorities. This is the vision of society based on social norms. Lack of freedom is a feature of the detention environment, being a social issue that prevents cases of deviance or maladaptation, a present reality specific to society from all times until now.

A penitentiary system brings together 3 basic elements:

1. The manner of execution of the deprivation of liberty.

²¹ See the official page of the People's Advocate of the Republic of Moldova, available here: <http://old.ombudsman.md/ro/content/ce-este-mecanismul-national-de-prevenire-torturii>, accessed on 19.11.2021.

²² C. P. Ardelean, *Coordonate psihologice ale periculozitatii in mediul penitenciar*, p. 5, https://doctorat.ubbcluj.ro/sustinerea_publica/rezumate/2010/psihologie/ardelean_calin_petrica_ro.pdf.

²³ O. Pop, *Recenzie la lucrarea Drept penitenciar (note de curs)*, p. 38, http://tinread.usarb.md:8888/tinread/fulltext/pop/pop_drept_penitenciar.pdf, accessed on 19.11.2021.

2. Treatment of detainees: rights; cultural educational activities; separation criteria; obligations.

3. The actual organization of the penitentiary: the group of detainees; the type of detainees; prison staff.

The elements described are based on several penitentiary systems starting with:

- The Pennsylvania system in the American city of Philadelphia where it has been used since 1790, known as a cellular system in 2 forms:

a) absolute cellular system: where the detainees were obliged to keep a total silence, they did not communicate with anyone, they were taken for a walk separately.

b) cell separation system: detainees isolated from each other could only communicate with prison staff.

- The Aubirian system created in 1820 in Aubira known as the "silence system", according to which detainees are isolated in cells only at night and during the day they work together, keeping quiet.

- The Reform System applied in 1876 at Almira Penitentiary in New York. The sentence did not have a fixed term and did not depend on the gravity of the act committed, but on the behavior of the detainee during the execution of the sentence. The detainees were divided into three classes: whoever reached the first class, considered the best, after six months was released on parole. After half a year of release, the release became final.

- Progressive system from isolation and severe discipline to various rights and activities in an atmosphere of trust.

And the common system. According to which the detainees are permanently in common, the administration of the penitentiary is economical and simple; the only negative aspect is the moral contagion and the learning of criminal techniques. The most widespread detention system today²⁴.

The detention system and life in the penitentiary can also be structured according to the criteria of the types of norms and laws, values, obligations that the detainee is obliged to respect.

The main rules for the treatment of detainees at European level are identified in the Recommendation of the Committee of Ministers of the Member States on European Prison Rules, REC (2006) 2 to Member States, adopted at the 952nd meeting of delegated ministers on 11 January 2006, rules that constitute a new stage in the field of international regulations of the rules governing the detention of persons, a stage that has largely capitalized on all previous achievements in this field.

In accordance with the Recommendations of the Committee of Ministers of the Member States on the European Prison Rules, these rules must be applied impartially, without discrimination based on race, sex, language, color, public opinion or otherwise, belonging to a national minority, religion, social status, nationality, wealth, place of birth or other.²⁵

Of particular importance are the basic principles followed by the Committee of Ministers on prison rules and their scope for protecting detainees from ill-treatment. Regularly, all detainees must be subject to government inspection and control by an independent authority. European prison rules apply both to persons placed in pre-trial detention by a judicial authority and to persons deprived of their liberty following a conviction. In principle, persons placed in pre-trial detention by a judicial authority and those deprived of their liberty following a conviction may be imprisoned only in prisons or establishments reserved for detainees in both categories.

These rules also apply to:

a. detainees who are in a penitentiary, for whatever reason;

b. persons who have been remanded in custody by a judicial authority or have been deprived of their liberty as a result of a conviction and who may, for any reason, be imprisoned elsewhere²⁶.

²⁴ G. Antoniu, *Codul penal pe înțelesul tuturor/The criminal code for everyone to understand*, Politica Publishing House, Bucharest, 1975, p. 47; S. Prodan, PhD in law, associate professor, *Lecture notes: Problems of the development of criminal enforcement legislation*, (Cycle II), Chisinau, 2013, pp. 43-44.

²⁵ Recommendation of the Committee of Ministers of the Member States on European Prison Rules adopted on 11.01. 2006, Part I, point 13, <https://rm.coe.int/16804c8d9a>, accessed on 19.11.2021.

²⁶ Ibid, points 10 – 13.

Therefore, the distribution of convicts, upon arrival in the penitentiary, regardless of the name of the regime (sector) it is mandatory to be placed in the conditions of the initial regime, for a short period (other than that established by the legal framework in force), without setting a deadline certain limit, but with the recommendation that the term should not exceed 2 months, which will include the stage of accommodation of the person in the penitentiary environment and its evaluation in accordance with rules 16, 51 and 52 of the Recommendations of the Committee of Ministers of the Council of Europe no. Rec (2006)²⁷. And as for the distribution of detainees, this must be done according to the need for security (security), as well as based on the individual needs of each of them. The purposes of the classification shall be: a) to prevent detainees who, on the basis of their criminal record or misconduct, may adversely affect other detainees, and b) to divide detainees into groups in order to facilitate their treatment in order to their resocialization.²⁸

Paragraphs 18 and 19 of the European Prison Rules also set out the standards required for detention facilities, especially those intended for the accommodation of prisoners during the night, which must respect privacy and human dignity, while meeting the minimum standards of hygiene and sanitary, taking into account in particular the living space, climatic conditions, lighting, air volume, ventilation and heating sources. The cells, including the furniture, must be in a decent condition and every effort should be made to keep the living areas clean and hygienic. Any infection with parasites must be dealt with vigorously, and detainees must receive personal hygiene and cleaning products. All cells (both single-occupancy and multi-occupancy cells) must have access to natural light as well as sufficient artificial lighting for reading. There must also be sufficient ventilation to ensure constant renewal of the air inside the cell. The placement of the windows must allow fresh air to circulate, whether or not there is artificial ventilation, and last but not least, the cells must be properly heated. Bath and shower facilities must be sufficient for each detainee to be able and required to use them at a climate-appropriate temperature at least once a week. Regarding the living area, we note that the CPT standards stipulate the norm of living space per prisoner in a cell of 4m². In this regard, the Court confirms that the predominant standard in its case law, namely 3m² of floor area for each person deprived of liberty in a collective room is the minimum standard applicable under art. 3 of the Convention²⁹. According to the recommendations of the Committee of Ministers, detainees who do not have appropriate personal clothing should be provided with appropriate clothing from a climatic point of view, clothing should not be humiliating or degrading, detainees should each have a separate bed and receive bed linen. adequate, well maintained, changed so as to ensure its cleanliness³⁰.

In the same vein, in the chapter "Food of detainees", it is necessary to mention the fact that, according to point 22 para. 1 and 2 of the European Prison Rules adopted by the Committee of Ministers of the Member States in 2006 REC (2006)³¹, detainees must enjoy a diet that takes into account not only their health, age or physical condition, but also the nature of the work performed by it, as well as the detainee's affiliation with religion and culture. Each state must ensure a diet, taking into account in particular the minimum protein and energy content, at the same time the food must be well prepared and served in hygienic conditions. At reasonable intervals, three meals a day should be provided and detainees' access to drinking water should not be restricted.

An important aspect is the rules regarding healthcare in penitentiary institutions, which play an important role in protecting the health of all persons deprived of their liberty.

Prison care is guided by the same ethical principles as in the community. The basic principles are established by the Geneva Declaration of the World Medical Association (1948, last version in

²⁷ Ibid, Part II, points 16, 51, 52.

²⁸ The set of minimum rules for the treatment of detainees, adopted on 31 July 1957, point. 67, <http://norwaygrants.anp.gov.ro/documents/12562/84827/Ansambulul+de+reguli+minime.pdf/c478546a-0724-4090-b5f9-7225145d265b?version=1.0>, accessed on 19.11.2021.

²⁹ Case *Muršić v. Croatia*, application no. 7334/13, § 107, <http://ier.gov.ro/wp-content/uploads/cedo/Mur%C5%A1i%C4%87-%C3%AEmpotriva-Croa%C8%9Biei.pdf>, accessed on 19.11.2021.

³⁰ Recommendation of the Committee of Ministers of the Member States on the European Prison Rules adopted on 11.01.2006, Part II, points 20-21, <https://rm.coe.int/16804c8d9a>, accessed on 19.11.2021.

³¹ European prison rules adopted by the Committee of Ministers of the Member States in 2006 REC (2006)2.

2006), the International Code of Medical Ethics (1949, last version in 2006), Decision no. 37/194 (of 18 December 1982) of the United Nations General Assembly and Recommendation no. R (1998) 7 of 8 April 1998 of the Committee of Ministers of the Council of Europe on issues of ethics and the organization of healthcare in prisons.³²

In this respect, medical services for persons deprived of their liberty are important for the prevention of ill-treatment. Thus, an inadequate level of healthcare can quickly lead to situations that fall within the scope of the term "inhuman and degrading treatment".³³

Medical services that cannot be provided in prisons must be provided in collaboration with the medical system of the local or general state administration. In addition, penitentiary medical services must be able to provide at least regular general and specialist consultations, dental services, outpatient treatment, an infirmary, emergency response and direct support from a fully staffed service, from a penitentiary or civilian hospital. Usually, in case of emergency, there must be a doctor on duty at any time.

Prison staff must have the necessary skills to provide medical care to detainees and appropriate medical treatment, as well as psychotherapy, diet, rehabilitation or other special care required under conditions comparable to community services. Every medical examination or consultation must be carried out in a medical consultation office, in order to create an atmosphere of confidentiality, dignity and privacy.³⁴

According to the rules of the Committee of Ministers of the Council of Europe, reflected in the Recommendation on European Prison Rules³⁵, the task of medical staff should not be limited to consulting, examining or treating sick detainees, but also other duties such as monitoring food conditions (quality, quantity, preparation and distribution of food) and hygiene conditions (cleaning of blankets and clothing, access to plumbing and running water), as well as cell lighting, heating and ventilation. Work and exercise outside the cell should also be considered. Prison staff should also be responsible for monitoring mental health, in particular preventing the harmful psychological effects of certain aspects of detention. Overcrowding, unsanitary conditions, inactivity and prolonged isolation may require both medical care for a detainee and general medical action by the responsible authority.

8. General aspects of the applicability of Article 3 of the European Convention on Human Rights to the conditions of detention

Article 3 of the European Convention on Human Rights provides: "no one shall be subjected to torture or to inhuman or degrading treatment or punishment."³⁶

Although it seems very simple and it is understandable, analyzing the quoted article, we will be able to observe that art. 3 The ECHR involves a number of issues and a number of discussions, as evidenced by the case law of the ECHR and the former Commission on the subject.

In order to better understand the applicability of art. 3 ECHR, some clarifications are required regarding the content of the notions of torture, degrading treatment and inhuman treatment. As the Convention does not define these notions, the task fell to the bodies of European jurisdiction, which decided that art. Article 3 of the Convention implies a level playing field against state actions. On the first level of gravity in this regard would be the degrading treatment, which is defined as an "act which produces in the eyes of the person concerned, in his or others' eyes, humiliation or inferiority, or a person to act contrary to his will and conscience, which would reach a minimum of gravity". In

³² Andres Lehtmets, Jörg Pont, *Îngrijirea sănătății și etica medicală în penitenciare: Manual pentru personalul medical și alți angajați ai penitenciarelor, responsabili de bunăstarea deținuților*, Consiliul European. – Chișinău: S. n., 2016, Î.S. F.E.-P. „Tipografia Centrală”, p. 9.

³³ Rules 2002 (rev. 2011) of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, <https://rm.coe.int/16806dbac4>, accessed on 19.11.2021.

³⁴ Recommendation of the Committee of Ministers of the Member States on the European Prison Rules, adopted on 11.01.2006, Part III, point 42, <https://rm.coe.int/16804c8d9a>, accessed on 19.11.2021.

³⁵ Idem, points 43-45.

³⁶ Mihai Poalelungi, *op. cit.*, p. 49.

principle, the existence of degrading treatment presupposes the existence of the intention to humiliate the person in question, but when the consequences of an act, even without a special purpose, lead to serious humiliation of the person, even in the absence of intention the treatment can be qualified as degrading³⁷.

The prohibition imposed by art. 3 is an absolute one, as it regulates the right of every person to dignity and physical integrity. It also follows that European states cannot in any case derogate from these provisions, which makes this right appear intangible. The prohibition of the application of torture or of degrading or inhuman treatment or punishment is absolute in relation to the conduct of the person to whom it is allegedly applied. Also, the nature of the crime that would be imputed to the plaintiff is devoid of any relevance in the field of art. 3³⁸.

Inhuman treatment is on a second level, which was first defined in *Ireland v. The United Kingdom*³⁹ as highlighting "those acts that cause the victim injuries or severe moral and physical suffering, which can cause severe mental disorders." In order to constitute a violation of art. 3 ECHR, these acts must meet certain conditions, namely that the suffering be of a particularly serious level, be caused by individuals or be caused by state agents, but be tolerated by state authorities⁴⁰.

Finally, torture was defined in the same judgment in *Ireland v. The United Kingdom* as "that inhuman treatment which causes physical or mental distress of particular cruelty".⁴¹

Therefore, art. 3 The ECHR enshrines an absolute right, this does not mean that any punishment or treatment that meets the conditions of the above concepts could be contrary to the Convention. Also in this context, in order to delimit the situations that fall within the scope of application of art. 3 The ECHR, the Strasbourg case-law, uses two criteria: the criterion of relative appreciation and the criterion of the intensity of suffering. The criterion of the relative assessment of the gravity of the ill-treatment allows the European judge to qualify in concrete terms the incriminated treatment. "This in practice leads the European judge to classify as inhuman or "inhuman and degrading" treatment the ill-treatment of persons subject to their authority by state agents (police, armed forces, prison staff), whether violence was occasional or organized and corresponded to a predetermined plan. The criterion of the intensity of suffering makes it possible to distinguish between the types of "treatment" pertaining to Article 3 of the ECHR, determining the scope of each of the concepts of "torture", "inhuman treatment" or "degrading treatment", under Article 3 only those treatments which reach a minimum level of severity are included"⁴².

In order to be able to discuss, under the provisions of Article 3 of the Convention, the penalty or a prohibited treatment, two cumulative conditions must be met, one is the existence of a volitional factor, which is the basis of that punishment or treatment, and the other is to the need for the punishment or treatment to involve a minimum of severity.

Regarding the condition of the minimum severity, it should be mentioned that the simple unjustified treatments applied to a person and which cause him some minor inconveniences, do not fall within the scope of protection of art. 3 ECHR. In any case, in order to assess the minimum severity that a certain treatment entails, the jurisprudence of the ECHR has created certain criteria, which should clearly highlight the existence or non-existence of the minimum severity. It should be noted that the assessment of this minimum severity is relative, depending on the overall data of the case, the nature and context of the treatment, its duration, but also the mental and physical effects it produces, and sometimes the sex, age and the health status of the data subject.⁴³ Being applied at the same time, these criteria lead to a relative appreciation of the minimum severity, but it needs to be

³⁷ R. Chiriță, *Convenția Europeană a Drepturilor Omului: comentarii și explicații/European Convention on Human Rights: comments and explanations*, 2nd ed., Ed. C.H. Beck, Bucharest, 2008, p. 97.

³⁸ C. Bîrsan, *Convenția Europeană a Drepturilor Omului: comentariu pe articole, vol.I. Drepturi și libertăți/European Convention on Human Rights: commentary on articles, vol. I. Rights and freedoms*, Ed. All Beck, Bucharest, 2005, p. 200.

³⁹ ECHR, *Ireland v. the United Kingdom*, 18 January 1978.

⁴⁰ C. Bîrsan, *op. cit.*, p. 211

⁴¹ ECHR, *Case Ireland v. The United Kingdom*, 18 January 1978 in R. Chiriță, *op. cit.*, p. 98.

⁴² F. Sudre, *Drept European și Internațional al Drepturilor Omului/European and International Human Rights Law*, Ed. Polirom, Bucharest, 2006, p. 225-226.

⁴³ ECHR, *Case B. v. France*, 25 March 1992, https://www.echr.coe.int/Documents/Research_report_Internet_ROM.pdf, accessed on 19.11.2021.

pointed out that there are certain punishments or treatments that are contrary to the provisions of art. 3 ECHR.

Therefore, "there are situations in which, regardless of the person who is the victim of such treatment, the context, the conditions and the consequences of those treatments, they cannot be accepted under any circumstances in a society based on respect for human beings and human dignity"⁴⁴. Thus, with regard to the conditions of detention, the most convincing example in this respect would be that of striking a person deprived of liberty without having shown violence. As a result, in any given situation, regardless of the intensity of the blow, its consequences or the condition of the victim, such an act of aggression applied to a person in a state of vulnerability and inferiority is serious enough to always be qualified, as being an inhuman treatment.

It should also be noted that the minimum severity of a treatment is assessed according to the age of the person concerned, so that the case of an elderly person cannot be compared with that of a young person, who will undoubtedly be much more difficult. bears certain conditions or treatments. In addition to the age criterion, when determining the minimum severity of the interference, the health status of the person concerned will be taken into account, respectively, he will be much more sensitive to some conditions which, for example, could even aggravate the health status, namely that person who is in a precarious state of health.

Another criterion for qualifying a particular treatment as degrading or inhuman is the duration of that treatment, which is particularly relevant in terms of detention conditions, as much depends on the time spent in certain conditions of detention that are inappropriate for determining the degree, severity and intensity of those treatments. An illustrative example of this would be forcing a detainee to remain in very hot weather for more than two months in a cell without ventilation and without windows, where the temperature had become unbearable.⁴⁵

With regard to the applicability of Article 3 of the Convention, another issue that should be discussed concerns the obligations of State authorities. With regard to these obligations, it should be noted that in order to ensure compliance with Article 3 of the ECHR, states are subject to both positive and negative obligations, which consists in the prohibition established in the obligation of state agents or state bodies to apply treatments or punishments that contravene of the Article 3 ECHR. This classification is nuanced by one author, speaking of a "substantial obligation" (which includes both the negative obligation on States not to apply ill-treatment to persons under their jurisdiction and the positive obligation to protect the physical integrity of persons deprived of their liberty) and a "procedural obligation", which is to initiate an effective and thorough formal investigation, which would respect the principle of adversarial proceedings, "in order to identify and punish the guilty, whenever there are reasonable grounds for believing that treatment contrary to Article 3 of the Convention has been administered by State agents to persons deprived of their liberty."⁴⁶

However, regarding the positive obligations of the states or their agents, it should be noted that they refer to those administrative and legislative measures that the states must adopt, in order to ensure the effective protection of the rights provided by art. 3 of the Convention, such as: the obligation to protect persons under their jurisdiction from the risk of being subjected to treatment contrary to art. 3, the obligation to criminalize violations of human dignity, the obligation to conduct an effective investigation.⁴⁷

With regard to the positive obligations of States with regard to conditions of detention, an important element is that of ensuring minimum conditions of detention commensurate with human dignity. This obligation is a creation of the ECHR case law on the subject, first set out in *Kudla v. Poland*⁴⁸. The plaintiff, in this case, being in a state of pre-trial detention, invoked that the detention regime to which he was subjected was incompatible with his state of health, which contradicts art. 3

⁴⁴ R. Chiriță, *op. cit.*, p. 101.

⁴⁵ ECHR, Case *Peers v. Greece*, 19 April 2001, <https://jurisprudentacedo.com/Peers-contra-Greciei-Conditiie-detentie-Celula-suprapopulata-Obligarea-de-a-ramane-inchis.html>, accessed on 19.11.2021.

⁴⁶ F. Sudre, *Drept European și Internațional al Drepturilor Omului*, Ed. Polirom, Bucharest, 2006, p. 223-224.

⁴⁷ R. Chiriță, *op. cit.*, p. 103.

⁴⁸ ECHR, Case *Kudla v. Poland*, 26 October 2000, <https://jurisprudentacedo.com/Kudla-contra-Polonia-Durata-proce-durii-Obligatiile-statalui.html>, accessed on 19.11.2021.

of the Convention. Analyzing the circumstances of the case, the Court established that art. 3 ECHR obliges states to offer detainees any conditions of detention that would ensure respect for human dignity, to take concrete measures to ensure that the execution of a custodial sentence does not result in physical or mental suffering at a higher level than it usually involves such a punishment. At the same time, in the assessment of the violation of art. 3 in terms of precarious detention conditions, the ECHR bases its findings on official reports prepared by the European Committee for the Prevention of Torture (CPT) following visits, therefore the Court referred to these reports in several cases solution.

In this regard, an example would be the case of *G. B. v. Bulgaria*⁴⁹, in which the Court refers to the conclusions of the 1995 CPT report, in which a number of issues relevant to the European Court as not meeting the requirements of art. 3, such as: poor artificial light, limited access to natural light, lack of access to the library or TV room, reduced contact with other people, activity outside the cell of only 15 minutes a day, the only occupations being reading newspapers, books and writing letters⁵⁰. In recent times, the ECtHR has been increasingly inclined to resolve disputes that arise in terms of detention conditions based on reports from the CPT, even without initiating any detailed analysis, in some cases an example would be the decision of *Narcisio v. the Netherlands*⁵¹, where the ECtHR ruled that there was no violation of art. 3 of the Convention, based on the CPT reports, although the facts seemed rather serious.⁵²

9. Conditions of detention in the case law of the European Court of Human Rights

Of particular importance in ensuring respect for human rights at European level is the ECHR, which is based in Strasbourg and which, since the beginning of its activity, over the years, has been notified of numerous complaints related to the violation of art. 3 of the Convention. Thus, with regard to the conditions of detention, extensive jurisprudence has developed, as well as from detainees in the signatory states, with many complaints challenging the conditions of detention, sometimes degrading and inhumane. Most of these complaints concern the material conditions of detention and raise issues such as: lack of sanitary facilities, overcrowding of cells, minimum living conditions and hygiene in general, artificial and natural light. The isolation of detainees in cells is another common problem in the jurisprudence and more specifically is that the latter do not benefit from a program of activities outside the detention rooms and even if these activities exist, they are for too small a number of detainees. Last but not least, another issue that requires attention to the situation of detainees is the attitude and behavior of penitentiaries and other detention centers and the authorities towards persons deprived of their liberty.

One of the decisions of the Court which would illustrate the situation presented is that given by the Court in the case of *Mayzit v. Russian Federation*⁵³. The facts could, in general, be summarized as follows: criminal proceedings were instituted against the applicant following an armed incident. In fact, the latter was detained for short periods in 1998 and 1999, and on the basis of a supplementary investigation, the authorities ordered the applicant to be detained repeatedly, and he was detained in a detention center from July 2000 until in March 2001, then from May to July 2001. The 6 cells in which he was detained were very small, so that for each detainee, he remained about one square meter. The detainees could only wash once every ten days and had to sleep one at a time because we could not get enough beds for everyone. As regards the Court's reasoning regarding the violation of art. 3 of the ECHR, it was noted that the applicant had been detained for a total of 9 months and 14 days in cells of 6-10 persons, which had a very small area, between 1.3 and 2.5m² for each detainee, under the conditions which CPT imposes the bearable limit of 4m² for each detainee. The ECtHR is

⁴⁹ ECHR, Case *G. B. v. Bulgaria*, 11 March 2004.

⁵⁰ D. Bogdan, M. Selegean, *Drepturi și libertăți fundamentale în jurisprudența Curții Europene a Drepturilor Omului*, Ed. All Beck, Bucharest, 2005, p. 66.

⁵¹ ECHR, Case *Narcisio v. The Netherlands*, January 27, 2005.

⁵² R. Chiriță, *op. cit.*, p. 111.

⁵³ ECHR, Case *Mayzit v. Russian Federation*, January 20, 2005, <http://ier.gov.ro/wp-content/uploads/2019/04/Correia-de-Matos-impotriva-Portugaliei.pdf>, accessed on 19.11.2021.

aware of the overcrowding of detention facilities in the Russian Federation, but in this case it raises a serious issue from the point of view of art. 3 that each detainee had less than 2 square meters at his disposal.

However, taking into account the sanitary conditions in the cells, which were in a deplorable state, the ECHR ruled that there was a violation of art. 3 ECHR, despite the fact that nothing indicates an intention to humiliate the applicant, and the fact of enduring conditions of detention such as those mentioned above is sufficient to establish this.⁵⁴

The issue of overcrowding in detention facilities has been highlighted by the Court in other states, and here we will refer to the case against Bulgaria. An issue regarding detention conditions, which were previously highlighted by the CPT as inhuman and degrading, is highlighted in the ECHR judgment in *Kehayov v. Bulgaria*⁵⁵. The applicant was arrested on charges of rape, was remanded in custody in a detention center for 6 months. Thus, the applicant complained about the degrading conditions in which he had been detained in that detention center. In giving reasons for its decision, the Court was guided by the CPT's report, which had previously described the conditions of detention in that center as degrading and inhuman. At the same time, the Court found a violation of art. 3 ECHR under the conditions of detention, in the circumstances in which the applicant was detained during the 6 months in a cell of 10m², together with 4 other persons, thus benefiting from a space of 2m² per detainee, which is inadmissible according to the imposed standards (4 sqm/ detainee). Moreover, in this case, there is a violation of art. 3 and on the ground that the applicant was obliged to stay permanently in the cell, except for that he made those two short daily outings to use the sanitary facilities.

Analyzing in the light of the jurisprudence of the ECHR and those aspects that refer to the actual facilities that detainees should benefit from, such as, for example: access to artificial and natural light, activities outside the cell, facilities and conditions in cells, access whenever necessary to sanitary facilities, etc., a first decision in this regard, which raises such issues, is set out by the ECHR in the case of *Cenbauer v. Croatia*⁵⁶. On 15 December 1993 the applicant was convicted of murder and sentenced to 12 years' imprisonment. He served part of his sentence in the Lepoglava prison, where the applicant claims that he was detained in very poor conditions. The cell in which he was detained was very small and lacked running water or plumbing, there was no heating and the walls were damp. The applicant also stated that, during the night, he had to meet his physiological needs in a plastic container, and that this was because the guards refused to open his cell to allow him to use the toilet. The applicant also alleges that he received hygiene items only once every 3-4 months, and that the food was of poor quality. However, all detainees were required to appear on call about 10 times a day, and at the same time, regardless of the weather, they were required to exercise in the yard.

In resolving this complaint, the ECHR stated that the applicant had been detained in very poor hygiene conditions, in the absence of sanitary facilities, and also noted that most of the time, detainees were required to remain in cells. As the State did not provide any convincing explanation for the fact that detainees were not allowed to use the toilet at night or the lack of hygienic conditions, the Court found that the applicant had been put in a humiliating situation, contrary to art. 3 of the Convention.⁵⁷

The ECHR ruled on the conditions of detention in another case⁵⁸, holding that the applicant had been arrested on charges of theft and concealment and had been detained for about two months in police custody. The cells were overcrowded, small, in the basement, and had no access to any source of natural light or air. Moreover, the cells were infested with rats and lice, there was no soap, no hot water and no toiletries, and worst of all, the toilet consisted of a bucket placed in the cell.

⁵⁴ R. Chiriță, *op. cit.*, p. 41-42.

⁵⁵ ECHR Case *Kehayov v. Bulgaria*, 18 January 2005, <http://ier.gov.ro/wp-content/uploads/cedo/Neshkov-si-altii-impotriva-Bulgariei.pdf>, accessed on 19.11.2021.

⁵⁶ ECHR Case *Cenbauer v. Croatia*, 9 March 2006, <https://hudoc.echr.coe.int>, accessed on 19.11.2021.

⁵⁷ R. Chiriță, *op. cit.*, p. 64-65.

⁵⁸ ECHR, Case *Yordanov v. Bulgaria*, 10 August 2006, <https://www.hr-dp.org/contents/625>, accessed on 19.11.2021.

In addition, detainees could not access newspapers or books or engage in physical activity, and the food was of poor quality. Examining and examining this complaint, the Court notes that, although there is no evidence that the prisoner's detention regime was set up for the purpose of humiliating him, the subjection of a person to such conditions may be regarded as being humiliating. Therefore, taking into account all the negative aspects of the place of detention, the ECHR considers that art. 3 of the Convention was violated, and the conditions to which the applicant was subjected exceeded the minimum level of suffering inherent in detention⁵⁹.

Another decision given by the Court highlighting the real conditions to which persons deprived of their liberty were and are subject is *Labzov v. Russian Federation*⁶⁰. During his detention, the applicant was detained in an overcrowded cell and invaded by lice and mice, and lacked ventilation. Moreover, detainees were allowed to shower only once every 15 days, at the same time being forced to stay in cells for 23 hours a day.

Also, in this case, the Court found a violation of art. 3 ECHR, moreover, the applicant's state of health, which was suffering from heart disease, had deteriorated due to his precarious condition and lack of natural light, clean air and deplorable hygiene conditions⁶¹.

The court found a similar situation in the conditions of detention in the case of *Karalevicius v. Lithuania*⁶², where art. 3 ECHR, because the applicant was detained in a detention center where the cells lacked ventilation, the toilet, and permission to leave the cell was allowed for a maximum of one hour a day, in fact, the cells lacked cold water, as far as the bath was concerned, was only allowed once every 15 days.

With regard to conditions of detention, an important issue worth highlighting is the behavior of the staff authorities towards detainees. During detention, even short-term detention, in some cases, for example, during detention or pre-trial detention, it was found that some people received degrading and inhuman treatment, causing injuries due to the blows received by to state agents during detention. A concrete example in this situation is the judgment given in the case of *Sunal v. Turkey*⁶³, another case in which the behavior of the penitentiary authorities constituted a violation of art. 3 is the one revealed by the judgment given in *Yankov v. Bulgaria*⁶⁴.

In addition to the above-mentioned aspects, the conditions of detention should be taken into account, as well as the situations that highlight some particularities and require a certain care, for example, situations in which the state of health or age of a person imposes conditions. tailor-made detention. Thus, in this sense a real situation is the case of *Farbtuhs v. Latvia*⁶⁵. The 83-year-old applicant was convicted of genocide and crimes against humanity. Prior to the conviction, the medical experts were consulted and they suggested that, as a result of the applicant's multiple illnesses, he could not serve the sentence of deprivation of liberty unless special medical facilities were provided and provided permanent care. Despite this, he was sentenced to life imprisonment. The management of the penitentiaries has acknowledged that it does not have the technical means to ensure the necessary permanent care and the necessary staff, for which reason the conditional release procedure was started for medical reasons. That procedure was rejected on the ground that the existing reports at that time did not state exactly what technical and human resources were missing and what diseases the applicant was suffering from. Only after a proper report had been drawn up, that is to say, only a year and a month after his imprisonment, the applicant was released, during which time he was held in the prison infirmary. In giving reasons for its judgment, the Court held that the applicant, being elderly, was disabled and could not perform most of the actions, which involve his daily life, and could not get out of bed or do his toilet. The authorities were aware of this fact, even at the time of the conviction, which results from the medical reports previously prepared. In such circumstances, the ECHR considers that the national authorities are obliged to monitor in particular the conditions

⁵⁹ R. Chiriță, *op. cit.*, p. 91-92.

⁶⁰ ECHR, Case *Labzov v. Russian Federation*, 16 June 2005, <https://hudoc.echr.coe.int>, accessed on 19.11.2021.

⁶¹ R. Chiriță, *op. cit.*, p. 54

⁶² ECHR, Case *Karalevicius v. Lithuania*, April 7, 2005, <https://hudoc.echr.coe.int>, accessed on 19.11.2021.

⁶³ ECHR, Case *Karalevicius v. Lithuania*, 25 January 2005, <https://rm.coe.int/16806f1616>, accessed on 19.11.2021.

⁶⁴ ECHR, Case *Yankov v. Bulgaria*, 13 November 2003, <https://hudoc.echr.coe.int>, accessed on 19.11.2021.

⁶⁵ ECHR, *Farbtuhs v. Latvia*, 2 December 2004, <https://hudoc.echr.coe.int>, accessed on 19.11.2021.

of detention, so that they meet the specific needs arising from the applicant's state of infirmity. The ECHR notes that both the prison staff and its administration have made considerable efforts to assist the applicant. However, she reminds that there is a violation of art. 3 of the Convention and in the absence of the will to humiliate the applicant, because the conditions in which the latter was detained led to his deteriorating health and the onset of severe disorders, which amounted to the imposition of degrading treatment.⁶⁶

9. Conclusions

In any society based on genuine democratic systems, the human being enjoys its protection through the existence of its fundamental rights enshrined in texts and reference documents. Last but not least, the priority of ensuring the legitimacy of respect for human rights at European level (derived from the European Convention on Human Rights) lies in respect for all its fundamental rights and freedoms, regardless of the contextual and conjunctural state of a person in a particular moment. International law provides that every detainee serving a custodial sentence may be prosecuted for violating the rights of the State. In that regard, the administration of justice is not only about the application of fair convictions but also about the creation, as far as possible, of decent minimum conditions for the execution of sentences. Thus, a modern state must monitor the observance of the rule of law, to the same extent that it must, through the general obligation of protection, respect the rights of any citizen, both in a state of freedom and deprived of liberty.

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⁶⁶ R. Chiriță, *op. cit.*, p. 53-54.

13. Recommendation of the Committee of Ministers of the Member States on European Prison Rules adopted on 11.01.2006, Part I, point 2, available at: <https://rm.coe.int/16804c8d9a>.
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