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EXAMINING THE ROLE OF THE EUROPEAN REGIONAL SYSTEM IN SAFEGUARDING PRISONERS' RIGHT TO HEALTH

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ABSTRACT

This research critically appraises the contribution of the European regional human rights system to prisoners' right to health and identifies good practices adopted in the system that can serve as models globally. The Council of Europe significantly contributes to safeguarding prisoners' rights to health, emphasising that 'prison health is public health' and 'no one should be left behind'. The primary institutions responsible for safeguarding human rights within the European regional system effectively fulfil their roles. There is a network of institutions that are the subject of this research. This theoretical research involves analysing judicial rulings and human rights standards related to prisoners' health rights, as introduced by the Council of Europe, European Court of Human Rights (ECtHR) and the Committee of Prevention of Torture (CPT). This study discovers the integrated approach adopted by the ECtHR based on the European Convention on Human Rights in recognising prisoners' right to health. This approach has led to dynamic interpretations and implementations of the prisoners' right to health across Council of Europe member states. Arguably, the European system serves as a model to improve prisoners' right to health. Further, these lessons can be significant in reforming prison systems, including the advancement of prisoners' right to health worldwide.

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1. INTRODUCTION

The right to health is a fundamental human right that is enshrined in international human rights law. Despite this, certain groups, such as incarcerated individuals, often encounter challenges when attempting to access healthcare and achieving optimal health outcomes. These challenges are frequently attributed to a range of factors, including overcrowding, inadequate facilities, and resource constraints of the prison.[1] Additionally, infectious diseases such as HIV/AIDS, hepatitis C, tuberculosis, and recently COVID-19 are more prevalent in prisons.[2] Due to their confinement, prisoners are disproportionately affected by physical and mental illnesses, with prevalence rates exceeding those of the general population.[3] Providing healthcare services in prisons is a significant public health concern, requiring increased attention from policymakers. This issue raises pertinent questions regarding the feasibility of implementing a policy that guarantees inmates' right to healthcare, particularly in the face of overcrowding, a common phenomenon in most prisons globally. [4]

In light of recent developments, the issue of defending prisoners' right to health has received a global attention. As Eger commented, the impetus behind this attention is rooted in the HIV/AIDS pandemic and its profound impact on the prison system.[5] The development of protection of right to health of prisoners could be more expeditious in Europe.[6] It is imperative to examine the European system as a model that adopts a human rights approach. The primary objective of this system is to rehabilitate prisoners to facilitate their reintegration into society. The European regional human

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1 Andrew Coyle, *Prisons of the World* (Policy Press 2022) 3.

2 WHO Regional Office for Europe, 'Status Report on Prison Health in the WHO European Region 2022' (*World Health Organisation*, 2023) 3.

3 World Health Organization Regional Office for Europe, *Health for All in Prisons: Report on a WHO Expert Meeting* (The Hague, Netherlands, 2019) https://apps.who.int/iris/handle/ 10665/329806 accessed 15 July 2023.

4 United Nations Office on Drugs and Crime (UNODC), *Handbook on Strategies to Reduce Overcrowding in Prisons* (UNODC 2013) 3.

5 Bernice S Elger, 'Towards Equivalent Health Care of Prisoners: European Soft Law and Public Health Policy in Geneva' (2008) 29 Journal of Public Health Policy 192 http://link.springer.com/10.1057/jphp.2008.6 accessed 20 December 2023.

6 Francesco Seatzu and Simona Fanni, 'A Comparative Approach to Prisoners' Rights in the European Court of Human Rights and Inter-American Court of Human Rights Jurisprudence' (2015) 44 Denver Journal of International Law and Policy 22.

rights system aims to protect prisoners' right to health by ensuring that 'no one is left behind' in healthcare access, and by recognizing that prison health is public health.[7] The Council of Europe upholds the principle that the human rights of all individuals deprived of their liberty must be respected. Furthermore, the Council asserts that individuals deprived of their freedom retain all the rights that are not rescinded by their sentencing or remand. These views align with international human rights principles and values that are predicated on non-discrimination.[8]

The European Regional Human Rights Mechanism has developed a well-structured institutional framework and procedures to safeguard the health rights of prisoners, which is considered a benchmark for other jurisdictions. This research article aims to analyze the institutional structure, procedural frameworks, good practice, and programs that have been instituted to protect the health rights of prisoners in the European system. The Council of Europe, the European Court of Human Rights (ECtHR), and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) are the key institutions responsible for protecting human rights in Europe. Hence, this paper analyzes the contribution of these entities in safeguarding the right to health of prisoners by means of legal standards, monitoring, and jurisprudence. The methodology employed in this research involves a theoretical approach, analyzing relevant regional standards, judicial decisions, and scholarly works on prisoners' right to health in Europe. The standards examined include the European Convention on Human Rights (ECHR), European Prison Rules, CPT standards, and WHO declarations. Moreover, the study evaluates pivotal ECtHR cases concerning right to health of prisoners.

The methodology employed in this research adopts a doctrinal legal research method, combined with a critical review of literature. This approach involves an in-depth analysis of primary sources, including relevant regional standards such as the European Convention on Human Rights (ECHR), European Prison Rules, CPT Standards, and WHO declarations. Additionally, pivotal judicial decisions from the European Court of Human Rights (ECtHR) concerning prisoners' right to health are thoroughly examined. The study also incorporates secondary sources, including scholarly works, commentaries, and academic critiques, to

7 WHO Regional Office for Europe, *Health for All in Prisons* (n 3).

8 ibid.

provide context and depth to the analysis. By employing this methodological framework, the research critically appraises the legal principles, case law, and human rights standards that shape the protection of prisoners' health rights within the European regional human rights system.

2. THE RIGHT TO HEALTH IN INTERNATIONAL LAW

Before discussing the prisoner's right to health, it is essential to consider the status of right to health in human rights law. Major international and regional human rights treaties, including the UDHR and ICESCR acknowledge right to health. These treaties ensure that everyone has the right to timely medical care[9] and the best possible physical and mental health.[10] This right extends to appropriate health services and the underlying determinants of health.[11] It is also noted that eliminating discrimination and ensuring physical accessibility, affordability, and access to information are important for the accessibility of healthcare.[12] Moreover, international human rights law recognizes that states have a primary responsibility to ensure minimum essential health rights.[13]

General Comment No. 14, adopted by the United Nations Committee on Economic, Social and Cultural Rights in 2000, provides an authoritative interpretation of Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognizes 'the right of everyone to the enjoyment of the highest attainable standard of physical

9 United Nations, Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III), art 25.

10 United Nations, International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR) art 12.

11 UN Committee on Economic, Social and Cultural Rights, *General Comment No 14: The Right to the Highest Attainable Standard of Health (Art 12)* (11 August 2000) UN Doc E/C.12/2000/4, para 1.

12 ibid para 12.

13 ibid para 43.

and mental health'.[14] It provide an inclusive definition of health,[15] emphasizing that the right to health extends beyond mere access to healthcare services. It includes the underlying determinants of health, such as access to safe water, adequate sanitation, sufficient food and nutrition, housing, healthy occupational and environmental conditions, and access to health-related education and information.[16]

General Comment No. 14 further outlines key elements of the right to health, which are essential for its realization: Availability: Functioning public health and healthcare facilities, goods, and services must be available in sufficient quantity. Accessibility: Health facilities, goods, and services must be accessible to everyone without discrimination. This includes physical accessibility, economic accessibility (affordability), and access to information. Acceptability: Healthcare services must be respectful of medical ethics and culturally appropriate. Quality: Facilities and services must be scientifically and medically appropriate and of good quality.

Importantly, General Comment No. 14 imposes three types or levels of obligations on States parties to respect, protect, and fulfill the minimum essential levels of the right to health.[17] It has further elaborated on the essential features of each level of obligation.

Firstly, in terms of 'respect,' states must respect the right to health by ensuring equal access to health services for all, refraining from discriminatory practices. Accordingly, emphasizes the principle of non-discrimination, urging states to prioritize marginalized groups, including prisoners, who are often in vulnerable situations and face additional barriers to accessing healthcare. They must avoid limiting access to reproductive health services, health-related information, and public participation in health matters. Additionally, states should prevent harmful environmental practices and ensure access to healthcare is not restricted as a punitive measure, even during armed conflicts.[18]

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14 ibid para 2.

15 Lawrence O Gostin and others, *Advancing the Right to Health: The Vital Role of Law* (World Health Organization 2017).

16 UN CESCR (n 11) para 11.

17 ibid para 33.

18 ibid para 34.

Secondly, states must ensure protection of right to health by providing equal access to healthcare, regulate privatization and medical practices, prevent harmful traditional practices and protect vulnerable groups. They must also stop third parties from restricting access to health-related services and information.[19]

Thirdly, the obligation to fulfil requires states to integrate the right to health into national legal and political systems, preferably through legislation, and adopt comprehensive health policies with detailed plans. States must ensure access to healthcare, including immunization, and underlying health determinants such as safe food, clean water, sanitation, and housing. Public health infrastructures should provide sexual and reproductive health services, train medical personnel, and ensure equitable distribution of healthcare facilities. Additionally, they should periodically review these policies to reduce pollution and minimize occupational risks.[20]

Additionally, general comment 14 recognizes the concept of core obligations stating that Regardless of their economic situation, all States have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of the right to health. This includes ensuring access to essential primary health care, minimum essential and nutritious food, basic shelter and housing, sanitation, and an adequate supply of safe and potable water.[21]

Regional human rights treaties recognize the right to health on a regional level. In the European context, one such treaty is the European Social Charter.[22] Governments recognize the importance of taking preventive measures, treating epidemics, and ensuring access to healthcare. Although the European Convention on Human Rights makes no explicit mention of the right to health, however, the European Court of Human Rights interprets it broadly to include the right to life,[23] the prohibition of

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19 ibid para 35.

20 ibid para 36.

21 ibid para 43.

22 Council of Europe, European Social Charter (adopted 18 October 1961, entered into force 26 February 1965) ETS 35, art 11.

23 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (opened for signature 4 November 1950, 213 UNTS 222, entered into force 3 September 1953) art 2.

torture,[24] and the right to respect for private life.[25] The right to health of prisoners was also addressed later in the text. The European system's right to health is more comprehensive, and a regional legal framework is established through cumulative protections.

3. RIGHTS TO HEALTH OF PRISONERS

This section provides an in-depth analysis of the evolution of the prisoner's right to health as a fundamental human right in international human rights law, as well as in the European region. In Europe, the protection of the prisoner's right to health is promoted through both binding and non-binding legal instruments, which will be comprehensively discussed in this section. Furthermore, this section will explore the conceptual and philosophical underpinnings of these instruments and their practical utilization. This section will also highlight the significance of enforcing these laws and creating an institutional system for safeguarding the prisoner's rights to health through practical implementation in the European region. Given the paramount importance of protecting the right to health of prisoners, this section prioritizes examining the practical enforcement of these instruments and their contribution to the institutional structure that safeguards prisoners' right to health in the European region.

This section analyzes the evolution of the prisoner’s right to health as a fundamental human right, with a specific focus on the European region. It examines the role of binding and non-binding legal instruments in shaping this right, emphasizing their conceptual foundations and practical applications. Particular attention is given to how these instruments are enforced and how they contribute to institutional frameworks that protect prisoners' health. By critically assessing the practical impact of these legal measures, this section underscores their role in strengthening the institutional mechanisms for safeguarding the health rights of prisoners in Europe.

As stated in the Universal Declaration of Human Rights (UDHR), all individuals possess inherent dignity and are entitled to equal and inalienable rights. These rights serve as the foundation of freedom, justice,

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[24] ibid art 3.

[25] See *Pretty v UK* (2002) 35 EHRR 1; *Powell v UK* (2000) 30 EHRR CD362; *Calvelli and Ciglio v Italy* (2002) 34 ECHR 1068.

and peace.[26] The UDHR does not expressly address the individual who is deprived of liberty, as is the case with the International Covenant on Civil and Political Rights (ICCPR). This deviation in language usage between the two documents underscores the importance and significance of the ICCPR's specific emphasis on the rights of individuals who are deprived of their liberty are to be 'treated with humanity and respect for their inherent human dignity'.[27] This human rights benchmark prompts inquiries on the appropriate treatment of individuals deprived of liberty with humanity and the preservation of their inherent dignity. The humane treatment of prisoners and their inherent dignity are closely connected with their health.[28] To fulfill the requirements of humane treatment of prisoners and their inherent dignity, it is necessary to adhere to the principles of equivalence.[29] The popular statement of 'leaving no one behind' in terms of prisoners' right to healthcare is centered around ensuring fair and equal access to healthcare services.[30]

Based on the principle of equality, the ICCPR is designed to protect all individuals' fundamental human rights regardless of their circumstances. By upholding this principle, the ICCPR seeks to promote and protect the fundamental freedoms of all individuals, regardless of their gender, race, religion, or any other distinguishing characteristic.[31] According to the soft law instrument at the international level, the Nelson Mandela Rules state that prisoners should enjoy the same standards of healthcare available in the community without discrimination[32] Similarly, the European prison rules emphasize that all detention must be managed with the aim of aiding the reintegration of individuals who have been deprived of their freedom

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26 UDHR (n 9) Preamble.

27 International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) UNTS 999, art 10.

28 Andrew Coyle, *Humanity in Prison: Questions of Definition and Audit* (International Centre for Prison Studies 2003).

29 WHO Regional Office for Europe (n 2).

30 WHO Regional Office for Europe, *Leaving No One Behind in Prison Health: The Helsinki Conclusions* (WHO Regional Office for Europe 2020) 7.

31 ICCPR (n 27) art 2.

32 The United Nations Standard Minimum Rules for the Treatment of Prisoners (2015) Rule 24.

back into society.[33] Both Mandela and European prison rules highlighted prompt, free healthcare that respects patient autonomy and confidentiality.

The right to health for prisoners is crucial because Prisons are environments where the prevalence of communicable and non-communicable diseases, mental health issues, and substance abuse disorders is significantly higher than in the general population.[34] As highlighted by international standards, including the Nelson Mandela Rules, ensuring prisoners' access to healthcare equivalent to community standards is not only a legal and moral obligation but also a public health necessity. [35]Effective prison health systems contribute to reducing health inequities, promoting social cohesion, and ensuring the reintegration of individuals into society upon release.[36] Furthermore, addressing the health needs of prisoners aligns with global commitments to 'leave no one behind,' as stipulated in the Sustainable Development Goals, reinforcing that the health of this vulnerable group is integral to broader societal health outcomes.[37]

4. SAFEGUARDING RIGHT TO THE HEALTH OF PRISONERS THROUGH BINDING AND NON-BINDING INSTRUMENT IN EUROPE.

This section discusses the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the European Convention for the Prevention of Torture and Inhuman or Degrading

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[33] Council of Europe, *Recommendation Rec (2006)2 of the Committee of Ministers to Member States on the European Prison Rules* (adopted 11 January 2006) Rule 6 https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae accessed 15 July 2023.

[34] World Health Organization, *Health in Prisons: A WHO Guide to the Essentials in Prison Health* (WHO 2007): Highlights the heightened health risks faced by prisoners and the public health significance of addressing these risks.

[35] United Nations, *Transforming Our World: the 2030 Agenda for Sustainable Development*, 2015, Goal 3: Focuses on ensuring healthy lives and promoting well-being for all, underpinned by the principle of 'leaving no one behind'.

[36] World Health Organization, *Prisons and Health* (WHO 2014): Emphasizes the role of prison health systems in reducing health inequities and contributing to societal health outcomes.

[37] See generally Health in Prisons: A WHO Guide to the Essentials in Prison Health (n 34).

Treatment or Punishment (ECPT) as binding human rights instruments related to the protection of the right to health of prisoners in Europe. As non-binding instruments, European prison rules and standards of the Committee on Prevention of Torture are also discussed in this section. Scholars have identified that soft law instruments, are of significant importance for the protection of the health rights of prisoners. These instruments are extensively employed in their interpretation and implementation by both judicial and non-judicial institutions across Europe. As such, they play a crucial role in upholding the principles of justice, fairness, and human rights in the context of the European prison system.[38]

4.1 The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which was adopted in 1950, stands as the primary human rights treaty in Europe concerning the protection of prisoners' right to health.[39] The ECHR is a legally binding instrument that has been signed and ratified by forty-six members of the Council of Europe. Its signatories have pledged to uphold its obligations in order to safeguard human rights, including the right to life,[40] the prohibition of torture,[41]and the prohibition of discrimination.[42] These provisions are vital for ensuring the well-being of prisoners in Europe and promoting their right to health. It should be noted, however, that the ECHR does not explicitly grant prisoners the right to health or healthcare. The Convention established the European Court of Human Rights as a mechanism to safeguard human rights, granting it 'supervisory jurisdiction'.[43] The Court's mandate is to ensure that the fundamental rights of all individuals are protected and upheld in accordance with the Convention. As discussed

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38 Elger (n 5); Seatzu and Fanni (n 6).

39 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), opened for signature 4 November 1950, 213 UNTS 222 (entered into force 3 September 1953).

40 ibid, art 2.

41 ibid, art 3.

42 ibid, art 14.

43 ibid, art 19.

below, it serves as a vital instrument in the protection of human rights across Europe.

4.2 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT) was established in 1987 as a critical instrument within the framework of the Council of Europe. Its primary objective is to prevent torture and ensure humane treatment, thereby playing a pivotal role in promoting and safeguarding human rights across European member states. The Convention also creates the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), an independent body responsible for monitoring detention facilities across Europe.[44] In this context, the CPT stands as a crucial mechanism for ensuring the prevention of torture and inhuman or degrading treatment or punishment in detention facilities.

The CPT carries out regular visits to detention facilities in order to assess the treatment of detainees and identify any issues that may require attention.[45] The CPT's findings and recommendations are then communicated to the relevant authorities, including governments, in order to promote the implementation of measures to prevent torture and ensure humane treatment.[46] The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT), together with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), play a critical role in promoting and safeguarding human rights across European member states. By establishing standards for the prevention of torture and inhuman or degrading treatment or punishment, the ECPT and the CPT contribute to the protection of the fundamental rights and dignity of all individuals, particularly those who are most vulnerable.

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44 Council of Europe, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (adopted 26 November 1987, entered into force 1 February 1989) ETS No 126, art 1.

45 ibid.

46 ibid, art 7.

4.3 European Prison Rules (EPR)

The European Prion Rule was initially adopted by the Committee of Ministers of the Council of Europe in 1973 and has undergone revisions in 1987, 2006,[47]and 2020.[48]The primary objective of these rules is to establish the minimum standards for prisons in the member states of the Council of Europe. The regulations cover various aspects of prison management, including the healthcare of prisoners. Notably, although the European Prison Rules are not legally binding on the member states of the Council of Europe, they hold significant importance as they have been given importance by the European Court of Human Rights (ECtHR) and the European Committee for the Prevention of Torture (CPT).[49]

The underlying principles of the EPR are rooted in the protection of human rights,[50] proportionality,[51] normalization,[52] reintegration,[53] adequate and quality staff,[54] accountability,[55] and transparency.[56] The health of prisoners is directly linked to factors such as hygiene, clothing, bedding, nutrition, exercise, and recreation, all of which are also addressed by the European prison rules.[57] Part III of the EPR outlines provisions that ensure the health and well-being of prisoners within the context of healthcare in prisons. It is imperative to adhere to these provisions to maintain the health and well-being of inmates in custodial settings.

The rules governing the organization of medical services within the prison system assert that they must be closely integrated with the general health administration of the community or nation. To this end, health policies in

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47 Council of Europe, 'Recommendation Rec (2006)2 of the Committee of Ministers to Member States on the European Prison Rules' (Adopted 11 January 2006).

48 Council of Europe, European Prison Rules (n 33).

49 Egler (n 5).

50 EPR (n 33) part I, rule 1,2.

51 ibid 3.

52 ibid 4, 5.

53 ibid 6, 7.

54 ibid 8.

55 ibid 9.

56 ibid part II.

57 ibid.

prisons should align with national health policies and be fully integrated with them. These regulations are based on the principle of normalization, which stipulates that life in prison should be as similar as possible to life in the community and is widely accepted by the EPA.[58] It is imperative that prisoners have access to healthcare services that are free from discrimination, regardless of their location. Medical services provided should be geared towards detecting and treating physical and mental illnesses.[59]

The EPR has stipulated guidelines for health staff serving in correctional facilities. As per these guidelines, each prison should have at least one qualified general medical practitioner available at all times. [60]Furthermore, adequate measures must be taken to ensure that medical practitioners are immediately available in cases of urgency. Prisons that do not have full-time medical practitioners must have part-time medical practitioners visiting regularly. It is also essential to have properly trained healthcare personnel, including dentists and opticians, available in every prison to ensure the adequate provision of healthcare services.[61]

It is the responsibility of medical practitioners to conduct compulsory medical examinations for incarcerated individuals upon admission and upon request upon release. Medical practitioners are expected to maintain medical confidentiality, diagnose illnesses, record any signs of violence, address withdrawal symptoms, and identify psychological stress. In the event of contagious conditions, it is imperative that prisoners are isolated. However, those with HIV should not be subjected to isolation for this reason alone. Medical practitioners should also take note of any defects that may impede the resettlement of prisoners post-release and determine their fitness for work and exercise. Finally, with the consent of prisoners, medical practitioners should establish arrangements for medical and psychiatric treatment after release.[62]

Oversight and reporting are an important aspect recognized by the EPR, which gives power to medical practitioners to oversee the health of prisoners. They are required to regularly check on sick prisoners, those

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58 ibid part I, rule 4,5.

59 ibid part II, rule 47.

60 ibid 40.

61 ibid 41.

62 ibid 42.

reporting illness, and those with special health needs. Special attention must be given to prisoners in solitary confinement, with daily visits and prompt medical assistance. If a prisoner's health is seriously at risk due to continued imprisonment or conditions, including solitary confinement, they must report it to the director. Additionally, they have the power to inspect and give advice on food, water, hygiene, sanitation, heating, lighting, ventilation, clothing, and bedding in the prison. The director should consider and implement their recommendations. If they do not agree, they can report to higher authority.[63]

Moreover, ethical considerations have been acknowledged by the EPR. It is established that prisoners must not be subjected to experiments without their consent. Furthermore, experiments that may cause physical or mental harm to prisoners are strictly prohibited.[64]The European Union requires national law to protect established standards. As an example, mechanisms ought to be implemented to ensure that minimum requirements are not breached by prison overcrowding.[65]

5. SAFEGUARDING RIGHT TO THE HEALTH OF PRISONERS THROUGH HUMAN RIGHTS INSTITUTIONS IN EUROPE

This section explores how human rights institutions in Europe safeguard the right to health of prisoners. It focuses on the contributions of the Council of Europe, emphasizing its legal frameworks, monitoring mechanisms, and jurisprudence. Subsection 5.1 discusses the Council of Europe's broader role in promoting prisoners' health rights through initiatives like the European Prison Rules (EPR) and the CPT's monitoring activities. Subsection 5.2 delves into the European Court of Human Rights (ECtHR) and its significant case law that interprets and expands protections under Articles 2 and 3 of the European Convention on Human Rights. Subsection 5.3 examines the European Committee for the Prevention of Torture (CPT) and its role in ensuring humane treatment and healthcare standards in detention settings, while Subsection 5.4 highlights the CPT standards, which emphasize access to care, equivalence of treatment, and professional medical ethics in prisons.

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63 ibid 44.

64 ibid 48.

65 ibid 42.

5.1 The Council of Europe's Contributions to Protect Right to Health of Prisoners

The Council of Europe, established in 1949, has promoted and protected human rights among its member states. The Council of Europe has advanced prisoners' right to health through the European Court of Human Rights, European Prison Rules, and the CPT's monitoring work.

5.2 European Court of Human Rights (ECtHR)

The European Court of Human Rights (ECtHR) was established under the European Convention on Human Rights which functions on a permanent basis.[66] As an authoritative body, the ECtHR receives applications from individuals, groups, and non-governmental organizations regarding human rights violations.[67] Although the ECHR does not explicitly safeguard the right to health or specific health rights for prisoners, the ECtHR has safeguarded the right to health of prisoners through its case law. The ECtHR has done so by invoking Article 2 which protect right to life and Article 3 of the convention which freedom from torture. This serves to demonstrate that the Human Rights Courts in Strasbourg have broadened the scope of the right to health for prisoners, notwithstanding the limitations of the present legal framework.[68]

The European Court of Human Rights has played a significant role in protecting the right to health of prisoners, particularly in the face of challenges such as lack of access to quality medical services, negligence of medical care, poor hygienic conditions, and overcrowding. The Court has demonstrated a favorable and proactive stance towards the rights of ill prisoners, taking into account institutional delays, including those on the part of the Institute of Forensic Medicine. Notably, the Court has held that prisoners with terminal illnesses ought not to be left to suffer due to delays, errors in judgment, or other institutional shortcomings.[69]

The jurisprudence of ECtHR has contributed significantly to strengthening health protections by mandating that authorities provide necessary and

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66 ibid (n 39) art 19.

67 ibid, art 34.

68 Henriette Roscam Abbing, 'Prisoners' Right to Healthcare: A European Perspective' [2013] European Journal of Health Law.

69 *Gülay Çetin v Turkey* App no 44084/10 (ECtHR, 5 March 2013).

timely care, reasonable accommodations for individuals with disabilities, and ensuring that detention conditions do not exacerbate pre-existing health conditions.[70] In *Dybeku v. Albania*,[71] for example, the applicant, who suffered from chronic paranoid schizophrenia, did not receive adequate treatment for his condition and was instead treated as a regular prisoner. The Albanian authorities contended that it was impossible to provide him with requisite medical care. Consequently, the applicant was subjected to inhuman and degrading treatment, which violated the provisions of Article 3. The court considered the cumulative negative effects of this ill-treatment on the applicant's health.

In *Renolde v. France*,[72] the European Court of Human Rights deemed the punishment meted out to the prisoner, Renolde, unacceptable. Renolde was confined to a punishment cell for forty-five days, which posed a threat to his physical and mental well-being. The court found this penalty incompatible with the standard of treatment required for mentally ill persons. Therefore, it was considered inhumane and degrading, violating both Article 2 and 3 of the convention.

The European Court has recognized that Article 3 of the Convention, which safeguards freedom from torture, is among the most fundamental values of a democratic society. This right is absolute and prohibits any form of torture, inhuman or degrading treatment, or punishment, irrespective of the circumstances and the victim's behavior.[73] In many judgments ECtHR applied Article 3 to protect prisoners right to health under the Article 3 of the ECHR such as deficient conditions of imprisonment, such as overcrowding, poor hygiene and sanitation, and lack of access to adequate health, among others.[74] The ECtHR has applied Article 3 in numerous cases to protect prisoners' right to health under the ECHR. This encompasses inadequate conditions of imprisonment, such as

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70 *Ashot Harutyunyan v. Armenia*, App no 34334/04 (ECtHR, 15 September 2010).

71 *Dybeku v. Albania* App no 41153/06 (ECtHR, 18 December 2007).

72 *Renolde v. France* App no 41153/06 (ECtHR, 16 January 2009).

73 *Labita v. Italy* [GC], no 26772/95, § 119, ECHR 2000-IV, *Kalashnikov V. Russia*, *Ireland v UK* (1979–80) 2 EHRR 25, para 163, *Derman v Turkey* (2015) 61 EHRR 27, para 27.

74 Tom Daems and Luc Robert (eds), *Europe in Prisons* (Springer International Publishing 2017) <http://link.springer.com/10.1007/978-3-319-62250-7> accessed 22 January 2024.

overcrowding, poor hygiene and sanitation, and insufficient access to adequate healthcare, among other factors.[75]

In accordance with this provision, it is the State's responsibility to ensure that individuals who are detained are held in conditions that respect their human dignity. The method and manner of detention must not cause any unnecessary hardship or distress beyond the unavoidable level of suffering inherent in detention. Additionally, the State must take practical steps to safeguard the health and well-being of the detained individual.[76]

ECtHR considered lack of appropriate medical care and, more generally, the detention in inappropriate conditions of a person who is ill may in principle amount to treatment contrary to Article 3.[77] the *Aleksanyan v Russia* case, the European Court of Human Rights (ECHR) found that Article 3 of the Convention was violated due to the lack of adequate medical assistance provided to the petitioner in the remand prison. The petitioner was HIV positive and suffered from several AIDS-related illnesses. During pre-trial detention, his health significantly deteriorated due to poor living conditions and inadequate medical treatment.[78]

The case of *Mouisel v France* involved an individual who received a 15-year prison sentence for participation in a gang that carried out armed robbery, kidnapping, and fraud. In 1999, the prison doctor diagnosed the applicant with chronic leukemia. The applicant sought a presidential pardon on two occasions on medical grounds, but his requests were denied. The European Court of Human Rights unanimously ruled that the applicant's continued detention, particularly after June 2000, violated Article 3 of the Convention. The court found that his imprisonment caused him to suffer beyond what is typically associated with a custodial sentence and treatment for cancer, thus violating his dignity.[79]

The case of *Kalashnikov v. Russia* was presented before the European Court, which ruled that the prison in question was excessively overcrowded. Prisoners were compelled to sleep in shifts of eight hours each due to the limited space available. The sleeping conditions were

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75 ibid.

76 *Kudla v. Poland* [GC], no 30210/96, § 92, ECHR 2000-XI.

77 *İlhan v. Turkey* [GC], no. 22277/93, § 87, ECHR 2000-VII, *Naumenko v. Ukraine*, no. 42023/98, § 112

78 *Aleksanyan v Russia* (2008) 47 EHRR 27 [113].

79 *Mouisel v France* App no 67263/01 (ECtHR, 14 November 2002), para 40.

further aggravated by the constant lighting in the cell, as well as the general noise and commotion from the large number of inmates. Additionally, the cell lacked adequate ventilation, and its infestation with pests resulted in various skin diseases and fungal infections. The applicant suffered from these conditions, which had an adverse impact on their health and well-being and amounted to degrading treatment.[80]

Upon scrutinizing the judgments under consideration, it is discernible that the European Court of Human Rights has endeavored to safeguard the development of the health rights of prisoners. This has been accomplished through a meticulous process of interpretation, which has served as an effective tool for the court to uphold the legal rights of prisoners. By taking advantage of its interpretive powers, the court has been able to ensure that prisoners are provided with the necessary legal protection to support their health and well-being.

5.3 European Committee for the Prevention of Torture

The European Committee for the Prevention of Torture was established as per the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT).[81] Its primary objective is to uphold the prohibition of torture and other forms of inhuman or degrading treatment or punishment under Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.[82] As a non-judicial preventive measure, the Committee conducts visits to detention centers and prisons to ensure that individuals who are deprived of their liberty are treated in a humane manner and protected from torture, cruel, inhuman, or degrading treatment or punishment.[83] The Committee's primary objective is to ensure that the fundamental rights and freedoms of individuals are respected in the context of detention.

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80 *Kalashnikov v. Russia*, App. No. 47095/99, 15 October 2002.

81 ECPT (n 44).

82 ECHR (n 39), art 3: 'no one shall be subjected to torture or to inhuman or degrading treatment or punishment.'

83 ECPT (n 81).

The CPT is permitted to visit any places of detention in member states where persons are deprived of their liberty by a public authority.[84] During these visits, the CPT is empowered to issue recommendations aimed at improving the conditions of the detentions and treatment. The CPT has published influential standards on prison healthcare based on its expert knowledge of prison conditions across Europe.[85] According to these standards, healthcare services for persons who are deprived of their liberty are directly relevant to the CPT's mandate. Further, the CPT has declared that the provision of inadequate healthcare could rapidly lead to situations falling within the scope of the term "inhuman and degrading treatment".[86] The CPT Standards support the idea that the healthcare services provided in prisons should be equivalent to those available in the general community. This means that prisoners receive medical treatment, nursing care, appropriate diets, physiotherapy, rehabilitation, or any other essential specialized services in conditions that are similar to those provided to patients outside of prison.[87]

5.4 CPT Standards on Right to Health of Prisoners [88]

During its official visits to member states, the CPT evaluates a comprehensive assessment of various components that constitute prisoner healthcare. The CPT established standards for prisoners' healthcare services across six areas: access to a doctor, equivalence of care, patient consent and confidentiality, preventive healthcare, humanitarian assistance, professional independence, and professional competence.[89] The following table summarizes each of the standards.

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84 ibid, art 2.

85 Evans Malcolm, 'European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)' in Evans Malcolm, *Max Planck Encylopedia of International Procedural Law* (Oxford University Press 2020).

86 ibid, para 30.

87 Evans (n 85).

88 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Health Care Services in Prisons: Extract from the 3rd General Report of the CPT*, CPT/Inf (93)12-part (1993). https://www.coe.int/en/web/ cpt/standards#prisons accessed 01 January 2024.

89 ibid, para 32.

Area	Summery of standards
(a.) Access to a doctor	Every prisoner should undergo medical screening upon admission, conducted by a doctor or qualified nurse under supervision,[90] A leaflet or booklet on healthcare services must be distributed to prisoners upon arrival, reminding them of basic hygiene measures to be observed within the prison. Access to a doctor should be ensured at all times, regardless of the detention regime. Confidential mechanisms for requesting medical attention must be available,[91] and emergency care should always have a doctor on call.[92] Prisoners should have access to a fully-equipped hospital, with appropriate security measures that avoid physical restraints,[93] and should be transported promptly and appropriately for their health needs.[94]
(b.) Equivalence of care	Prisoners are entitled to the same standard of medical care as individuals in the community. Health services should include general medicine, specialized care,[95] and psychiatric services.[96] Facilities and staff should meet community-level standards, ensuring proper supervision, record-keeping, and transfer of medical files when necessary.[97]
(c.) Patient's consent and confidentiality	Prisoners must provide informed consent for treatment and have access to information about their health.[98] Medical confidentiality must be observed, with examinations conducted privately and medical records managed securely. Informed consent is also necessary for participation in medical research or teaching programs.[99]

90 ibid, para 33.

91 ibid, para 34.

92 ibid, para 35.

93 ibid, para 36.

94 ibid, para 37.

95 ibid, paras 38-40.

96 ibid, paras 41-43.

97 ibid, para 44.

98 ibid, paras 45-48.

99 ibid, paras 49-51.

(d.) Preventive health care	Preventive care encompasses hygiene supervision,[100] disease prevention (e.g., managing transmittable diseases like HIV and tuberculosis),[101] suicide prevention,[102] and violence prevention.[103] Prison health services should provide education, promote cleanliness, and ensure the availability of counseling and appropriate procedures for at-risk individuals.[104]
(e.) Humanitarian assistance	Special attention should be given to vulnerable groups, such as mothers and children,[105] adolescents,[106] prisoners with personality disorders,[107]and those unsuited for continued detention due to severe health conditions.[108] Measures should prioritize humane treatment and access to necessary healthcare and support systems.
(f.) professional independence	Healthcare staff must operate independently of prison management to ensure ethical standards. Decisions regarding patient care should be based solely on medical criteria, and health professionals must not participate in punitive functions or certify fitness for punishment.[109]
(g.) Professional competence	Healthcare providers in prisons must possess specialized knowledge and training to address prison-specific health challenges. Ongoing professional development and the recruitment of adequately qualified staff, including doctors and nurses, are critical to maintaining high standards of care.[110]

[100] ibid, para 53.

[101] ibid, paras 54-56.

[102] ibid, paras 57-59.

[103] ibid, paras 60- 62.

[104] ibid, para 63.

[105] ibid, para 65, 66.

[106] ibid, para 67.

[107] ibid, para 68, 69.

[108] ibid, para 70.

[109] ibid, paras 71-74.

[110] ibid, paras 75-77.

5.4.1 Pilot Judgments

This research brings attention to another significant aspect of the ECHR, namely the establishment of a crucial judgment procedure known as 'pilot judgments.' The judgments were issued to address the common structural deficiencies within the prison systems of European Union states, including Russia, Italy, Bulgaria, Hungary, Belgium, and Romania.[111] When the ECHR received multiple applications that shared a common root cause, such as prison overcrowding and poor hygienic conditions, the Court identified the violations of Article 3 of the convention. It directed the implementation of effective domestic remedies for both preventive and compensatory purposes in each country.[112] As a result of the pilot procedure, the states have enacted several legislative measures targeted at resolving the systemic problem.[113]

5.4.2 Link between ECtHR and CPT

The interaction between the European Court of Justice and the Committee on Prevention of Torture plays a vital role in protecting human rights in the region.[114] When delivering the decision of the European Court of Justice, it considered the health standards for prisoners that were published by the Committee on Torture. Additionally, the state reports that are relevant to the ECtHR in making decisions are those based on the visits and publications by the Committee.[115]

5.4.3 Lessons Learned from the EU Mechanism in Protecting Prisoners' Rights

The European regional system's strong framework for safeguarding prisoners' rights provides critical insights for jurisdictions globally, particularly in fostering a comprehensive and integrated approach. A key lesson lies in the dynamic interpretation of human rights by the European

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111 *Ananyev v Russia* (2012) 55 EHRR 2.

112 *Torregiani v Italy (*2013) 57 EHRR 2.

113 *Neshkov v Bulgaria* (2015). ECHR 4.

114 Abbing' (n 68).

115 *Ashot Harutyunyan v. Armenia*, App. No. 34334/04, 15 September 2010, *Dybeku v. Albania*, App. No. 41153/06, 2 June 2008

Court of Human Rights. The Court's application of Articles 2 and 3 of the European Convention on Human Rights demonstrates how legal provisions can be expansively interpreted to address issues beyond their explicit text, ensuring that prisoners' right to health and humane treatment are upheld even in the absence of a specific health-related provision.

The collaborative institutional framework within the European system is another significant aspect. The coordination between the ECtHR, the Committee for the Prevention of Torture, and the European Prison Rules underscores the importance of aligning monitoring, adjudicative, and standard-setting bodies. This collaboration strengthens the mechanisms for protecting prisoners' rights and ensures cohesive efforts in addressing systemic challenges.

Preventive monitoring and the development of actionable standards are also noteworthy. The CPT's proactive approach, which includes regular visits and the publication of detailed recommendations, highlights the importance of transparency and accountability. By focusing on preventive measures, the European system effectively addresses structural issues such as overcrowding and inadequate healthcare.

The pilot judgment procedure introduced by the ECtHR provides an innovative mechanism for addressing systemic problems within member states. By requiring domestic remedies for recurring violations, this approach ensures sustainable reforms while setting a precedent for addressing collective grievances. This procedural innovation illustrates how targeted legal mechanisms can drive systemic change.

Another critical lesson is the European system's emphasis on the principles of equivalence and normalization. These principles ensure that prison conditions closely reflect community standards, reinforcing the dignity of prisoners and supporting their reintegration into society. Such an approach aligns with broader international human rights norms and enhances the rehabilitation process.

The European system's focus on vulnerable groups, including mentally ill prisoners, mothers with children, and terminally ill individuals, further highlights the need for nuanced policies that address the diverse needs within prison populations. By prioritizing healthcare for these groups, the system demonstrates how targeted interventions can bridge gaps in the protection of prisoners' rights.

Finally, one of the most distinctive features of the European framework is its commitment to transparency and accessibility. Policies, rules, judicial

judgments, statistics, and monitoring reports are readily available online, facilitating research and public oversight. This openness not only promotes accountability but also serves as a model for other jurisdictions, illustrating how access to information can drive reforms and protect the rights of prisoners.

Incorporating these lessons into regional and national prison systems worldwide can significantly strengthen efforts to uphold prisoners' rights. The European system exemplifies how legal and institutional frameworks, combined with transparency and proactive monitoring, can create a strong foundation for protecting the rights of one of society's most vulnerable groups.

6. CONCLUSION

This research article analyzed the institutional framework and mechanisms within the European regional human rights system that contribute to upholding prisoners' right to health. The Council of Europe, European Court of Human Rights, European Committee for the Prevention of Torture, and WHO Europe represent a network of institutions that play pivotal roles through setting standards, monitoring, and jurisprudence. The research found that the European Convention on Human Rights, despite not explicitly granting a right to health, has been dynamically interpreted by the European Court of Human Rights to encompass prisoners' health rights. The Court has established obligations on member states, applying Articles 2 and 3 of the Convention to issues such as inadequate medical treatment, poor detention conditions, lack of rehabilitation, and failure to release terminally ill prisoners. Its pilot judgment procedure has spurred domestic reforms addressing systemic human rights violations in prisons. The European Committee for the Prevention of Torture conducts regular monitoring visits to places of detention and has developed influential standards guiding prison health policies on areas such as access, confidentiality, prevention, and humanitarian needs. The European Prison Rules outline minimum requirements for prison administration and healthcare. Though non-binding, these standards have been widely referenced by human rights bodies. In conclusion, the integrated efforts of these various bodies have developed a strong regional system upholding prisoners' right to health, providing an example of good practices in this area. The dynamic and progressive approach within the European framework continues to have far-reaching influence globally.