REVIEW ARTICLE

PENITENTIARY MEDICINE IN THE CONTEXT OF NATIONAL HEALTH CARE REFORM IN UKRAINE

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Iryna Iakovets[1], Anatolii Stepanyuk[1], Valentyna Zverkhovska[2]

[1]ACADEMICIAN STASHIS SCIENTIFIC RESEARCH INSTITUTE FOR THE STUDY OF CRIME PROBLEMS OF THE NATIONAL ACADEMY OF LAW SCIENCES OF UKRAINE, KHARKIV, UKRAINE

[2]NATIONAL PIROGOV MEMORIAL MEDICAL UNIVERSITY, VINNYTSIA, UKRAINE

ABSTRACT

The aim: Identify the main issues in the penitentiary medicine functioning in the context of National Health Care Reform in Ukraine and determine the state of realization of the right to health care and medical assistance of convicts and detainees.

Materials and methods: This article used a set of general and special methods of scientific cognition. The empirical basis of the research consists of: international acts and standards in the penitentiary field and health care, statistics of the Ministry of Justice, reports of international organizations, the case law of the European Court of Human Rights (ECHR), scientific publications in databases of systematic reviews MEDLINE, PubMed, reports on the results of monitoring visits to prisons and pre-trial detention centers.

Conclusions: Penitentiary medicine continues to be a separate departmental system, which does not consider the positive changes in the National Medical Services System. Such a superficial imitation of the method of guaranteeing prisoners' rights to medical care is a kind of cargo cultism of public institutions designed to ensure non-discriminatory conditions for implementing the right to health care for all population segments.

KEY WORDS: health care and medical care in prisons and pre-trial detention centers; protection of prisoners' rights; mechanisms for ensuring the right to health care

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INTRODUCTION

The proper organization of conditions for implementing the right to health care and medical assistance by convicts and detainees during their stay in penitentiary facilities and after release has become significantly relevant in recent years. And it's not just about the humanistic approach or the pursuit of human rights. The so-called "penitentiary medicine" issues are not limited to the penitentiary system's framework – they also affect society.

The Health Care System in Ukraine is based on such principles as the recognition of health care as a priority of society and the state, observance of human and civil rights and freedoms in the field of health care, and provision of related state guarantees; humanistic orientation; ensuring the priority of universal values over class, national, group or individual interests. The leading international documents that deal with the provision of necessary medical care to convicts and detainees include the following: the European Convention on Human Rights,1950; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984; The United Nations Standard Minimum Rules for the Treatment of Prisoners, 1955; Basic Principles for the Treatment of Prisoners, 1990; European Penitentiary Rules / Recommendation №R (2006) 2 of the Committee of Ministers of the Member States of January 11, 2006; Guidelines for physicians concerning torture and other cruel, inhuman or degrading treatment or punishment about detention and imprisonment (Tokyo Declaration), 1975. In its judgments, the European Court of Human Rights notes that Article 3 of the European Convention on Human Rights obliges the state to take care of the physical well-being of persons deprived of their liberty. At the same time, the Court agrees that the quality of health care in penitentiary facilities may not always be the same as that provided in the best general care facilities. However, the state must ensure that the health and well-being of detainees are adequately protected by providing them with the necessary medical care (for example, decisions in cases

Kudla v. Poland, application № 30210/96, § 94, ECHR 2000-XI; Hurtado v. Switzerland of January 28, 1994, Series A, № 280-A; Melnik v. Ukraine, application № 72286/March 1 March 28, 2006, paragraphs 104–106; Farbtuhs v. Latvia, application № 4672/02 of December 2, 2004, p. 56).

Health support and medical care organization are essential issues in correctional facilities. Many convicts and detainees already have health problems when incarcerated due to their lifestyle or environment. It is well known that prisons concentrate on people with issues such as alcohol abuse, drug addiction, or risky behavior. Prisoners have a high proportion of people with mental and psychological disorders, which is why the level of suicide and self-harm in prisons is relatively high, and violence can be a daily occurrence. That is why places of imprisonment become dangerous for the health of prisoners and staff.

THE AIM

Identify problematic issues in the penitentiary medicine functioning in the context of National Health Care Reform in Ukraine and clarify the state of implementing the right to health care and medical assistance to convicts and detainees.

MATERIALS AND METHODS

The empirical data of the research include: international acts and standards in the field of execution of criminal sanctions and health care; statistics of the Ministry of Justice of Ukraine; reports of international organizations; the case law of the European Court of Human Rights; reports on monitoring visits to enforcement agencies punishments and pre-trial detention centers. To generalize the approaches in the organization of penitentiary medicine, we analyzed scientific publications in the databases of systematic reviews MEDLINE and PubMed. The working experience in the State Institution "Probation Center" came in handy when analyzing quantitative and qualitative indicators of the realization of the right of convicts to health care.

We used general and special scientific methods of cognition, particularly Comparative Law, which allowed us to study medical care organizations in penitentiary institutions in several countries and highlight their advantages and disadvantages.

REVIEW AND DISCUSSION

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), after inspections of penitentiaries in Ukraine regarding medical care and health care for convicts, noted that the main shortcomings of medical assistance and health care are: inadequate conditions for keeping people, which leads to the creation of favorable conditions for the spread of diseases, in particular, tuberculosis; lack of necessary medicines, which is caused by insufficient funding for this area of activity; lack of medical staff, their inadequacy for the number of people held in penitentiary facilities as a result – periodic physical examination of prisoners, insufficient for prevention, detection (diagnosis) and treatment of diseases [1].

In turn, representatives of human rights organizations point to some other problems. According to the monitoring results, many penitentiary facilities lack proper attention and appropriate medical care for prisoners suffering from serious illnesses treated within such facilities. However, the prisoners often do not have access to adequate medical care, and then, by law, they must be transferred to a civilian hospital for good treatment. On the other hand, the penitentiary administration does not want to do so. It can only be compelled to do so by a decision of the European Court of Human Rights on interim measures under Rule 39 of the ECHR Rules. This decision obliges the state to transfer a sick prisoner to a specialized civilian hospital [2]. Researchers note that factors that increase the risk of disease, as well as specific conditions of detention and behavior of convicts, lead to the fact that therapeutic approaches to this category of patients in medical practice should be different [3].

One of the reasons for the lack of timely and proper treatment of convicts is the subordination of medical institutions to the Penitentiary System of the prison administration and not to the Ministry of Health, which is a problem that needs to be addressed [2]. That is why, according to human rights activists, the entire system of medicine should be restructured from penitentiary to general practice [4].

Currently, the Ministry of Justice of Ukraine is trying to continue the functioning of a completely autonomous system of penitentiary medicine. As a result, the health care reform implemented in Ukraine has completely bypassed approaches to providing medical services in places of deprivation of liberty. According to official data of the Health Care Center of the State Criminal Executive Service of Ukraine, obtained during the research, currently under the subordination of the Ministry of Justice: 80 medical units, 13 hospitals, and 4 paramedic stations. In them, prisoners and detainees can receive medical care and services even though the right to free choice of a doctor is enshrined in the

law. So, is the existence of an autonomous healthcare system in places of detention justified?

The study of the international experience of the countries of the former USSR, Europe, and the USA testifies to the existence of different approaches in the organization of medical care in penitentiary services. Thus, the implementation of the function of medical care can be divided into three models [5]:

1. Departmental. The staff and management of the penitentiary system provide medical care in penitentiary institutions. The penitentiary health care staff, material, and financial assets are at the disposal of the penitentiary system. As a rule, normative legal support of the medical care order and assessment of its quality is also assigned to the penitentiary system. Such a system exists in Ukraine, Russia, other countries of the former USSR, Asia, and some European countries (Ireland, Albania).

The main advantage of the departmental system is the relatively low financial costs. There are also advantages in the observance of regime measures in institutions and higher social protection of medical staff of penitentiary institutions. For example, to attract and retain medical staff in many countries, the penitentiary system provides many motivational measures (provision of official housing, health insurance for health workers, and others).

Despite all the positive aspects, the departmental system has serious shortcomings. Thus, the presence of a military medical staff closed system and lack of external control over medical care by supervisors, and independent NGOs causes the so-called "double loyalty" – the need to comply with the interests of management to the detriment of the patient in prison, and possible use of the disease and drug withdrawal as a method of exposure. There is also a low continuity of medical care and functional medical examination of patients with socially significant diseases after release.

2. Out-of-department. Medical care and assistance are provided by third-party organizations (commercial or civil health care systems) that are not under the control of the penitentiary system. Funding can be organized under different schemes. The closer the amount of medical care to national standards, the more expensive it is to the state and exceeds similar costs in civilian health care.

Such a model successfully exists in Norway, England, France, and Australia. In transition, Spain and Scotland. Under such a system, conditions are created for improving the quality of medical care for prisoners; there are opportunities for further development and improvement of the system of protecting prisoners' rights to provide quality medical care. Prisoners have the same status as all citizens of the country, and medical staff interact with the administration of correctional facilities but are independent of it. Under such a system, better health care is provided in prisons, and continuity in medical care to released prisoners is ensured [6].

Its shortcomings include the complexity of management, the loss of specific knowledge that prison medical staff had, and the high cost of providing medical care to other citizens.

3. Mixed version – used in the United States, characterized by a combination of organizational components of the above systems. Federal correctional facilities are funded from the state budget; health workers are subordinated to the national executive body (for example, the Ministry of Justice), are civil servants, and have appropriate titles, guaranteeing their high social security. Medical care for convicts in correctional facilities in some states (counties) is built in the same way as at the federal level, but funding is provided from the state budget. Medical care is provided by commercial organizations that have committed to medical care within the allocated funds [7].

To some extent, the advantages of this system include the above benefits of the departmental and non-departmental systems, and the disadvantages are similar.

A number of countries have succeeded in the complete integration of prison health care with national public health by transferring its responsibility and administration to the national health system and ministry of health; these include Norway; France; the United Kingdom; the Swiss cantons of Geneva, Vaud, Valais, and Neuchatel; New South Wales in Australia; Italy; Kosovo; Catalonia in Spain; and Finland [8]. Such a transition occurred at different times. For example, in the case of Norway, the Penitentiary Health Service has been run by the national health service since 1988. In England and Wales, this process began in 2000 and ended in 2006 [9]. Several other countries are now exploring the possibility or intention of making a similar transition, including Spain, Scotland, and others.

Ukraine had a departmental model of the penitentiary organization, according to which medical staff in each prison or pre-trial detention center subordinated to the administration of the institution (head of the institution and his deputy) and higher governing bodies – the Interregional Department for the Execution of Criminal Penalties and the relevant structural units of the Ministry of Justice. This model can be called departmental in its "pure form," and the results of its operation did not provide adequate medical care and led to numerous human rights violations and loss of

budget funds due to these violations in the European Court of Human Rights.

At the beginning of the reform (as of January 1, 2020), the total number of convicts and detainees in the institutions of the State Penitentiary Service of Ukraine amounted to 52,863 people. At the same time, the full-time staff of the State Penitentiary Service of Ukraine amounted to 2,781 positions, of which 2,530 (or 91%) were filled. And the penitentiary system included: medical units in 91 prisons, paramedic points – in 4 institutions, and 18 hospitals, of which 9 are multidisciplinary (including 1 psychiatric one), and 7 are tuberculosis hospitals. To change the situation, in pursuance of the order of the Cabinet of Ministers of Ukraine dated September 13, 2017, № 684-r, there was established the State Institution "Health Center of the State Penitentiary Service of Ukraine" (further – Health Center) which belongs to the Ministry of Justice of Ukraine. The structure of the Health Center includes the management, divisions of the staff, and branches in the regions (currently 20 of them). The whole team of the Health Center is still 2,781 units (including the management and administration – 81). Implementing practical activities to provide medical care to convicts and detainees in prison and pre-trial detention centers is entrusted directly to the relevant branches of the Health Centers in the regions.

However, such an update of the organizational structure did not ensure the achievement of the set tasks. On the contrary, it distanced convicts and detainees from receiving the necessary medical services and care. The reform of civilian medicine, which is based on the principle of guaranteeing a package of medical services and involving local budgets in their provision in the context of decentralization, does not consider in this system citizens who are in prison and pre-trial detention centers. Due to this approach, vulnerable categories of convicts will also not be able to use medical services immediately after their release from prison (until other social aspects are resolved).

In addition, creating a separate system of healthcare services requires significant budgetary expenditures, including for the maintenance of staff and healthcare facilities. Thus, according to the official data obtained during the study, despite the decrease in the number of prisoners (from 52,863 in 2019 to 42,848 in 2022), the costs of their medical care and maintenance of medical staff have not changed.

Researchers note that the practical implementation of the objectives of health care in prisons and pre-trial detention centers requires the support and permission of the institution's governor – for example, transferring inmates for medical interventions to outside facilities or the procurement and installation of health equipment in the institution. In this regard, the Mandela Rules said, "Clinical decisions may only be taken by the responsible health-care professionals and may not be overruled or ignored by non-medical prison staff" [10].

In Ukraine, the separation of penitentiary medicine from the administration of prisons and pre-trial detention centers has led to the removal of the heads of these facilities from health problems and, in some cases, to artificial barriers for convicts and prisoners to access medical services. Earlier, other authors drew attention to the fact that the penitentiary legislation of Ukraine does not provide mechanisms for exercising a specific right to health care, as well as the responsibility of officials and officials of the penitentiary service for inadequate medical care and harm to their health [11].

The mortality rate among prisoners, especially in adulthood (up to 50-55 years), remains extremely high; there are problems with quality medical examinations and providing complete secondary and tertiary medical, palliative care, providing medical care to those sentenced to life imprisonment, prisoners with mental disorders, various forms of addiction, dangerous chronic, infectious diseases, etc. The incidence (prevalence) in penitentiary institutions exceeds the national tuberculosis rate by more than 10 times, HIV infection by 25 times, viral hepatitis C by 15 times, alcohol and drug addiction by 20 times, etc.

The preventive direction of the activity of penitentiary medicine raises many questions. Regulatory procedures and stages of the patient's clinical route both in the penitentiary system and outside it (referral to state and municipal health care facilities) are over-regulated and lead to long-term patient transfer and, as a consequence, the growth of dangerous complications of diseases.

Another problem is that convicts and prisoners do not get social protection. Thus, during the entire period of the system's existence, no sick leave was issued, even for those who work and earn the appropriate contributions to the compulsory insurance. It is also the result of the separation of penitentiary medicine, which is not included in the electronic system for issuing sick leaves.

In such circumstances, it is difficult to eliminate the reasons that become the basis for appeals to the European Court of Human Rights about the inadequate conditions of detention convicts and detainees, their medical and logistical support, which primarily entails additional state costs, compensations, and causes the formation of a negative image of Ukraine in the world community, as well as budget losses.

The isolation of the medical care system of the State Penitentiary Service of Ukraine leads to high maintenance costs. The budget for 2020 for the maintenance of the Health Center, branches, and subordinate medical institutions provided UAH 589.9 million, which is UAH 11,591.7 per capita [12-15]. In 2021, UAH 566.7 million was spent [16]. For comparison, the per capita expenditure in the general system of the National Health Service of Ukraine is approximately UAH 3,000. At the same time, these funds do not create quality medical care. For example, 74% of the annual budget is spent on wages and salaries, and only 9.4% on medicines and dressings.

The health center's entire medical staff is proportional to the largest hospitals in Ukraine. For example, the number of hospital beds in Health Center facilities is 9.3 per 1,000, much higher than the average for Ukraine – 7.3 per 1,000 population. At the same time, each healthcare facility in the penitentiary system lacks the workload to ensure the quality of treatment and its cost-effectiveness. This burden on doctors is an example of inefficient use of funds and, above all, of poor quality, which threatens the life and health of the patient. For instance, according to official data in 2019, 479 patients with a diagnosis of ischemic heart disease were treated in Health Center hospitals, of which 81 patients died [12]. In 2021, the number of such persons was 347 and 74, respectively. The mortality rate for patients with this diagnosis is 15% and is three times higher than in the general system, even in those who treat the most severe patients. Malignant mortality is 22%, twice the average for the public health system. The presence of subordinate hospitals only creates the illusion of access to medical care. Convicts and detainees often need a long transfer to a medical facility, but this does not guarantee that the facility will provide the necessary assistance. In this regard, researchers point out that hospitals do not have psychiatric wards and generally involve a limited number of psychiatric specialists. This situation is, therefore, incapable of providing prisoners with adequate psychiatric services [13].

In the UK, research into prisoners' use of hospital care noted that moving away from the Prison Medical Service being responsible for prison health care is believed to have improved the quality of prison health care [14, 9]. In 2016, Public Health England conducted a rapid review to understand how this move had affected it. It found that the consensus was that the move had resulted in significant improvements to the quality of care through, among other factors, improved partnership working, professional development of the health care workforce, and increase [15, 9].

The need to fully transfer penitentiary medicine in Ukraine to the National Health Care System is supported by the existing difficulties in cooperation between the penitentiary and public healthcare facilities. Thus, payments to health care facilities of the public system for provided medical services are made by electronic referrals when the facilities of the penitentiary system do not have the technical capacity to provide electronic referrals. As a result, the health care facilities of the general health care system have no incentive to work with the prison, as the cost of medical services provided to convicts and prisoners is not reimbursed.

Interestingly, 1,594 convicts and detainees have concluded declarations with family doctors. All declarations were signed before being imprisoned. That is, double funding is provided for these 1,594 people. However, convicts are not provided with access to their family doctors, and they are forced to apply only to the medical staff of the Center for Health of the penitentiary system.

CONCLUSIONS

The article gives grounds to state that over time, the problems of medicine in the penitentiary system in Ukraine, despite all the measures taken, do not decrease but only change. The implemented measures have only a point effect and do not significantly change the situation. Penitentiary medicine, as a separate departmental structure, is a valuable element that requires constant co-financing and will continue to do so until a complete duplication of the public sector health care system is established.

Penitentiary medicine today has lost its connection with the civilian health sector and exists as autonomously as possible. At the same time, it continues to use the services of civilian medicine outside the established procedure and free of charge for the providers of such services. Convicts and prisoners are not included in the general medicine of society. And this does not allow for the introduction of progressive ways and methods of treatment in the penitentiary system, requires much higher unjustified costs, and complicates further treatment after release. Convicts and prisoners cannot receive services and facilities for all other population categories.

Therefore, the only way to solve the situation in Ukraine is to maximize the integration of penitentiary medicine with the national health care system, making it practical and efficient. In addition, it will ensure that convicts and prisoners have unhindered access to quality medical care, improving the population's overall health.

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ORCID and contributionship:

Iryna Iakovets: 0000-0002-1022-3115[A-E]
Anatolii Stepanyuk: 0000-0002-0877-6319[B,D,E,F]
Valentyna Zverkhovska: 0000-0003-0738-6746 [A,B,E]

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The Authors declare no conflict of interest.

CORRESPONDING AUTHOR

Iryna Iakovets
Academician Stashis Scientific Research Institute
for the study of crime problems of
the National Academy of Law Sciences of Ukraine
49 Pushkinska st., 61002 Kharkiv, Ukraine
tel: +380958412822
e-mail: sektor2@ukr.net

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