

# *Probation, Parole and Penitentiary Law*

## *class 5*

*Prisoners' rights in International law*



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KATEDRA PRAWA KARNEGO WYKONAWCZEGO

# *Relevant Legal Documents*

International Covenant on Civil and Political Rights, 1966
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
The 1949 Geneva Conventions and the two Protocols Additional of 1977
Statute of the International Criminal Court, 1998
Universal Declaration of Human Rights, 1948
Standard Minimum Rules for the Treatment of Prisoners, 1955
Basic Principles for the Treatment of Prisoners, 1990
Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988
Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians,
The Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1982
Code of Conduct for Law Enforcement Officials, 1979 Declaration on the Protection of All Persons from Enforced Disappearance, 1992
Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, 1989
European Convention on Human Rights, 1950
European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1987

# ***Right against cruel or inhuman treatment or punishment under international law***

Universal Declaration of Human Rights & International Covenant on Civil and Political Rights

Universal Declaration of Human Rights in Article 5 provides that:

- \* No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment

More so, under Article 7 of the International Covenant on Civil and Political Rights provides that:

- \* No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment and, in particular “no one shall be subjected without his free consent to medical or scientific experimentation”

Article 10(1) of the International Covenant on Civil and Political Rights:

- \* All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
- \* The Universal Declaration of Human Right uses the phrase “No one” - a general phrase without making exclusion to some categories of people.
- \* International Covenant on Civil and Political Rights also uses a general phrase with no exclusion of some categories of people.

# ***Right against cruel or inhuman treatment or punishment under international law***

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment & European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Article 16 (1) provides that:

- \* Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent of a public official or other person acting in an official capacity
- \* This document states that each member State shall undertake to prevent any acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1

Moreover, under Article 1 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment:

- \* The Committee shall, by means of visits, examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment.
- \* The European Convention provides for the setting up of an international committee empowered to visit all places where persons are deprived of their liberty by a public authority. The committee, composed of independent experts, may make recommendations and suggest improvements in order to strengthen, if necessary, the protection of persons visited from torture and from inhuman or degrading treatment or punishment.

# *Right against cruel or inhuman treatment or punishment under international law*

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*All persons deprived of their liberty have the right to be treated with humanity and respect for their dignity. This is a fundamental and universal rule which must be guaranteed at all times and independently of States' available material resources.*

*Every detained or imprisoned person has the right not be subjected to discrimination.*

*Except in exceptional circumstances, suspects shall be separated from convicted prisoners; unconvicted detainees have the right to be presumed innocent until proved guilty and therefore also have the right to more favourable treatment than convicted prisoners.*

# *Contacts with the Outside World*

## Standard Minimum Rules

- \* Rule 37 of the Standard Minimum Rules provides that “prisoners shall be allowed under necessary supervision to communicate with their family and friends at regular intervals, by correspondence and by receiving visits.”
- \* According to the rule 38 (1) and (2) of the Standard Minimum Rules Prisoners who are foreign nationals “shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong”, or “with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons”
- \* Rule 92 of the Standard Minimum Rules states that An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution
- \* Contacts between a lawyer and his clients are privileged and confidential and this basic rule also continues to apply when the clients are deprived of their liberty. Rule 93 of the Standard Minimum Rules

# *Contacts with the Outside World*

## Body of Principles

The same issue we can also find in Principle 18 of the Body of Principles:

1. A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.
  2. A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel.
  3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.
- \* [Principle 15 of the Body of Principles](#) provides that “communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days”.
  - \* [Further, Principle 16\(1\) of the Body of Principles stipulates that](#) “Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody”
  - \* [According to Principle 16\(4\) such notification](#) “shall be made or permitted to be made without delay”, although “the competent authority may ... delay a notification for a reasonable period where exceptional needs of the investigation are required”

# *Contacts with the Outside World*

## European Convention on Human Rights

- \* Article 8(1) of the European Convention provides that “everyone has the right to respect for his private and family life, his home and his correspondence”, paragraph 2 allows for the following restrictions on the exercise of this right: “There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

# ***Right to work and wages***

## Standard Minimum Rules

### Rule 89 of the Standard Minimum Rules

- \* an untried prisoner shall always be offered opportunity to work, but shall not be required to work. If he chooses to work, he shall be paid for it.

### For further details as to the work of convicted persons, we have to take a closer look at rules 71-76 of the Standard Minimum Rules.

- \* But in general prison labour must not be of an afflictive nature (Rule 71 (1)) and prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer (Rule 71 (2)) Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day (Rule 71(3)).
- \* In addition, the international laws exclude any performance of hard labour emanating from a sentence or punishment imposed by a competent court or any work or service obtained from any person as a consequence of a sentence by a court of law

# ***Right to work and wages***

## Universal Declaration of Human Rights

Article 23 of the Universal Declaration of Human Rights states that:

- Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- Everyone, without any discrimination, has the right to equal pay for equal work.
- Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

Article 24 provides further that:

- Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

# *Accommodation*

- While the general human rights conventions contain no details of the requirements with regard to the accommodation of detainees and prisoners, Rules 9-14 of the Standard Minimum Rules for the Treatment of Prisoners regulate, in particular, sleeping, working and sanitary conditions.

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*In general, the accommodation of detainees and prisoners must be such as to respect their dignity, security and good health, with adequate sleeping, living, working and sanitary conditions.*

# *Accommodation*

## Standard Minimum Rules

- \* Thus, Rule 9(1) provides that “where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If, for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room”
- \* Rule 9(2) All prison accommodation of persons deprived of their liberty, including in particular the sleeping accommodation, “shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation” (Rule 10).
- \* Rule 11(a) “the windows shall be large enough to enable the prisoners to read or work by natural light, and shall allow the entrance of fresh air whether or not there is artificial ventilation”
- \* Rule 11(b) “Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight”
- \* Lastly, “the sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner” (Rule 12)

# ***Personal hygiene, food, health and medical services***

The main principles regarding the personal hygiene, food, health and medical services of persons deprived of their liberty are also contained in the Standard Minimum Rules for the Treatment of Prisoners

- \* **Personal hygiene:** “prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness” (Rule 15).
- \* **Clothing: Rule 17(1):** “every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating” **Rule 17(2)** “All clothing shall be clean and kept in proper condition”. **Rule 17(3)** “Whenever a prisoner is removed outside the institution for an authorized purpose, he shall be allowed to wear his own clothing or other modest clothes”.
- \* **Bedding: Rule 19** “Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness”.

# ***Personal hygiene, food, health and medical services***

The main principles regarding the personal hygiene, food, health and medical services of persons deprived of their liberty are contained in the United Nations Standard Minimum Rules for the Treatment of Prisoners

- \* **Food:** Rule 20(1) “Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served”; Rule 20(2) “drinking water shall be available to every prisoner whenever he needs it”.
- \* **Health and medical services:** Rule 22(1): there shall be “at least one qualified medical officer who should have some knowledge of psychiatry” at every place of detention. And the medical services “should be organized in close relationship to the general health administration of the community or nation” (Rule 22(1)); “sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals”, and where hospital facilities exist in the institution concerned, they shall have the equipment and supplies “proper for the medical care and treatment of sick prisoners and ... a staff of suitable trained officers” (Rule 22(2)); every prisoner shall also have at his or her disposal “the services of a qualified dental officer” (Rule 22(3)).

# ***Personal hygiene, food, health and medical services***

The main principles regarding the personal hygiene, food, health and medical services of persons deprived of their liberty are contained in the United Nations Standard Minimum Rules for the Treatment of Prisoners

- \* **Women:** In institutions for women there shall “be special accommodation for all necessary pre-natal and post-natal care and treatment (Rule 23(1)).
- \* **Next,** “the medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures” (Rule 24);
- \* The medical officer shall also “have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed” (Rule 25(1));
- \* The medical officer shall further “regularly inspect and advise the director” upon such issues as the quality of the food, the hygiene and cleanliness of the institution and prisoners, the sanitation, clothing and bedding etc. (Rule 26)

# *Personal hygiene, food, health and medical services*

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*Every person deprived of his or her liberty has the right and the duty to keep clean and the right to be warm and in good health. To this end, he or she shall be provided with the necessary hygienic equipment, clothing, bedding, adequate food and medical and dental services.*

*Every person deprived of his or her liberty has the right to a cell of adequate size and to enjoy daylight.*

*When dealing with detainees or prisoners staging protests or hunger-strikes, the authorities must take care not to adopt an inflexible, punitive approach but should instead explore avenues of dialogue and be guided by a sense of humanity.*

*A person in police custody shall be allowed to be examined by a physician of his or her own choice. Medical examinations shall be conducted in private unless the doctor requests otherwise, and the result of the medical examinations shall be recorded by the doctor and made available to the detainee and his or her lawyer.*

# *Religion*

- \* Rule 6(1) of the Standard Minimum Rules for the Treatment of Prisoners, Principle 2 of the Basic Principles for the Treatment of Prisoners and Principle 5(1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment prohibit discrimination on the basis of religion.
- \* Principle 3 of the Basic Principles adds, furthermore, that it is “desirable to respect the religious beliefs and cultural precepts of the group to which prisoners belong, whenever local conditions so require”.
- \* Rules 41 and 42 of the Standard Minimum Rules contain the following more detailed regulations in this respect.
- \* In the first place, “if the institution contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis” (Rule 41(1)).
- \* A qualified representative so appointed or approved “shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his religion at proper times” (Rule 41(2)).

# Religion

- \* Furthermore, “access to a qualified representative of any religion shall not be refused to any prisoner”, but “if any prisoner object to a visit of any religious representative, his attitude shall be fully respected” (Rule 41(3)).
- \* Lastly, “so far as practicable, every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination” (Rule 42)).

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*Every person deprived of his or her freedom has the right not to be discriminated against on the basis of religion. To the extent possible, the religious convictions and cultural precepts of the detainees and prisoners shall be respected, including the holding of regular services and the organization of pastoral visits.*

# *Separation of categories*

- \* [Rule 8 of the Standard Minimum Rules for the Treatment of Prisoners](#) provides that “the different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment.”
- \* This means, in particular, that “men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate” ([Rule 8\(a\)](#))
- \* [According to article 37\(c\) of the Convention on the Rights of the Child](#) “every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so”. The best interest of the individual child may thus justify a departure from the basic rule that it shall be separated from adults.

# *Separation of categories*

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*In general, children/minors who are deprived of their liberty shall be separated from adults, unless such separation is not in their best interest; they shall be brought to justice promptly.*

*To the extent possible men and women shall be held in separate institutions*

# ***Right to make complaints***

- \* The existence of efficient complaints procedures and the consistent and vigorous investigation and prosecution of grievances of persons deprived of their liberty have a strong dissuasive effect on the incidence of all forms of torture and cruel, inhuman or degrading treatment and punishment.
- \* Persons deprived of their liberty have a right to an effective remedy for alleged violations of their human rights, including, in particular, the right to freedom from torture and other forms of ill-treatment, and access to effective complaints procedures which should result in prompt, serious and objective investigations of the complaints by the authorities.
- \* Proven torture or other forms of ill-treatment must be adequately punished and appropriate compensation granted to the victim
- \* Every prisoner on admission shall be provided with written information on rules and on complaints and disciplinary procedures in a language which he or she understands. If necessary, these regulations should be explained orally.

# ***Right to make complaints***

- \* Article 7 of the International Covenant on Civil and Political Rights “the right to lodge complaints against maltreatment must be recognized in the domestic law”
- \* Article 2(3) of the International Covenant on Civil and Political Rights states that “complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective”.
- \* The Committee against Torture has emphasized the importance of introducing “an effective and reliable complaint system that will allow the victims of torture and other forms of cruel, inhuman or degrading treatment or punishment to file complaints”.
- \* Article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requires that: Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities.

# ***Right to make complaints***

- \* The right to challenge conditions of imprisonment or treatment while in detention is also contained in the [Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment](#):
- 1. *A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.*
- 2. *In those cases where neither the detained or imprisoned person nor his counsel has the possibility to exercise his rights under paragraph 1 of the present principle, a member of the family of the detained or imprisoned person or any other person who has knowledge of the case may exercise such rights.*
- 3. *Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant.*
- 4. *Every request or complaint shall be promptly dealt with and replied to without undue delay.*

# ***Right to make complaints***

\* In addition, [rule 36 of the Standard Minimum Rules](#) provides:

1. Every prisoner shall have the opportunity each weekday of making requests or complaints to the director of the institution or the officer authorized to represent him.
2. It shall be possible to make requests or complaints to the inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present.
3. Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels.
4. Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.

# Summary

- \* Under Articles 1 and 2 of the Universal Declaration of Human Rights all human beings are equal in dignity, rights and are entitled to all rights and freedoms contained in the instrument without distinction of any kind, such as religion, race, sex, colour, language, political or other opinion, other status among others.
  - So prisoners have the right to enjoy the same human rights as persons at liberty, subject only to those restrictions that are consequence of the imprisonment.
- \* Detainees and prisoners have the right to contact their families or friends without delay upon arrest or detention. They have a right to maintain contact with families and friends through visits and correspondence at regular intervals.
  - Any interference with this right must not be arbitrary (International Covenant on Civil and Political Rights) and must be based on law, imposed for legitimate purposes, and necessary in a democratic society for such purposes (European Convention on Human Rights).
- \* Prisoners have a right to be regularly visited by, and consult and communicate with, their lawyers through correspondence that shall be transmitted without delay and preserving the full confidentiality of the lawyer-client relationship. During visits by their lawyers, detainees and prisoners shall be able to confer within sight but not within the hearing of law enforcement officials
- \* Every prisoner shall have the right to make a complaint regarding his or her treatment and, unless the complaint is evidently frivolous, to have it dealt with promptly and, if requested, confidentially. If necessary, the complaint may be lodged on behalf of the prisoner by his or her legal representative or family

# ***Task to complete***

Regarding Class 4 & 5 answer a question below briefly (in a few words):

- Q1: Which one of prisoners rights do you consider as the most important? Why?
- **Send it back to me:** e-mail [aleksandra.polak2@uwr.edu.pl](mailto:aleksandra.polak2@uwr.edu.pl) by the end of next week