

Injecting Reason:

Prison Syringe Exchange and the European Convention on Human Rights

Rick Lines

Irish Penal Reform Trust

Irish Centre for Human Rights

XVI International Conference on AIDS

Toronto, Ontario

15 August 2006

Thanks

Prof. William A. Schabas
Dr. Kathleen Cavanaugh

Irish Centre for Human Rights



National University of Ireland, Galway
Ollscoil na hÉireann, Gaillimh

“Realization of human rights and fundamental freedoms for all is essential to reduce vulnerability to HIV/AIDS.”

*Declaration of Commitment on HIV/AIDS
UN General Assembly Special Session on HIV/AIDS
27 June 2001*

European Convention on Human Rights

- Binding in all Council of Europe countries
- Ratified by 46 States in Western Europe, Eastern Europe and FSU
- European Court of Human Rights decisions are directly enforceable
- No explicit right to health, but the right to health of prisoners is engaged by other mechanisms



European Court of Human Rights, Strasbourg

What do we know about blood-borne infections in prisons?

1. Rates of HIV/HCV infection in prisons related to two factors.
 - Rates of infection in the community outside prison, especially amongst vulnerable populations (i.e., injecting drug users)
 - Prevalence of high risk behaviours inside prisons (i.e., sharing injecting equipment)
2. High rates of HIV/HCV infection, injecting drug use, or both in prisons across Europe
3. Evidence of HIV and/or HCV transmission in prisons

Principle of Equivalence

- UN *Basic Principles for the Treatment of Prisoners*
- WHO *Guidelines on HIV Infection and AIDS in Prisons*
- UNAIDS
- UN *International Guidelines on HIV/AIDS and Human Rights*
- European Committee for the Prevention of Torture
- National prison legislation or policy in most European states

Article 3 of the European Convention

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

- “Article 3 enshrines one of the fundamental values of the democratic societies making up the Council of Europe...and is generally recognised as the internationally accepted standard.” – *European Court*

State Obligations under Article 3

1. “Negative Obligations” – obligation not to inflict harm on persons in detention (usually applied to torture, beatings, etc.)
2. “Positive Obligations” – obligation to protect the lives and well-being of people in detention

The “positive obligation” to protect health

- Article 3 imposes upon States a positive obligation, or “duty to protect”, the well-being of people in detention [*Keenan v United Kingdom* (2001)]
- “a positive obligation to protect the physical well-being of persons deprived of their liberty” [*Hurtado v Switzerland* (1994)]
- “to take the practical preventive measures necessary to protect the physical integrity and the health of persons who have been deprived of their liberty” [*Pantea v. Romania* (2003)]

The “positive obligation” to protect health

- to “do everything that could reasonably [be] expected...to prevent the occurrence of a definite and immediate risk to [a prisoner’s] physical integrity, of which [the authorities] knew or should have known”
[*Pantea v. Romania* (2003)]
- The “duty to protect” the physical integrity of people deprived of liberty includes the obligation to provide them with health care [*Hurtado v Switzerland* (1994), *Kudla v Poland* (2000)]
- States’ obligations apply regardless of the conduct of the prisoner, even if that conduct is illegal [*McFeeley v UK* (1981), *Chahal v UK* (1996), *Kudla v Poland* (2000), *Novoselov v Russia* (2005)]

The obligation to take “effective” measures

- The State has a further responsibility to take effective measures to ensure its positive obligation is met [*A v UK* (1998), *Z v UK* (2002)]
- Relevant to the issue of harm reduction in prisons, specifically prison syringe exchange
- Syringe exchange known to be the most effective method of preventing transmission of HIV/HCV via injecting
- Arguably the State’s obligation to protect the health of prisoners who inject drugs is **not satisfied** simply by providing of other forms of (less effective) drug services

Special vulnerabilities in interpreting inhuman or degrading treatment

- Court has interpreted Art 3 violations with respect to special vulnerabilities of certain categories of prisoners (mental illness, physical disability)
- State's positive obligations are increased in these circumstances
- Possibility of interpreting drug dependency as a special vulnerability?
- *Pantea v Romania* – State obligation to protect against harm to prisoners committed by third parties
- Implications for harm reduction and syringe exchange

The Convention as a “living instrument”

- ECHR is a “living instrument which must be interpreted in light of present day conditions”
- Human rights protections are not static, they have the potential to evolve and expand over time
- Evolution based upon factors including:
 - Case law and precedent
 - Social conditions and public attitudes
 - Research and scientific evidence
 - Pressing social need
 - State practice in the COE

Making the case for harm reduction/syringe exchange in prisons

- STATE: Denial of syringe exchange is not “inhuman or degrading treatment”
 - Legitimate part of imprisonment
 - Seeking a drug free prison is a legitimate goal
- RESPONSE: Drug free aspiration does not override protections of ECHR, nor obligations of States
 - Positive obligations and effective measures remains
 - Harm reduction not a conflict with drug-free policy
 - Completely drug-free prison not realistic or achievable
 - Scientific evidence of risk behaviour, HIV prevalence
 - HIV transmission constitutes a pressing social need

Making the case for harm reduction/syringe exchange in prisons

- STATE: This is a matter of domestic policy.
 - Prison syringe exchange rare.
 - The European Court should not intervene.
- RESPONSE: Principle of equivalence recognised throughout Europe and internationally.
 - State discretion should be considered within this context
 - States are failing to meet international standards of prison health care, and are ignoring the rights of people in detention.

Making the case for harm reduction/syringe exchange in prisons

- STATE: Safety risk to staff
- RESPONSE: No evidence of risk. In fact just opposite

Making the case for harm reduction/syringe exchange in prisons

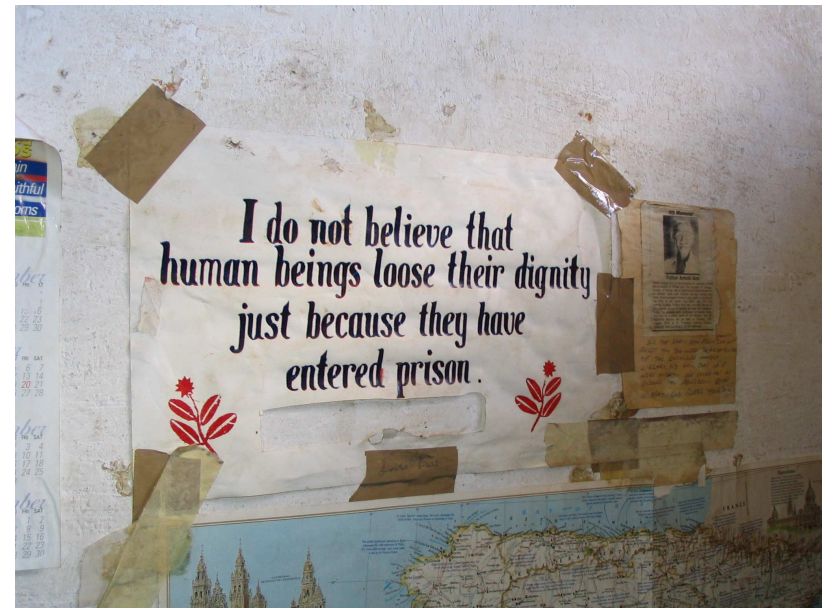
- STATE: Lack of resources
- RESPONSE: “lack of resources cannot in principle justify detention conditions which are so poor as to reach the threshold of severity contrary to Article 3”
[*Poltoratskiy v Ukraine*]
 - Harm reduction saves money by preventing transmission of HIV/HCV

People in prison retain their fundamental rights

Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the *Universal Declaration of Human Rights*, and ... the *International Covenant on Economic, Social and Cultural Rights*, and the *International Covenant on Civil and Political Rights* ... as well as such other rights as are set out in other United Nations covenants.

Principle 5

UN *Basic Principles for the Treatment of Prisoners*



Kamiti Prison
Nairobi, Kenya - 2005

Rick Lines
rlines@iprt.ie

Irish Penal Reform Trust
www.iprt.ie

Irish Centre for Human Rights
www.nuigalway.ie/human_rights