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**THE SITUATION OF PERSONS DEPRIVED LIBERTY
WHO SUFFER FROM HIV IN POLISH PENAL
INSTITUTIONS**

The sixth International Baku Conference of the Ombudsmen in the year dedicated throughout the world to the 60th Anniversary of the Universal Declaration of Human Rights and the celebration the first National Human Rights Day in Azerbaijan provides a great opportunity for all of us to meet under the auspices of Ms. Elmira Suleymanova, Commissioner for Human Rights of the Republic of Azerbaijan. It is always an honour and a true pleasure to meet with you, Ms. Suleymanova.

As this conference is concerned with “Human Rights in the Globalizing World”, and in particular with the problem of the ensuring of such rights of people deprived liberty and the conditions of penitentiary institutions, I find it as a perfect opportunity to listen to presentation of many excellent experts in the field of the rights of prisoners who suffer from HIV, and to share with you a bit of our Polish experience. Especially that the Polish ombudsman has recently become the National Preventive Mechanism within the OPCAT.

Poland has been dealing with HIV problem in prisons since 1989, when official numbers of registered HIV positive prisoners was ninety-six. This was the year when regular tests for HIV started to be carried out upon admitting to detention facilities of people belonging to the groups of risk. Since then we have

witnessed a continuous growth in the number. Last year in our prisons and detention on remand facilities we had eleven hundred and forty-five (1145) carriers of the virus, including eighty-one newly diagnosed cases. Considering the fact that the number of prisoners in Poland ranges at about ninety thousand the number may not seem striking, but we must remember that only officially released data are available, and that the growth rate is very high.

Since 1996 compulsory HIV antibodies testing has been abandoned. Through Polish penitentiary units pass one thousand and two hundred to one thousand and five hundred carriers every year. They are mostly young people, often addicted to drugs. The big question is how to make sure that the number of HIV carriers who leave prisons is not higher than the number of those who enter them.

Methods and proceedings with HIV carriers and ill persons have certainly evolved from strict isolation, including prohibition on common meals, and even using common washing and sanitary facilities. Definite end of segregation was in 1996, and recommendations from the Parliamentary Assembly of the Council of Europe, and most of all from the Committee for the Prevention of Torture have been crucial in this respect.

CPT and Council of Europe seem to rightly stress the importance of prevention, and thus the task of the state to work out AIDS and infectious disease programs, based on information on transmission and preventive measures, and addressed to both prison staff and inmates. 1988 recommendation explicitly calls “to provide written information to prisoners, properly translated when necessary, about the modes and consequences of HIV infection, and in particular about the dangers of homosexual contacts and intravenous drug abuse in prisons”.

HIV and AIDS are transmissible, and transmission can be avoided if all relevant safety measures are kept.

Factors that increase the risk of infection in prisons are more numerous than outside, as far as tattooing, self-mutilation and injuries, and homosexual activities are concerned. And state authorities hold responsibility for the safety of imprisoned persons, as their own ability to provide for their own safety is limited. In this context the Council of Europe bodies allow for isolation of a prisoner when he or she behaves irresponsibly, and therefore puts others in danger. Also European Prison Rules of 2006 permit isolating prisoners suspected of infectious or contagious conditions for the period of infection and providing them with proper treatment, but demand that prisoners carrying the HIV virus are not isolated for that reason alone.

It must be borne in mind that an HIV carrier creating a risk of transmitting the virus may be subject to criminal responsibility. And not all of them are mature enough to admit to the prison authorities that they are seropositive, although it might sometimes be justified by hostile attitudes towards AIDS.

What can be the consequences of concealing one's illness or the fact of carrying HIV? Polish executive criminal regulations explicitly state an obligation of a new-coming prisoner to provide information on his or her health. It is disputable, however, if HIV tests can be compulsory. Population of sentenced persons, according to Polish law, is not included in the group where tests for infectious diseases are obligatory, and as you well know, this is perfectly in tune with the position represented by the Council of Europe.

It must be noted that under the UN Principles of Medical Ethics it is not a contravention of ethics for a physician to participate in any procedure for restraining a prisoner or detainee as long as such a procedure is determined in accordance with purely medical criteria as being necessary for the protection of the physical or mental health or the safety of the prisoner or his fellow prisoners. Also in Strasbourg case-law we see some criteria for compulsory

medical examination, justified by the protection of health, and not amounting to the violation of prohibition of torture or right to privacy.

HIV and AIDS are diseases, and as such they require treatment. Here also a question of treatment in penitentiary system must be raised. Recommendations suggest sending AIDS suffering patients at late stages to specialised hospitals or even home in deadly cases, and for humanitarian reasons.

Polish law provides a therapeutic system of serving a sentence, especially for medical and psychological reasons. Certainly this is the case with HIV carriers who are also drug addicted. According to medical science AIDS is an incurable disease, and any treatment is very costly in this case, although Polish hospitals provide access to such treatment.

Let me conclude with a remark that prisons are not only for those who are healthy and fit, and that ill prisoners should not bear additional sufferings, other than what is deserved by the requirements of their punishment.

I am very grateful to Ms. Elmira Suleymanova, Commissioner for Human Rights of the Republic of Azerbaijan for providing us with this opportunity to reflect upon the rights of people deprived liberty and the conditions of penitentiary institutions, and I wish you and your institutions plenty of success in the ensuring of such rights.