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Detenzione penale: i diritti sono rispettati?

Secondo una nuova relazione dell'Agenzia per i diritti fondamentali (FRA), il sovraffollamento, le cattive condizioni igienico-sanitarie e il tempo limitato trascorso fuori dalle celle del carcere violano i diritti dei detenuti e ne pregiudicano il reinserimento. Le conclusioni e la banca dati di supporto aiuteranno giudici e avvocati a valutare le carenze delle condizioni carcerarie al momento di prendere decisioni sui casi transfrontalieri.

"*Le norme carcerarie internazionali e dell'UE sono chiare: i detenuti devono essere trattati con dignità",* afferma il direttore della FRA Michael O'Flaherty. *"I detenuti spesso si trovano ad affrontare condizioni degradanti durante la prigionia. Gli Stati membri dell'UE devono garantire condizioni di detenzione rispettose per migliorare le possibilità di reinserimento dei detenuti".*

La relazione "Criminal detention conditions in the European Union: rules and reality"" [Condizioni di detenzione penale nell'Unione europea: norme e realtà] delinea alcune norme minime selezionate a livello internazionale ed europeo e il modo in cui queste si traducono in leggi nazionali. Mostra anche come tali norme si applicano nella pratica, concentrandosi sugli aspetti illustrati di seguito :

- **Dimensioni della cella:** il sovraffollamento porta spesso ad avere a disposizione meno di 3m^2 di spazio a detenuto, in violazione del minimo raccomandato di 4m^2.
- **Tempo trascorso fuori:** gli Stati membri non sempre prevedono regole sul tempo che i detenuti di lungo periodo possono trascorrere al di fuori della loro cella. A volte trascorrono un'ora al giorno fuori dalla loro cella, un tempo insufficiente soprattutto nelle carceri sovraffollate.
- **Servizi igienico-sanitari:** le carceri sporche con accesso limitato ai servizi igienici violano le leggi internazionali e nazionali, nonostante le condizioni stiano lentamente migliorando.
- **Assistenza sanitaria:** sebbene i detenuti dovrebbero beneficiare dello stesso livello di assistenza sanitaria della popolazione generale, le carenze di personale spesso causano ritardi. Inoltre, mentre si sottopongono a esami e visite mediche non viene rispettata la loro privacy.
- **Violenza:** le lotte, le violenze sessuali e il bullismo sono comuni in molti Stati membri, malgrado l'obbligo per questi ultimi di proteggere i detenuti sotto la loro custodia.

I risultati guideranno i giudici e altri operatori del diritto a valutare se i detenuti siano a rischio di subire trattamenti inumani e degradanti, in violazione dei loro diritti fondamentali.

Tale valutazione è particolarmente utile in materia di decisioni su casi transfrontalieri, ad esempio quando gli Stati membri emettono un Mandato d'arresto europeo.

La nuova banca dati online sulla detenzione penale della FRA completa la relazione. Contiene norme nazionali, leggi e relazioni di monitoraggio sulle condizioni di detenzione provenienti da tutta l'UE.

La FRA ha utilizzato le relazioni degli organismi nazionali di controllo e interviste di ricerche precedenti per illustrare in che modo le condizioni di detenzione variano da uno Stato membro all'altro.

La Commissione europea ha chiesto alla FRA di raccogliere informazioni sulle condizioni carcerarie e il relativo monitoraggio in tutti gli Stati membri dell'UE, per fornire assistenza alle autorità giudiziarie nell'adozione di decisioni in merito al trasferimento di detenuti in un altro Stato membro dell'UE.

Per maggiori informazioni rivolgersi a: media@fra.europa.eu / Tel.: +43 1 580 30 642

JUSTICE

Criminal detention conditions in the European Union: rules and reality

FRA EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

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EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

Criminal detention conditions in the European Union: rules and reality

Foreword

Imagine suddenly losing control over your everyday life – and finding yourself in an environment devoid of free choice and privacy, but full of hostility and fear. This is a stark reality for many individuals in detention across the European Union.

People who are detained – whether while awaiting trial or after conviction – are in many ways invisible. Subjected to a tightly controlled regimen, they have little say over when they eat, spend time outdoors, see a doctor, or even use the bathroom. As such, they are at particular risk of enduring fundamental rights violations.

Some suffering is, of course, inherent in detention, as the European Court of Human Rights has recognised. But the right to respect for human dignity does not stop at the cell door. Conditions in jails and prisons must be sufficiently humane to be compatible with this right – and all others.

Myriad factors affect detention conditions. This report focuses on five core aspects: the size of cells; the amount of time detainees can spend outside of these cells, including outdoors; sanitary conditions, including from a privacy perspective; access to healthcare; and whether detainees are protected from violence.

The research underscores that overcrowding, a well-known problem in many EU Member States, persists – and that too few authorities have found good ways to address it. Yet other aspects, too, are problematic. Some even raise questions about the Charter's prohibition on torture. As a result, judges tasked with executing European Arrest Warrants from other Member States must carefully consider whether to oblige such requests.

The international community has taken important steps to ensure rights compliance, including by establishing monitoring bodies and through awareness-raising efforts. Truly tackling these issues, however, will require a shift in perspective. Humane detention conditions foster rehabilitation – which ultimately benefits not just the individuals directly implicated, but society as a whole.

We hope this report encourages policymakers to approach the issue of detention conditions from that perspective.

Michael O'Flaherty
Director

Contents

Abbreviations

CAT	United Nations Committee against Torture
CJEU	Court of Justice of the European Union
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
EAW	European Arrest Warrant
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
FRA	European Union Agency for Fundamental Rights
LGBTI	Lesbian, gay, bisexual, transgender and intersex
NGO	Non-governmental organisation
NPM	National Preventive Mechanism
OPCAT	Optional Protocol (of 2002) to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
UNODC	United Nations Office on Drugs and Crime

Country codes

Code	EU Member State
AT	Austria
BE	Belgium
BG	Bulgaria
CY	Cyprus
CZ	Czechia
DE	Germany
DK	Denmark
EE	Estonia
EL	Greece
ES	Spain
FI	Finland
FR	France
HR	Croatia
HU	Hungary
IE	Ireland
IT	Italy
LT	Lithuania
LU	Luxembourg
LV	Latvia
MT	Malta
NL	Netherlands
PL	Poland
PT	Portugal
RO	Romania
SE	Sweden
SI	Slovenia
SK	Slovakia
UK	United Kingdom

Why this report?

Criminal detention is the deprivation of liberty in connection with a crime in accordance with law. Whereas prison conditions are mainly a competence and responsibility of the Member States, the Charter of Fundamental Rights requires that, within the scope of EU law, detention conditions do not lead to violations of fundamental rights. The EU legislator has dealt with detention conditions especially in the context of migration.

A certain level of suffering is typically connected with detention, but detainees should not be deprived of their dignity. As the European Court of Human Rights (ECtHR) stated, "the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately ensured by, among other things, providing him with the requisite medical assistance."[1]

Some cases of criminal detention in the European Union exceed this unavoidable level of suffering, reaching the level of degrading treatment or even torture, as international and national monitoring reports and jurisprudence – most notably of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the ECtHR – clearly demonstrate. This report focuses on selected aspects of criminal detention that are crucial for protecting the dignity of detainees. It provides examples from EU Member States and aims to assist practitioners in assessing requests for the execution of European arrests warrants.

This report complements FRA's database on detention conditions. The database combines in one place national standards, jurisprudence and monitoring reports regarding detention conditions in all 28 EU Member States. The database serves as a 'one-stop-shop' for practitioners seeking information about criminal detention conditions in any given EU Member State. It presents the minimum standards that are used as benchmarks for assessing a state's conformity with fundamental rights – most importantly, with ensuring the prohibition of torture and inhuman and degrading treatment and punishment – relating to the prevailing 'prison conditions' in a Member State.

Far from exhausting the topic of the human rights aspects of detention conditions, this report focuses on the following five key aspects of detention conditions:

- the amount of cell space available to detainees;
- hygiene and sanitary conditions;
- time available to detainees to spend outside their cells or outdoors;
- access to healthcare; and
- protection against violence.

FRA identified these issues in close cooperation with the European Commission, the Council of Europe, and National Preventive Mechanisms (NPMs), based on relevant judgments of the Court of Justice of the European Union (CJEU) and the ECtHR, as well as established standards such as the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)[2] and the European Prison Rules.[3] Equally important aspects of criminal detention conditions, such as solitary confinement and proper ventilation, fall outside the scope of this report.

For each of these aspects of detention conditions, the report first summarises the minimum standards at international and European levels. It then looks at how these standards are translated into national laws and other rules of the EU Member States. To provide more context, the report also presents an overview of how these rules play out in practice according to the findings of existing NPMs (for the role of NPMs and their relevance in this context, see the section 'Overview of the relevant legal framework'). NPMs are very often the first body to identify possible violations of criminal detention standards.

The focus of this report is on identifying shortcomings – such as overcrowding or a lack of protection against violence – that may be key to an accurate assessment of prison conditions. However, prison conditions that violate the standards of the prohibition of torture and inhuman or degrading treatment are often not detected as a result of identifying shortcom-

1 European Court of Human Rights (ECtHR), *Kudła v. Poland*, No. 30210/96, 26 October 2000.

2 The United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), General Assembly resolution 70/175, annex, adopted on 17 December 2015.

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

ings in relation to one particular aspect in isolation. Rather, such violations are more likely to be detected through an overall evaluation of a multitude of aspects and circumstances.

The report is not intended to compare or rank Member States. Its aim is to assist judges and other legal practitioners involved in cross-border cases based on the EU's mutual recognition instruments, such as the European Arrest Warrant (EAW). Practitioners need to assess whether criminal detention conditions in EU Member States are compatible with fundamental rights, as ruled by the CJEU (see the section 'Overview of the relevant legal framework'), in particular the prohibition of torture and inhuman or degrading treatment (Article 4 of the Charter of Fundamental Rights of the European Union (the Charter),[4] and Article 3 of the European Convention on Human Rights (ECHR[5])). Detention conditions might also interfere with other human rights, such as the right to a private and family life (Article 8 of the ECHR and Article 7 of the Charter). However, the focus of this report remains on the absolute prohibition of torture and inhuman and degrading treatment – though some other aspects of detention are also mentioned, such as aspects concerning privacy during medical examinations.

The report responds to the European Commission's request inviting FRA to compile certain basic information on prison conditions and the monitoring mechanisms in place in Member States. The Commission was invited by the Council of the European Union to provide practical guidance on where practitioners could find relevant sources containing objective, reliable and properly updated information on penitentiary establishments and prison conditions in the Member States.[6] The report's findings are based on a focused desk research exercise and also draw – where appropriate – on FRA's related research on access to lawyers and procedural rights published in 2019.[7]

The report on many occasions refers to the standards set by the CPT as the leading body in the area of monitoring places of detention in Europe. The work of the CPT is much more detailed and comprehensive, while this report aims to draw attention to only certain aspects of criminal detention conditions. The CPT country visit reports provide a broad overview of the country in question and should be consulted and taken into consideration by authorities deciding on transferring detainees to that country.

The report provides brief introductions to the five areas of prison conditions addressed. It should be used alongside FRA's online database of relevant jurisprudence and reports by competent monitoring bodies. The database – in the absence of an existing over-arching database of this nature – aims to further facilitate access to information on detention conditions in the EU Member States, drawing on existing international, European and national monitoring reports. The database is now available through the FRA website. It was developed in close consultation with the Council of Europe, especially the European National Preventive Mechanism (NPM) Forum and the CPT.

Annex 2 provides an overview of relevant international and European standards for detention conditions, and gives examples of illustrative cases – which are more comprehensively covered in the online database.

On terminology and scope

The terms 'prisoner', 'detainee' and 'person deprived of their liberty' are used interchangeably in this report, covering all persons deprived of their liberty in the course of criminal proceedings (pre-trial) or after a conviction (post trial). The findings of this report are therefore relevant for both pre-trial and post-trial detention (prison) conditions.

4 Charter of Fundamental Rights of the European Union, (2000/C 364/02), 26 October 2012.
5 European Convention on Human Rights, Council of Europe, 4 November 1950.
6 Council of the European Union (2018), para. 16.
7 FRA (2019).

Overview of relevant legal framework

The principle of mutual recognition implies that a decision taken by a judicial authority in one EU Member State is recognised and, where necessary, enforced by entities in another EU Member State. This principle was endorsed at the 1999 European Council meeting in Tampere and has become the cornerstone of judicial cooperation, in both civil and criminal matters, within the EU.[8] Mutual trust obliges Member States to assume that all EU Member States comply with human rights standards. The principle is most notably encapsulated in the EAW established by Framework Decision 2002/584/JHA of 13 June 2002 (the EAW Framework Decision).[9] The Framework Decision is currently in force in all Member States. The purpose of the EAW is to facilitate the surrender of persons for prosecution or the execution of criminal judgments. Once surrendered to the issuing Member State, persons subject to the warrant are likely to face custodial measures in the form of pre-trial or post-trial detention.

The CJEU altered the legal landscape and made it obligatory for executing Member States to assess detention conditions in the issuing Member State before surrendering a person with its judgment in *Aranyosi and Căldăraru v. Generalstaatsanwaltschaft Bremen*.[10] In this case, the German court sought clarification of whether or not the EAW Framework Decision must be interpreted as meaning that, where there is solid evidence that detention conditions in the issuing Member State are incompatible with human rights, in particular with Article 4 ('Prohibition of torture and inhuman or degrading treatment or punishment') of the Charter, the executing judicial authority must refuse to execute an EAW.

The CJEU, after reiterating that the EAW system of surrender is based on the principles of mutual recognition and mutual trust, held that Article 1(3) states that the Framework Decision is not to have the effect of modifying the obligation to respect fundamental rights as enshrined in the Charter. Furthermore, the prohibition of inhuman or degrading treatment or punishment guaranteed by Article 4 of the Charter, corresponding to Article 3 of the ECHR, is absolute. On these grounds, it held that, where the judicial authority of the executing Member State is in possession of evidence of a real risk of the inhuman or degrading treatment of individuals detained in the issuing Member State, they are bound to assess the existence of individual risk when deciding on surrender. As such, judicial authorities are under an obligation to first assess whether or not there is a real risk of inhuman or degrading treatment in the issuing Member State (Step 1). In cases in which such a risk is identified, judicial authorities must then conduct an individual assessment to determine the likelihood of the surrendered person being exposed to such risk (Step 2). Further steps on how to conduct an individual assessment have been clarified in subsequent case law of the CJEU, in particular in case C-220/18 PPU, *Generalstaatsanwaltschaft*[11] and the *Dorobantu* judgment.[12]

In *Dorobantu*, the court held that, in case of known systemic deficiencies in the issuing state, the executing authority should assess whether the risk is real in the particular circumstances of each case. The assessment should be specific and precise. To be able to perform such assessments, the executing authority must request all necessary information on the conditions in which the person concerned will be detained in the issuing state. The executing authority should take into account all the relevant physical aspects, such as the personal space available to each prisoner, sanitary conditions and the extent of the detainee's freedom of movement within the prison. The court noted that, in the absence of EU minimum standards, the authorities should apply the ECtHR interpretation. When the assurance has been given that the person will not be subjected to inhuman or degrading treatment, the executing authority must rely on that assurance. However, in exceptional circumstances, the executing authority can find that, notwithstanding the assurance, the person concerned runs a risk of being subjected to inhuman or degrading conditions of detention in the issuing Member State. In that case, as the prohibition of degrading and inhuman treatment is absolute, the executing authority must not give precedence to the efficacy of judicial cooperation and principles of mutual trust and mutual recognition.

To assess the existence of a general risk (Step 1), the executing judicial authority must, according to the CJEU, rely on information that is "objective, reliable, specific and properly updated on the detention conditions prevailing in the issuing Member State. The risk exists when that information demonstrates that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention. That information may be obtained from, inter alia, judgments of international courts, such as judgments of

8 European Council (1999).
9 Council of the European Union (2002), Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States (2002/584/JHA), OJ 2002 L 190.
10 Court of Justice of the European Union (CJEU), Joined cases C-404/15 and C-659/15 PPU, *Aranyosi and Căldăraru v. Generalstaatsanwaltschaft Bremen*, 5 April 2016.
11 CJEU, C-220/18 PPU, *ML*, 25 July 2018.
12 CJEU, C-128/18, *Dorobantu*, 15 October 2019.

the ECtHR, judgments of courts of the issuing Member State, and also decisions, reports and other documents produced by bodies of the Council of Europe or under the aegis of the UN".[13]

Accordingly, in line with the *Aranyosi and Căldăraru* case law, apart from consulting the jurisprudence of the ECtHR, to assess the existence of a real risk of inhuman or degrading treatment in the issuing Member State (Step 1), national judges have to consult the relevant sources from the Council of Europe and the United Nations (UN). Minimum standards and benchmarks on detention conditions are contained in soft-law (legally non-binding) instruments, such as the Council of Europe's European Prison Rules or the Nelson Mandela Rules. The European Prison Rules are recommendations adopted by the Committee of Ministers. While they are not legally binding, they provide widely recognised standards. The Nelson Mandela Rules, because of their international reach, are at times less strict than the standards developed under the auspices of the Council of Europe. However, the Nelson Mandela Rules are comprehensive in that they touch on various aspects and principles of the proper management and administration of prisons, including the necessity to establish a system of standardised prisoner file management in every place where persons are detained (Rule 6) and a twofold system for regular internal and external inspections (Rule 83).[14]

International rules and monitoring mechanisms referred to in this report

CPT – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment: monitoring mechanism of the Council of Europe, established by the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

European Prison Rules – Recommendation of the Committee of Ministers of the Council of Europe to Member States.

Nelson Mandela Rules – United Nations Standard Minimum Rules for the Treatment of Prisoners.

NPMs – National Preventive Mechanisms: national monitoring mechanisms established by the Optional Protocol (of 2002) to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The majority of EU Member States are parties to OPCAT. (Four EU Member States are not yet parties. Of these, Belgium, Ireland and Slovakia have signed the Protocol. Latvia has not signed). See Annex 1 for the full list of the NPMs of the EU Member States.

To determine whether or not these minimum standards are met in practice and hence what the situation on the ground is in a given state, the most important sources of information for national judges are the findings of the Council of Europe's CPT and the NPMs established under the Optional Protocol (of 2002) to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).[15]

The CPT is a 'treaty body' established under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. This convention established the CPT, empowering it to visit all places where persons are deprived of their liberty by a public authority. The committee is composed of independent experts and makes recommendations to the governments of the Member States it visits. These recommendations seek to strengthen the protection of the human rights of detainees.[16]

Most EU Member States have ratified OPCAT. This obliges signatory states to establish or designate an independent body to implement a system for regularly visiting places of detention, to prevent the in-

13 CJEU, Joined cases C-404/15 and C-659/15 PPU, *Aranyosi and Căldăraru v. Generalstaatsanwaltschaft Bremen*, 5 April 2016, para. 89.

14 UNODC (2015).

15 Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/RES/57/199, 9 January 2003.

16 The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has suggested a plethora of standards and tools (see the CPT's webpage).

human or degrading treatment of prisoners. To date, 24 EU Member States have established NPMs whose findings – just like the findings of the CPT – are crucial evidence of the situation concerning detention conditions on the ground. Belgium, Ireland and Slovakia have signed but not yet ratified the Optional Protocol, while Latvia has still to sign it.[17]

NPMs complement the work of the UN Subcommittee on Prevention of Torture (also established under OPCAT). The permanent presence of an NPM in a country enables regular monitoring and the building of a long-term relationship between the NPM and the relevant authorities, based on trust and ongoing dialogue. As domestic bodies, NPMs are particularly well placed to propose concrete preventive measures that are tailored to the situation and challenges in the country. NPMs are in a good position to identify early warning signs, through regular monitoring visits, and therefore to prevent violations of minimum standards in places of detention. This is why their findings are used in this report to illustrate the situation on the ground in EU Member States with respect to different aspects of detention conditions.

For the list of NPMs in the EU Member States, see Annex 1.

For a detailed overview of the relevant international and European standards and benchmarks on the specific aspects of detention conditions addressed in this report, see Annex 2.

Methodology and sources

The information on the relevant national rules and standards and the related findings from the NPM reports, reflecting the situation on the ground in EU Member States, were collected by desk research (based on available sources such as binding legal instruments, prison rules, and NPM or other monitoring body reports) undertaken by FRA's network of research institutions, Franet. The information provided reflects the situation and includes developments from 1 January 2015 to 1 May 2018.

In addition, several quotes from semi-structured interviews obtained as part of related but separate FRA research conducted in eight Member States (Austria, Bulgaria, Denmark, France, Greece, the Netherlands, Poland and Romania) are included in Section 4.3. (on access to healthcare) and Section 5.3. (on protection from inter-prisoner violence) to further illustrate the situation on the ground. This research resulted in the FRA report *Rights in practice: access to a lawyer and procedural rights in criminal and European Arrest Warrant proceedings* (see the section on 'FRA's related research'). The interviews covered arrests and charges from December 2016 to June 2018. The quotes from this separate FRA research – encompassing fieldwork in eight Member States – include testimonies from interviewed NPM representatives, as well as representatives of other bodies responsible for monitoring criminal detention conditions, specifically accessing healthcare and protection from violence (during both pre-trial and post-trial detention).

With respect to the above, it should be noted that FRA's separate research in eight Member States did not cover the aspects of cell space, hygiene and sanitary conditions, or time outside a cell. Hence, no examples can be provided from this other research for the chapters in the present report that address these themes. Examples can be drawn with respect to access to healthcare and protection from violence, which were asked about.

Where a source is not explicitly referred to in a footnote, the evidential basis is the data provided by the Franet institution of the relevant state.

17 Latvia has not signed the Optional Protocol. Belgium signed the Optional Protocol on 24 October 2005, however, has not yet ratifitied it. Ireland signed the Optional Protocol on 2 October 2007, however, has not yet ratifitied it. Slovakia signed the Optional Protocol on 14 December 2018, however, has not yet ratifitied it. For the list of countries that have signed and/or ratified the Optional Protocol, see the United Nations Treaty Collection. See the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) webpage for a list of NPMs established under this convention.

FRA's related research

This report complements a line of research conducted by FRA in the area of criminal justice, in particular research published in the following reports:

- *Rights in practice: access to a lawyer and procedural rights in criminal and European Arrest Warrant proceedings (2019)*[18] – this report summarises the views of professionals and defendants, including those in pre-trial detention, on the practical application of the right to access a lawyer and procedural rights in criminal proceedings and in EAW proceedings. Relevant quotes from the representatives of the NPMs interviewed are used in the present report, as described in the 'Methodology and sources' box.
- *Criminal detention and alternatives: fundamental rights aspects in EU cross-border transfers (2016)*[19] – this report provides an overview of Member States' legal regulations in respect of framework decisions on transferring prison sentences, probation measures and alternative sanctions, as well as pre-trial supervision measures, to other Member States.
- *Rights of suspected and accused persons across the EU: translation, interpretation and information (2016)*[20] – this report reviews Member States' legal frameworks, policies and practices regarding the right to information, translation and interpretation in criminal proceedings.
- *Handbook on European law relating to access to justice (2016)*[21] – this publication summarises the key European legal principles in the area of access to justice, focusing on civil and criminal law.

18 FRA (2019).

19 FRA (2016a).
20 FRA (2016b).
21 FRA (2016c).

1 Cell space

Overcrowding of prisons is a well-known problem in many Member States. The size of cells and the living space available to prisoners are crucial criteria – and usually the starting point of any assessment of living conditions within prison facilities. This chapter looks at European and international standards, national standards and findings of monitoring bodies on the situation on the ground with regard to cell or living space.

FRA's database on detention conditions

See FRA's online database of national standards, relevant international jurisprudence and reports by competent monitoring bodies concerning prison conditions for further information on cell space.

Note on sources

FRA has conducted separate but related fieldwork research in eight EU Member States – on access to a lawyer and procedural rights in criminal and EAW proceedings – that addresses the themes of access to healthcare and protection from violence. However, this other research did not cover issues relating to cell space, hygiene and sanitary conditions, or time outside a cell. Because of this, this chapter is based solely on desk research carried out for the present study.

1.1. European and international standards

The ECtHR has repeatedly ruled, recently in the Grand Chamber judgment *Muršic v. Croatia*, that cell space that comprises less than 3 m² of floor space per inmate in a multi-occupancy cell (including space taken up by furniture but not the space taken up by sanitary facilities) should give rise to a strong presumption of a violation of Article 3 of the ECHR (inhuman and degrading treatment).[22] The responding government can rebut such a presumption by demonstrating that other factors are capable of compensating for the lack of personal space, namely that the lack of space was only occasional accompanied by sufficient freedom of movement outside the cell, the availability of meaningful activities and the absence of aggravating factors. The CJEU – in the *ML* judgment[23] – supported this view.

In general, the ECtHR has established that, in cases of prison overcrowding, states should provide effective remedies at national level. Persons affected by insufficient cell space should be able to move to another facility and receive compensation in their country.

22 ECtHR, *Muršić v. Croatia*, No. 7334/13, 20 October 2016, paras. 105, 140; see also ECtHR, *Rezmives and others v. Romania*, Nos. 61467/12, 39516/13, 48231/13 and 68191/13, 25 April 2017; ECtHR, *Nikitin and others v. Estonia*, Nos. 23226/16, 43059/16, 57738/16, 59152/16, 60178/16, 63211/16 and 75362/16, 29 January 2019; and ECtHR, *Ananyev and others v. Russia*, Nos. 42525/07 and 60800/08, 10 January 2012.

23 CJEU, C-220/18 PPU, *ML*, 25 July 2018, para. 92.

ECtHR jurisprudence on cell space

In *Muršic v. Croatia*, the ECtHR summarised its line of jurisprudence:

- It confirmed that 3 m² of surface area per detainee in a multi-occupancy cell was the prevalent norm in its case law, being the applicable minimum standard for the purposes of Article 3 (prohibition of inhuman or degrading treatment) of the ECHR.
- This applies to both pre-trial detention and post-trial detention.
- This includes space taken up by furniture and does not include space taken up by sanitary facilities.
- When the surface area is below 3 m², the lack of personal space is regarded as so serious that it gives rise to a strong presumption of a violation of Article 3, unless:
  - the periods of a lack of personal space could be regarded as short, occasional and minor;
  - while at the same time the applicant has sufficient freedom of movement and access to activities outside the cell; and
  - is being held in a generally appropriate detention facility.
- If the space is between 3 and 4 m², then it is a significant factor that needs to be considered cumulatively with other conditions, such as how much time the person spends in the cell and other aspects. For example, there could be a violation if access to fresh air is not possible, if there is no natural light in the cell or no ventilation, if the temperature is not appropriate, if it is not possible to use the sanitary facility in private and/or if there are other problems with sanitary conditions.
- If the area of a cell is more than 4 m², but concerns about bad conditions are raised, the conditions must be examined in light of Article 3 of the ECHR, taking into account the prison conditions as a whole.

The judgment dealt with a complaint about the lack of personal space in prison, which had fallen below 3 m². The applicant complained that he was placed in overcrowded cells, disposed of less than 3 m² for a period of fifty days, and that the cells in which he had been held were badly maintained, humid, dirty and insufficiently equipped. There were also periods in which he had been allocated to cells of a size of 3 and 4 m². The applicant had not been given the opportunity to participate in prison work nor was he provided with access to recreational and educational activities. He was allowed to move freely outside the cell between 4 pm and 7 pm. Additionally, the sanitary facilities were not separated from the living area, therefore, there was a constant smell in the cell. According to the government, the applicant had an average of 3.59 m² of personal space at his disposal.

See ECtHR, Muršić v. Croatia, No. 7334/13, 20 October 2016, paras. 13-17.

Although case law sets out what is accepted as the very minimum in terms of cell space (i.e. 3 m² per detainee), this should not prevent a more generous standard of cell space. However, in Italy, for example, the 3 m² standard is considered the ordinary standard for prison cells, as found by the Italian NPM in its 2018 report, whereas it should be considered only the absolute minimum standard, the breach of which would indicate a severe violation of human dignity.[24]

The CPT applies standards that are stricter than the minimum 3 m². Moreover, since 2015, the CPT has distinguished between the "minimum" and the "desirable" cell size.[25] The minimum standards for personal living space in prison cells is defined by the CPT as follows:

- 6 m² of living space for a single-occupancy cell plus a sanitary facility;
- 4 m² of living space per prisoner in a multiple-occupancy cell plus a fully partitioned sanitary facility;
- at least 2 m between the walls of the cell;
- at least 2.5 m between the floor and the ceiling of the cell.

In addition, for multiple-occupancy cells of up to four inmates, the CPT suggests, and promotes as a desirable standard, a space of 4 m² per additional inmate to be added to the minimum living space of 6 m² for a single-occupancy cell. Hence, the desirable standards of cell space are as follows:

24 *"In tema di sovraffollamento i dati sono ancora distanti dall'essere soddisfacenti. È vero nessuna persona è attualmente in una camera detentiva il cui spazio individuale lordo sia inferiore a 3 metri quadrati: ce ne erano oltre 7500 nel gennaio 2013. Tuttavia troppo spesso ci si accontenta di questo risultato, quasi sia diventato il parametro standard della regolarità e non il parametro minimo al di sotto del quale si apre inevitabilmente il tema della violazione dell'articolo 3 della CEDU."* Italy, Authority for the Protection of People who are Detained or Deprived of their Personal Freedom, 2018, p. 46.

25 Council of Europe, CPT (2015a).

- for two prisoners: at least 10 m^2 (6 m^2 plus 4 m^2) of living space plus a sanitary facility;
- for three prisoners: at least 14 m^2 (6 m^2 plus 8 m^2) of living space plus a sanitary facility;
- for four prisoners: at least 18 m^2 (6 m^2 plus 12 m^2) of living space plus a sanitary facility.

The European Prison Rules do not stipulate a particular cell space but emphasise that prisoners should in principle live in individual cells, except where it is preferable for them to share sleeping accommodation (Rule 18). This also applies to remand detainees (Rule 96).[26]

The Nelson Mandela Rules follow a similar approach, demanding that in principle every prisoner should have their own cell. There are exceptions, however – for instance, where dormitories are used (Rule 12) or because of "different local custom in respect to the climate" (Rule 113).[27]

1.2. National standards

Sixteen EU Member States have laws or regulations in place specifying national standards of minimum cell space per prisoner or detainee. Of these 16, minimum cell space standards range from about 3 m^2 per person in individual cells (in Estonia, Poland and Lithuania) to around 10 m^2 (in Greece, Latvia and Slovenia). National standards for cell space per prisoner in multi-occupancy cells range from about 3 m^2 to 6 m^2 per prisoner.

Belgium stipulates a minimum cell space for pre-trial detention cells, but not for prison cells.[28] France is the only Member State that specifies a maximum cell space per prisoner of 11 m^2. The minimum and maximum sizes of cells for more than two detainees vary for the remaining Member States (see Table 1). The table refers to legal standards as defined by relevant acts. In practice, however, prisoners might be placed in a larger or smaller space.

Table 1: Do Member States regulate cell space per prisoner (pre-trial and post-trial)?

EU Member State	Pre-trial detention	Post-trial detention	Minimum cell space per prisoner (individual cells)	Minimum cell space per prisoner (multi-occupancy cells)
AT	X	X	Pre-trial-detention (security police, max. 48h): 6m^2 Detention (court prisons): 7.5 m^2 to 12.3 m^2 (no national standard in law for cell space in prisons; administrative directive according to CPT standards)	Pre-trial-detention (security police, max. 48h): 6m^2 for the first inmate, plus 4m^2 for every additional inmate, plus ca. 1m^2 for the toilet Detention (court prisons): 4.4 m^2 to 7.9 m^2 (no national standard in law for cell space in prisons; administrative directive according to CPT standards)
BE	✓	X	For one or more detainees (ranging from 10 m^2 for a cell for one detainee to 38 m^2 for a cell for 5 or 6 detainees).	For one or more detainees (ranging from 10 m^2 for a cell for one detainee to 38 m^2 for a cell for 5 or 6 detainees).
BG	✓	✓	4 m^2	4 m^2
CY	✓	✓	7 m^2	4 m^2
CZ	✓	✓	6 m^2, can temporarily be decreased to 3 m^2	4 m^2, can temporarily be decreased to 3 m^2
DE	X	X	–	–
DK	✓	✓	6 m^2	4 m^2 (e.g. 8 m^2 for two-person cells)
EE	✓	✓	3 m^2	–
EL	✓	✓	10.7 m^2 (35 m^3)	6 m^2

26 Council of Europe, Committee of Ministers (2006a); and, in particular, see Council of Europe, Committee of Ministers (2006b).

27 Nelson Mandela Rules (2015).

28 Belgium amended its law after the research was completed. The situation is currently regulated by the Royal Decree of 3 February 2019 implementing Articles 41, §2 and 134, §2 of the Basic Law of 12 January 2005 on the prison system and the legal status of detainees.

ES	X	X	–	–
FI	✓	✓	7 m²	5.5 m²
FR	✓ (for more than two detainees)	✓ (for more than two prisoners)	*Etablissements pour peine* for detainees serving a final prison sentence of more than two years; 8.5m² for an individual cell; *Maisons d'arrêt* for remand detainees or detainees serving a final prison sentence of less than 2 years: from 10.5 m² for an individual cell (but in case of overcrowding – which is mostly the case – it can host 2 detainees).	11 to 14 m² for two detainees 14 to 19 m² for three detainees 19 to 24 m² for four detainees 24 to 54 m² for five to 10 detainees
HR	✓	✓	4 m²	4 m²
HU	✓	✓	6 m²	4 m²
IE	X	X	–	–
IT	X	X	9 m²	5 m²
LT	✓	✓	3.6 m² per pre-trial detainee 3.1 m² per inmate in the dormitory-type prison 3.6 m² per inmate in the cell-type prison	3.1 m² per inmate in the dormitory-type prison 3.6 m² per inmate in the cell-type prison
LU	X	X	Cell space is not regulated. Individual cells or double cells are about 11 m²	Cell space is not regulated. Cells for 3 or 4 prisoner are between 23 and 30 m²
LV	✓	✓	9 m²	4 m²
MT	✓	✓	7 m²	10.5 m² (5.25 m² per prisoner)
NL	?	✓	–	9 m² (cell for one to two prisoners)
PL	✓	✓	3 m² (pre-trial, for up to 14 days and post-trial); 2 m² (prison pre-trial and post-trial)	3 m² (pre-trial and post-trial) 2 m² (pre-trial and post-trial)
PT	✓	X	7 m²	4m²
RO	✓	✓	6 m²	4 m²
SE	✓	X	6 m²: partially regulated; pre-trial detention checked	–
SI	✓	✓	9 m²	7 m²
SK	✓	✓	3.5 m² for men 4 m² for women and juvenile offenders.	
UK	X	X	A cell must have sufficient space for "circulation and movement" and to carry out core activities (like using a toilet in private, sleeping, dressing, taking meals etc.)	A cell must have sufficient space for "circulation and movement" and to carry out core activities (like using a toilet in private, sleeping, dressing, taking meals etc.)

Source: FRA, 2019

Note: Regulated = indicated in dark red. "Partially regulated" = light red. "Not regulated" = white.

While many Member States apply the same rules regarding cell space for different categories of detention (e.g. pre-trial custody and detention during a prison sentence), some Member States have different standards in place. For example, Belgium applies rules and minimal conditions for pre-trial detention by police, regulated by a legislative act.[29] In contrast, there is no national standard in terms of minimum cell space in prisons, with each of the 32 prisons in Belgium having different cell sizes.

Several Member States specify that the minimum cell space standard can be temporarily decreased in cases of a substantial increase in prisoner numbers (e.g. in Czechia, Poland and Slovakia). However, some Member States clarify that no derogations are possible in certain cases. For example, in Slovakia, cell space cannot be decreased below the minimum standard for pregnant prisoners.

Ten Member States do not regulate or have a national standard in place for minimum cell space per detainee or prisoner. Despite this, most of these 10 Member States do set down certain conditions, such as that cells should provide "sufficient" space (Austria, Germany and Italy), a reasonable amount of space (Malta) or enough space to make them habitable (Spain).

Furthermore, although some Member States do not have a national standard in place, cell space is in some cases regulated through a detention facility's guidelines or administrative rules. In Italy, for example, each detention facility has its own internal regulations (approved by the Italian Ministry of Justice), which must respect the principles enshrined in national legislation. In Luxembourg, specific details on cell space are often defined in the internal rules of each penitentiary centre. Other Member States report customary or typical cell spaces (e.g. 9 m² for individual cells in Belgium;[30] 5.5–6.5 m² for single cells in the United Kingdom, specifically England and Wales[31]). Sweden is an example of a country with no specific national rules on minimum cell space in square metres. However, the necessary equipment of all cells/rooms is regulated, and cells typically measure 7 m² to 9 m² and are suitably equipped and adequate, as reported by the CPT in 2015.[32]

1.3. Findings of monitoring bodies on the situation on the ground

NPMs report problems in practice, despite national standards being in place in the majority of Member States. These problems concern compliance with laws and rules on cell space, in particular regarding overcrowding in prisons. Many Member States struggle with overcrowding in prisons and, in some, issues are serious and pressing. In fact, recommendations issued by the monitoring bodies suggest that this basic standard is being violated, based on the benchmark of 3 m² per person as a bare minimum.

Some of the concerns highlighted by NPMs and other monitoring mechanisms regarding overcrowding in recent years include the following:

- In Romania, the provisions of Order No. 2772/C/2017 setting out the minimum cell space[33] are not complied with in all detention facilities. Moreover, detention conditions differ from one penitentiary to another. Conditions can even differ widely within the same detention facility, as evidenced by monitoring work done by non-governmental organisations (NGOs) and the NPM.

- In Ireland, despite the fact that minimum cell space is not defined in law, the Irish Prison Service has accepted the recommendation by the Inspector of Prisons that single-occupancy cells should be at least 7 m² (and at least another 4 m² per prisoner if the cell contains more than one prisoner).[34] Bed capacity is now in line with the Inspector of Prison's recommendations in nine prisons.[35] Nevertheless, overcrowding still occurs. The UN Committee against Torture (CAT) recommended in 2017 that Ireland take measures to reduce overcrowding, especially among female prisoners.[36]

- In Italy, in its 2018 report to the Italian Parliament, the NPM confirmed its concerns about

29 Belgium, Federal Public Service Interior (IBZ), Royal Decree on minimal standards, the implementation and utilisation of confinements used by the police force (*Koninklijk besluit betreffende de minimumnormen, de inplanting en de aanwending van de door de politiediensten gebruikte opsluitingsplaatsen/Arrêté royal relatif aux normes minimales, à l'implantation et à l'usage des lieux de détention utilisés par les services de police*), 14 September 2007 (published in the Belgian official gazette on 16 October 2007).

30 Belgium, Directorate-General for Penitentiary Establishments (*Directoraat-Generaal Penitentiare Inrichtingen/Direction Générale des Etablissements Pétentiaires*), information received via email on 15 June 2018.

31 United Kingdom, Ministry of Justice, NOMS Agency Board (2012), pp. 39–40.

32 CPT (2016).

33 Romania, Ministry of Justice (*Ministerul Justiției*), Order of the Ministry of Justice No. 2772/C/2017 regarding the minimum standards on detention conditions for people deprived of liberty (*Ordinul Ministerului Justiției nr. 2772/C/2017 – aprobarea Normelor minime obligatorii privind condițiile de cazare a persoanelor private de libertate*), 18 October 2017.

34 Ireland, Inspector of Prisons (2010), para. 2.3; Ireland, Inspector of Prisons (2013), para. 2.6.

35 Ireland, Irish Prison Service (2016a).

36 UN, CAT (2017), para. 16(a).

overcrowding in Italian prisons, as in some detention facilities monitored by the NPM the number of detainees amounted to 150 % of prison capacity.[37]

- In Portugal, according to statistics from the General-Directorate of Reintegration and Prison Services (*Direção-Geral de Reinserção e Serviços Prisionais*, DGRSP), 28 out of the 48 prisons were overcrowded in 2016.[38]

- In Cyprus, a CPT visit in 2017 highlighted a serious overcrowding problem in one prison, particularly in a closed part of the prison. The occupancy of this closed part was 564, but the capacity was only 397. In contrast, the occupancy of the open part of the prison was 33 and the capacity was 106.[39] The CPT found that alternatives to detention are not sufficiently utilised in Cyprus. Moreover, lengthy remand periods, which can be the maximum sentence permitted for an offence, as a result of deficiencies in court processes, further aggravate the problem of overcrowding. This also infringes the principle of proportionality in remand detention. Furthermore, by virtue of a decision of the prison board, foreign nationals are barred from progression to semi-open and open prisons and for parole. This inequality of treatment generates considerable discontent among foreign inmates and leads to tension between foreign inmates and staff.[40]

ECtHR judgments on insufficient living space and overcrowding

The related issues of insufficient living space and overcrowding have been consistently raised by the ECtHR in its case law over the years, often in relation to violations of Article 3 of the ECHR (inhuman and degrading treatment). In some cases, its decisions have led to legal reforms at national level (e.g. in Hungary and Poland) or changes in the prison administration practices (e.g. in Italy).

- The ECtHR ruled against Belgium in 2017 in *Sylla and Nollomont v. Belgium*.[a] According to the ECtHR, Mr Sylla was detained in a shared cell of 9 m², together with two fellow inmates, while Mr. Nollomont was detained in a cell of 8.8 m² with one other prisoner. The ECtHR deemed such living conditions to be in violation of Article 3 of the ECHR (inhuman and degrading treatment), since Mr. Sylla had less than 3 m² of personal living space, while Mr Nollomont was also detained in conditions contrary to this provision. (In addition to a small living space, the sanitary conditions for Mr. Nollomont were very poor, he had very limited access to activities, and he was exposed to cigarette smoke.)
- In *Torreggiani and others v. Italy*, the ECtHR in 2013 ruled that the lack of individual space suffered by the three complainants while in detention (each of whom was allotted 3 m² of personal space in shared cells) represents a violation of the fundamental right to human dignity.[b] The court found that the applicants' living space did not conform with the standards acceptable under its case law. It pointed out that the standard recommended by the CPT in terms of living space in cells was 4 m² per person. The shortage of space to which the applicants had been subjected in Piacenza prison had been exacerbated by other conditions, such as a lack of hot water over long periods, and inadequate lighting and ventilation. All these shortcomings, although not in themselves inhuman or degrading, amounted to additional suffering. While there was no indication of any intention to humiliate or debase the applicants, the court considered that their conditions of detention had subjected them – in view of the length of their imprisonment – to hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. Article 3 of the ECHR had therefore been violated. Although the ruling did not lead to any changes at legislative level, Antigone, a prominent Italian association for the protection of prisoners' rights, reports that the ruling has, in practice, led to more prison administrations respecting the standards defined by the ECtHR.[c]
- On 10 March 2015, the ECtHR delivered a pilot judgment in *Varga and others v. Hungary*, resulting mainly from the detection of a structural problem of widespread overcrowding in Hungarian detention facilities. The ECtHR concluded that the limited personal space available to all six detainees in the case (the plaintiffs), aggravated by the lack of privacy when using the toilet, inadequate sleeping arrangements, insect infestation, poor ventilation and restrictions on showers or time spent away from their cells, had amounted to degrading treatment as per Article 3 of the ECHR.[d] As a result of the judgment, Hungary amended its Penitentiary Code,[e] and introduced a special type of mechanism for raising complaints concerning inhuman conditions of detention, effective from 1 January 2017.[f] According to the new rules, the prisoner and their attorney may lodge a complaint in writing against the conditions of detention that violate fundamental rights (addressed to the head of the detention facility). It must be investigated within 15 days, and upon a finding that the complaint was well-founded, the decision must contain measures to end the inhuman conditions.

37 Italy, Authority for the Protection of People who are Detained or Deprived of their Personal Freedom (2019).
38 *Observador* (2017).
39 Council of Europe, CPT (2018), para 73.
40 *Ibid.*, para. 101.

If the complaint is based on the lack of necessary facilities (e.g. living space, sanitary conditions) in the detention institution, the head of the institution must reach out to the head of the Hungarian Penitentiary System to transfer the complainant to another institution where adequate conditions are available to them.[g]

- In the pilot judgment *Rezmiveş and others v. Romania*,[h] the court ruled that Romania has to take measures to improve conditions of criminal detention. The court indicated that there was a steady increase of cases against Romania concerning conditions of detention, in particular overcrowding. To address those issues, Romania was required to reduce overcrowding (which was in many cases 2 m² per person) and improve material conditions of detention. The court recommended more often using alternatives to detention. In addition, Romania was required to introduce effective remedies available in cases of poor conditions of detention.

In *Orchowski v. Poland*[i] and *Sikorski v. Poland*[j] concerning detention conditions in Poland, the ECtHR recognised overcrowding as a systemic problem in Polish penitentiary units. The rulings strengthened the process of challenging overcrowding in Polish penitentiary units. It contributed to changes in the penal policy and more frequent use of measures other than detention, especially by introducing to Polish law the electronic surveillance of convicts. The process of limiting the effects of overcrowding was also assisted by Supreme Court rulings. In one of its judgments, the Supreme Court indicated that placement of a prisoner in a cell with a surface area less than the national standard of 3 m² per prisoner might be recognised as a violation of his/her personal rights, making the State liable for any damage suffered by a prisoner in such circumstances.[k] These measures resulted in a significant reduction in overcrowding between 2009 and 2015.[l] However, since December 2015, the population of Polish penitentiary units has been increasing due to changes in the penal policy, an increase in the number of pre-trial detainees, and a reduction of the number of paroles. In addition, prison authorities have decided to close several penitentiary units. As a result, as of 18 May 2018, the number of prisoners in relation to the overall capacity amounted to 92 %[m] (compared with 83 % of the prison capacity in December 2015). It should be noted, however, that unequal distribution of prisoners might be causing problems, as some facilities might be overcrowded, while others still have free spaces.

Sources: [a] *ECtHR, Sylla and Nollomont v. Belgium, Nos. 37768/13 and 36467/14, 16 May 2017*

[b] *ECtHR, Torreggiani and others v. Italy, No. 43517/09, 8 January 2013*

[c] *Scandurra and Miravalle (2018)*

[d] *ECtHR, Varga and others v. Hungary, No. 14097/12, 10 March 2015*

[e] *Hungary, Act CCXL of 2013 on the execution of criminal sanctions and measures, certain coercive measures and detention (2013. évi CCXL. törvény a büntetések, az intézkedések, egyes kényszerintézkedések és a szabálysértési elzárás végrehajtásáról), 1 January 2015*

[f] *Ibid., Art. 144/B*

[g] *Ibid., Art. 144/B(5)*

[h] *ECtHR, Rezmiveş and others v. Romania, Nos. 61467/12, 39516/13, 48231/13 and 68191/13, 25 April 2017*

[i] *ECtHR, Orchowski v. Poland, No. 17599/05, 22 October 2009*

[j] *ECtHR, Sikorski v. Poland, No. 17885/04, 22 October 2009*

[k] *Poland, Supreme Court (Sąd Najwyższy), II CSK 51/12, 26 September 2012*

[l] *While on 30 September 2009 the population of penitentiary units equalled 85,123 prisoners (102.4 % of the prisons system capacity), at the end of December 2015, it was at the level of only 70,836 prisoners (83 % of the prison system capacity)*

[m] *Poland, Central Board of the Prison Service (Centralny Zarząd Służby Więziennej) (2018a), p. 1*

Conclusion

The problem of overcrowding is a persistent issue in many EU Member States, even though detailed minimum standards and guidelines on prison cell space have been established at national, European and international levels.

Rules in some Member States stipulate 4 m² or less of floor space per prisoner, which, according to international standards applicable in Europe, should be the absolute minimum. A cell space of less than 3 m² per individual gives rise to a strong presumption of a violation of rules that prohibit torture and inhuman and degrading treatment. NPMs from many Member States observed overcrowding in violation of those rules and encountered inmates with less than 3 m² of floor space at their disposal.

2 Hygiene and sanitary conditions

This chapter looks at several key aspects (under the headings 'European and international standards', 'National standards' and 'Findings of monitoring bodies on the situation on the ground') related to the hygiene and sanitary conditions to be considered when assessing detention conditions. In particular, this chapter considers the general cleanliness of prisons/cells; access to shower/bathing facilities; access to toilets/sanitary facilities; and the privacy of sanitary facilities.

FRA's database on detention conditions

See FRA's online database of national standards, relevant international jurisprudence and reports by competent monitoring bodies concerning prison conditions for further information on hygiene and sanitary conditions.

Note on sources

FRA has conducted separate but related fieldwork research in eight EU Member States – on access to a lawyer and procedural rights in criminal and EAW proceedings – that addresses the themes of access to healthcare and protection from violence. However, this other research did not cover issues relating to cell space, hygiene and sanitary conditions, or time outside a cell. Because of this, this chapter is based solely on desk research carried out for the present study.

2.1. European and international standards

The European Prison Rules stipulate that prisons are to be properly maintained and kept clean at all times (Rule 19.1). Toiletries and cleaning products shall be provided (Rule 19.6) and prisoners should have access at any time to sanitary facilities that are hygienic and respect privacy (Rule 19.3).[41] Similar standards are included in the Nelson Mandela Rules (Rules 13, 14 a and b, 15 and 17) at the international level.[42]

Prisoners should have access to hot showers and bathing facilities daily where possible, and at least twice per week according to the European Prison Rules (Rule 19.4). According to CPT standards, adequate access to shower and bathing facilities shall be ensured for all detainees.[43] Rule 16 of the Nelson Mandela Rules stipulates that detainees should be given access to hot showers as "frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate".

Regarding access to toilets, CPT standards require cells to have a toilet and a washbasin as a minimum. Multiple-occupancy cell toilets should be fully partitioned and ensure privacy.[44] Prisoners must be able to use toilets located outside their cells at all times, including at night. In addition, prisoners must be provided with necessary personal hygiene products.[45]

The ECtHR has also repeatedly held that sanitary facilities shall be accessible and should be available to be used in a manner that respects the detainee's right to privacy (Article 8 of the ECHR). For a multiple-occupancy cell, a sanitary facility annex, separated by a partition, is not sufficient, as such facilities do not

41 Council of Europe, Committee of Ministers (2006a).
42 Nelson Mandela Rules (2015).
43 Council of Europe, CPT (2001).
44 Council of Europe, CPT (1992), para. 49; European Prison Rules, Rule 19.3; Council of Europe, CPT (2001).
45 Council of Europe, CPT (2015a), Appendix.

offer adequate privacy.[46] The ECtHR has also ruled that national authorities must maintain good hygiene conditions and apply effective means to ensure standards of hygiene, such as disinfection and fumigation, as well as the provision of hygiene and sanitary products to detainees.[47]

2.2. National standards

This section focuses on (1) access to shower/bathing facilities; and (2) access to toilets/sanitary facilities and the privacy of sanitary facilities.

2.2.1. Access to shower/bathing facilities

Access to showers and hot water is regulated in 26 EU Member States. Two Member States (Germany and Denmark) have no specific regulation on access to showers in place. In Belgium,[48] standards are applicable only to pre-trial detention. However, even in Member States that have established the right of access to regular showers in their national legislation, the standards often do not meet the required frequency specified by Rule 19.4 of the European Prison Rules.[49] These Member States include Austria (the Code of Conduct for Detention ensures access to showers for detainees once per week for pre-trial detention); Estonia; Ireland; Lithuania; Luxembourg; Latvia; Malta; Poland (males have access once a week; women have access twice a week); and Slovenia.

In addition, while most Member States have legislation in place ensuring access to hot showers, such legislation does not always specify the frequency of the access that should be provided (e.g. in Belgium, Croatia, Cyprus, Italy, the Netherlands, Romania, Spain, Sweden and the United Kingdom). In contrast, some EU Member States have provisions in national legislation that exceed the minimum requirements of frequency as established by the European Prison Rules, and stipulate that detainees should have access to hot showers at least three or four times a week, or even on a daily basis (e.g. Finland, France, Greece, Hungary and Portugal).

Some EU Member States pay attention to specific groups, and their national legislation contains specific provisions ensuring more frequent access to hot showers for women, sick prisoners or prisoners who carry out physically demanding work. In Hungary, female prisoners are also entitled to use hot water between the daily showers in a sink located in the cell.[50] In Slovakia, women are entitled to shower on a daily basis. If there are specific needs or the character of work assigned requires it, prisoners are allowed to shower as needed.[51] Similarly, in Poland women should be allowed to bathe twice a week (in comparison with once a week for men).[52] Moreover, in Poland, prisoners who are employed in work that may be considered unsanitary have the right to more frequent baths.[53] Baths for prisoners who are sick should be organised according to physicians' instructions.

2.2.2. Access to toilets/sanitary facilities and privacy of sanitary facilities

FRA's research findings show that 24 EU Member States (all but Belgium, Czechia, Denmark and Germany) have laws or rules and regulations in place establishing at least the general minimum national standards with regard to access to sanitary facilities – in particular to toilets.

Two EU Member States regulate access to adequate sanitary facilities and hygienic conditions only partially in law. The Belgian Royal Decree Confinement regulates access to sanitary facilities for pre-trial detention and prescribes that each police cell shall include a toilet and that detainees have the right to have access

46 ECtHR, *Kalashnikov v. Russia*, No. 47095/99, 15 July 2002, para. 99.

47 ECtHR, *Muršić v. Croatia*, No. 7334/13, 20 October 2016, paras. 48, 53, 55, 59, 63-64 and 140; see also, ECtHR, *Rezmives and others v. Romania*, Nos. 61467/12, 39516/13, 48231/13 and 68191/13, 25 April 2017, paras. 106-108.

48 Belgium, Royal Decree on minimal standards, the implantation and utilisation of the confinements used by the police force (*Koninklijk besluit van 14 september 2007 betreffende de minimumnormen, de inplanting en de aanwending van de door de politiediensten gebruikte opsluitingsplaatsen* / *Arrêté royal de 14 septembere 2007 relatif aux normes minimales, à l'implantation et à l'usage des lieux de détention utilisés par les services de police*), 14 September 2007, Art. 5.

49 Council of Europe, Committee of Ministers (2006a).

50 Hungary, Decree of the Minister of Justice No. 16/2014 on the detailed rules on the execution of imprisonment, detention, pre-trial detention, and detention as a substitute for monetary fines (*16/2014. (XII. 19.) IM rendelet a szabadságvesztés, az elzárás, az előzetes letartóztatás és a rendbírság helyébe lépő elzárás végrehajtásának részletes szabályairól)*, 1 January 2015, Art. 132.

51 Slovakia, Act No. 221/2006 of 15 March 2006 on execution of detention (Zákon č. 221/2006 z 15. marca 2006 o výkone väzby), 15 March 2006, para. 16(6).

52 For more information about gender issues in detention and other legal situations, see EIGE (2016).

53 Poland, Minister of Justice, Regulation on organisation and order of pre-trial detention (*Rozporządzenie Ministra Sprawiedliwości w sprawie regulaminu organizacyjno-porządkowego wykonywania tymczasowego aresztowania*), 22 December 2016.

to all basic needs, including sanitation.[54] However, no standard on access to sanitary facilities in prisons is prescribed by law in Belgium. In Czechia, access to toilets and the requirement to partition sanitary facilities are regulated by law only for prisons, but not for pre-trial detention.

Denmark and Germany[55] do not explicitly regulate the issues of access to sanitary facilities in their national legislation, but they do follow certain minimum conditions. For example, in Germany, these conditions were stipulated by the Federal Constitutional Court Ruling that held that toilets in multi-person cells must be completely separate and have extra ventilation.[56] For single cells, the court denied the need for a separated toilet. However, for non-separated toilets in single cells, the court declared that prison staff must respect the privacy of inmates by knocking on the cell door before entering.

2.3. Findings of monitoring bodies on the situation on the ground

NPMs highlighted recurring problems with all issues that should be regulated by Member States, including the general cleanliness of prisons/cells; access to shower/bathing facilities; access to toilets/sanitary facilities; and the privacy of sanitary facilities.

2.3.1. General cleanliness of prisons/cells

- Several NPMs – and in some cases also the CPT – highlight the lack of cleanliness of sanitary facilities as an issue (e.g. in Cyprus, Lithuania, Luxembourg, and Slovenia).

- The main issues include rubbish in the corner of rooms, dirty facilities, broken water-drainage mechanisms, unclean toilet bowls and unpleasant smells. NPMs recommend the regular cleaning and disinfection of sanitary facilities, as is also set out by national legislation.

2.3.2. Access to shower/bathing facilities

- Detainees' access to showers remains insufficient in practice. FRA's findings show that NPMs in several EU Member States (including Austria, Belgium, Italy, Latvia and Luxembourg) often highlight the challenge of ensuring frequent and continued access to hot water and access to showers at least twice a week.

- Improvements based on recent NPM recommendations can be observed in some Member States. For example, in Czechia, at the recommendation of the Public Defender of Rights Ombudsman,[57] prisoners have reportedly gained access to hot showers twice a week. The duty of prisons to allow prisoners to take a hot shower at least twice a week has been incorporated into the Rules of Procedure.[58]

- In its 2017 report, the NPM in Poland indicates that, in most of the units visited, prisoners have the option to take baths twice a week or even every day.[59] This is the result of an instruction by the general director of the prison service ordering all regional directors to take action that allows the prison service to guarantee every prisoner two baths per week.[60]

2.3.3. Access to toilets/sanitary facilities (particularly the issue of the right to privacy)

- The insufficient protection of privacy with regard to sanitary facilities is repeatedly highlighted by NPMs. They indicate serious problems regarding the proper separation of sanitary areas in at least 14 EU Member States (including Austria, Belgium, Bulgaria, Cyprus, Estonia, France, Germany, Greece, Lithuania, Hungary, Italy, Latvia, Poland and Spain).

- For example, in Bulgaria, toilets were found placed in the cells, between two beds, with no wall or screen separating them from the rest of the cell.

- Not all prisons provide for in-cell sanitation (namely in Cyprus, Romania, Spain, Sweden and the United Kingdom) and the toilets are located adjacent to the cells. In such cases, persons deprived of liberty are dependent on the staff to allow them to

54 Belgium, Royal Decree on minimal standards, the implantation and utilisation of the confinements used by the police force (*Koninklijk besluit van 14 september 2007 betreffende de minimumnormen, de inplanting en de aanwending van de door de politiediensten gebruikte opsluitingsplaatsen* / *Arrêté royal de 14 septembere 2007 relatif aux normes minimales, à l'implantation et à l'usage des lieux de détention utilisés par les services de police*), 14 September 2007, Art. 5.

55 The German Prison Act states that cells should be designed "in a manner meeting their purpose". Germany, Prison Act (*Strafvollzugsgesetz*), 16 March 1976, Section 144.

56 Gemany, Federal Constitutional Court (*Bundesverfassungsgericht*) (2011), 1 BVR 409/09, 22 February 2011.

57 Czechia, Public Defender of Rights Ombudsman (2016).

58 Czechia, Rules of Procedure of the Exercise of Custody (*vyhláška, kterou se vydává řád výkonu vazby*), Regulation No. 104/1994, 3.6.1994.

59 Poland, Commissioner for Human Rights (2017), p. 32.

60 Wierzbicki (2015).

access them. The CPT and NPMs recommend that all persons deprived of liberty be guaranteed access to a toilet at all times, day or night,[61] in accordance with the relevant international and European standards.

- In Ireland, in response to high numbers of cells lacking sanitary facilities in the past, forcing prisoners to 'slop out' each morning (e.g. by emptying a chamber pot, bucket or chemical toilet), the Irish Prison Service took action. In 2016, it stated that 98 % of all prisoners now have in-cell sanitation facilities.[62] The service itself has accepted that the "single most pressing objective of estate modernisation in recent times has been the need to ensure appropriate in-cell sanitation throughout the estate, and to cease the practice of 'slopping out' in prisons without in-cell toilets".[63] The service is developing plans for new blocks in Limerick and Portlaoise prisons, which will eliminate the practice of slopping out (i.e. emptying human waste in prison when flushable toilets are not available in a cell).[64] The UN CAT recommends that these plans are implemented as a priority.[65]

Conclusion

Sanitary and hygiene conditions remain at the centre of the monitoring bodies' interest. Clean prisons with well-maintained sanitation facilities are integral to the fundamental rights of prisoners, as stipulated in the European Prison Rules and the Nelson Mandela Rules. To this end, most Member States have legislation in place regarding access to adequate shower/bathing facilities, access to toilets/sanitary facilities and the privacy of sanitary facilities. However, monitoring bodies find a wide range of serious issues in many Member States. Moreover, the ECtHR continues to encounter cases of poor hygiene and sanitation in prisons in breach of Article 3 (inhuman and degrading treatment) and Article 8 (right to privacy) of the ECHR.

However, the situation in prison facilities is gradually improving in response to the NPMs' recommendations, findings show.

ECtHR judgments on access to toilets

The ECtHR highlights the lack of privacy with respect to sanitary facilities as an issue of both inhumane/degrading treatment (Article 3 of the ECHR) and of privacy (Article 8 of the ECHR). It also highlights the importance of ensuring privacy with regard to sanitary facilities and the proper structural separation of the toilet area, in particular.

- For example, the ECtHR considered the detention conditions complained about by an applicant who alleged a violation of Article 3 of the ECHR (inhuman and degrading treatment) in a 2018 case, *Danilczuk v. Cyprus*. The ECtHR referred to the reports of both the CPT and the ombudsman when assessing the detention conditions. Both of these actors raised concerns about the general problems of overcrowding in prisons and access to toilets at night. In particular, regarding sanitary conditions in prisons, the ECtHR considered that the lack of access for inmates to toilets during the night, when cells are locked, and thus their delayed access to toilets, amounted to treatment that is prohibited by Article 3 of the ECHR.[a]
- In *Sylla and Nollomont v. Belgium*,[b] the ECtHR deemed the combination of overcrowding (lack of personal living space of both applicants) and lack of privacy with regard to sanitary facilities, as toilets were located in the cell and were separated by only a wooden partition, providing inadequate privacy, as satisfying the minimum threshold for a violation of Article 3 of the ECHR.[c]
- In 2015, in *Szafranski v. Poland*,[d] the ECtHR found the detention of a prisoner in a cell with a sanitary annex that was not fully partitioned to be a violation of Article 8 of the ECHR. The ECtHR stated that "the domestic authorities have a positive obligation to provide access to sanitary facilities which are separated from the rest of the prison cell in a way which ensures a minimum of privacy for the inmates".

Sources: [a] *ECtHR, Danilczuk v. Cyprus, No. 21318/12, 3 April 2018, paras. 57 and 59*
[b] *ECtHR, Sylla and Nollomont v. Belgium, Nos. 37768/13 and 36467/14, 16 May 2017*
[c] *Ibid., paras. 9, 30 and 41*
[d] *ECtHR, Szafrański v. Poland, No. 17249/12, 15 December 2015*

61 See, for example, Council of Europe, CPT (2016) and Council of Europe, CPT (2018).
62 Ireland, Irish Prison Service (2016b).
63 Ireland, Irish Prison Service (2016c), p. 21.
64 *Ibid.*
65 UN, CAT (2017), para. 16(e).

3 Time spent outside cell and outdoors

Time spent outside cells and outdoor exercise, as well as contact with the outside world, are key factors that must be considered when assessing living conditions in detention facilities. This chapter examines these issues under the headings 'European and international standards', 'National standards' and 'Findings of monitoring bodies on the situation on the ground'.

FRA's database on detention conditions

See FRA's online database of national standards, relevant international jurisprudence and reports by competent monitoring bodies concerning prison conditions for further information on time spent outside cells and outdoors.

Note on sources

FRA has conducted separate but related fieldwork research in eight EU Member States – on access to a lawyer and procedural rights in criminal and EAW proceedings – that addresses the themes of access to healthcare and protection from violence. However, this other research did not cover issues relating to cell space, hygiene and sanitary conditions, or time outside a cell. Because of this, this chapter is based solely on desk research carried out for the present study.

3.1. European and international standards

In examining the freedom of movement outside cells, the ECtHR uses the criteria applied by the CPT.[66] The CPT stipulates that prisoners must have one hour of exercise in the open air per day and spacious and suitably equipped exercise yards are provided.[67] Prisoners should be able to exercise for at least one hour per day in the open air also according to both the European Prison Rules and the Nelson Mandela Rules[68] (Rule 27 and Rule 23, respectively). Accordingly, prison authorities should make organised and recreational activities available by providing appropriate facilities and equipment (European Prison Rule 27 and Nelson Mandela Rule 23).

In addition to at least one hour in the open air, the CPT defines as a rule that all prisoners shall spend a minimum of eight hours a day outside their cells partaking in purposeful activities, such as education, vocational activities or recreation.[69] More vaguely, the European Prison Rules stipulate that all prisoners shall be allowed to spend as many hours a day outside their cells in work, education or exercise as "are necessary for an adequate level of human and social interaction" (Rule 25).[70]

66 ECtHR, *Muršić v. Croatia* [GC], No. 7334/13, 20 October 2016, para. 133; ECtHR, *Tomov and others v. Russia*, Nos. 18255/10, 63058/10, 10270/11, 73227/11, 56201/13 and 41234/16, 9 April 2019, para. 128; ECtHR, *Clasens v. Belgium*, No. 26564/16, 28 May 2019, para. 35.
67 Council of Europe, CPT (1992), para. 48; Council of Europe, CPT (2015a), Appendix; Council of Europe, CPT (2017a), paras. 58 and 68.
68 Nelson Mandela Rules (2015).
69 Council of Europe, CPT (1992), para. 47; Council of Europe CPT (2015a), Appendix.
70 Council of Europe, Committee of Ministers (2006c), p. 55.

3.2. National standards

The vast majority of EU Member States stipulate the minimum amount of time that prisoners must be allowed to spend outdoors in the open air. This is a minimum of one hour per day in at least 24 Member States – in line with both the European Prison Rules and the Nelson Mandela Rules. Some Member States have more liberal minimum standards, of two hours or more (e.g. Cyprus, Croatia, Portugal, Slovenia and Spain). The time that prisoners can spend outside their cells also often depends on the prison regime (e.g. open, semi-open or closed) – with semi-open and open prisons allowing for much more time spent outdoors and outside cells.

Some Member States allow for derogation from this minimum standard, however – for example, in the case of bad weather (e.g. in Austria, Germany and the United Kingdom). This is not the case in all Member States though; for example, in Slovakia, prisoners must be allowed to go for a walk even in bad weather conditions.[71]

The amount of time that prisoners can spend outside their cells (in a common area) does not seem to be specifically regulated in about half of the Member States. Moreover, in the Member States that do regulate this, the minimum amount of time varies across prisons within many Member States, in line with the particular prison's rules and regime.

Some sports, recreational and educational facilities are available in all Member States, as reported by Member States. However, the quality of such facilities and the extent to which they are available differs widely across Member States, as well as across the various detention regimes within the Member States. Access to facilities can also differ for men and women; for example, women in the Panevėžys correctional home in Lithuania do not have access to sports facilities.[72]

Table 2 gives an overview of the amount of time spent outside cells, as stipulated in national rules across the 28 EU Member States.

71 Slovakia, Regulation No. 437/2006 of the Ministry of Justice of the Slovak Republic on detention order, 26 June 2006 (*Vyhláška Ministerstva spravodlivosti Slovenskej republiky 437/2006 z 26. Júna 2006, ktorou sa vydáva Poriadok výkonu väzby*), para. 20.

72 Lithuania, Lithuanian Seimas Ombudsman, Report regarding the human rights situation of vulnerable groups in imprisonment institutions: Lukiškės interrogation isolator-prison, in a prison-prison, a juvenile interrogation isolator – correction home in Kaunas, Panevežys correction home (*Ataskaita dėl pažeidžiamų grupių žmogaus teisių padėties įkalinimo įstaigose: Lukiškių tardymo izoliatoriuje-kalėjime, Kauno nepilnamečių tardymo izoliatoriuje-pataisos namuose ir Panevėžio pataisos namuose*), No. 2015/1-99, 20 November 2015.

Table 2: National standards for amount of time spent by prisoners outside their cells

Member State	Time spent outdoors	Time spent indoors in a common area (outside cell)	Are sports/recreational/educational facilities available?
AT	One hour per day (for prisoners who do not work outside).	No national standard	Yes
BE	Every detainee has the right to a daily walk or other recreational activity of at least one hour in the open air.	Every detainee has the right to physical exercise and sport for at least two hours a week and the right to participate in the work available in prison. This derives from the Basic Law, which provides for a legal minimum for walking, sports and visits.	Yes
BG	At least one hour per day (Art. 86, para. 1 of the Implementation of Penal Sanctions and Detention in Custody Act)	Not defined – depends on the prison regime.	Yes
CY	Nearly 10 hours per day.	The central prison has an open-door regime allowing inmates to be out of their cells from 7.00 until 22.00 on weekdays	Yes
CZ	One hour per day	Not defined – depends on the prison regime	Yes
DE	One hour per day (for prisoners who do not work outside)	No national standard	Yes
DK	Minimum of one hour a day	A convict who serves a sentence in prison has wide access to common areas when not confined in cells from 21.00 to 08.00.	Yes
EE	Minimum one hour per day	Minimum four hours per day (weekly average)	Yes
EL	At least one hour per day	Time out of cell between 08.00 am and 12.00 pm, and in the afternoon, between 15.00 pm and half an hour before sunset.	Yes
ES	Differs depending on the regime (e.g. open, semi-open or closed). For closed regimes, four hours per day can be spent in the courtyard.	Differs depending on the regime	Yes
FI	"Minimum of one hour per day"; depending on the prison regime.	Recreational activities should not exceed 8 hours per day, and 35 hours per week.	Yes
FR	One hour per day	Rules relating to movement within detention establishments vary according to the type of establishment	Yes
HR	Minimum of two hours a day	No national standard	Yes
HU	At least one hour per day	No national standard	Yes
IE	Information not available.	Two hours outside cell	Yes
IT	For adults under restricted regime: 2 hours per day For children: they are outdoors during the day and they are in cells for the night and after lunch.	For adults: four hours outside cell For minors: they are engaged for at least 4 hours per day in outdoor and training activities	Yes

LT	Prisoners of light group – 4 hours per day; of the ordinary group – 3 hours per day; and of the disciplinary group – 2 hours per day	The time for leisure time has to be indicated in the daily agenda, which is usually set by the head of a particular detention institution.	Yes
LU	One hour per day	Regime A – confinement to cell for 19-20 hours; regime B – detainees can spend the day time circulating freely in their units	Yes
LV	Not less than one hour per day	No national standard – depends on regime and internal prison rules	Yes
MT	Minimum one hour per day, if weather permits.	From 07.45 hrs to 12.30 hrs and from 14.00 hrs to 20.30 hrs	Yes
NL	Minimum of 18 hours a week	Between 18-63 hours a week of activities	Yes
PL	One hour per day	The frequency of such access depends on the unit	Yes
PT	Two hours per day	Director of the prison establishment to establish the time per day/week that prisoners may spend outside their cells. There are specific standards depending on detention regime	Yes
RO	Minimum of one hour per day	The frequency of such access depends on the regime.	Information not available.
SE	At least an hour every day	No national standard – depends on prison regime	Yes
SI	At least two hours of outdoors recreation daily	No national standard	Yes
SK	At least one hour	No national standard	Yes
UK	At least one hour per day (England and Wales, Scotland and Northern Ireland)	Time spent indoors varies depending on the establishment, and on the availability of staff and constructive activities	Yes

Source: FRA, 2019

3.3. Findings of monitoring bodies on the situation on the ground

In practice, several Member States do not seem to meet the standard established by the CPT of a minimum of 8 hours spent by detainees outside their cells participating in purposeful activities, such as education, vocational activities and recreation, according to the findings of monitoring bodies on the amount of time spent out of cells. It is not unusual for prisoners to spend 22 or even 23 hours a day inside their cells in some Member States. This gives rise to concerns that there is a very serious issue. In this respect, monitoring bodies have made strong recommendations in several Member States.

- Austria: the NPM recommended in 2016 that lock-up times that amount to 23 hours are intolerable and should urgently be shortened.[73]
- Cyprus: time out of cells and purposeful activities were described by the CTP in 2018 as "limited", leading the CPT to conclude that the material conditions were "austere" and "impoverished" to the extent that they cannot be seen as providing the right therapeutic environment for those prisoners who suffer from mental health issues.[74]
- Latvia: the CPT called upon the Latvian authorities in 2016 to take the necessary steps at Daugavgrīva and Rīga central prisons to devise and implement a comprehensive regime of out-of-cell activities (including group association activities) for all prisoners. The aim should be to ensure that all prisoners are able to spend a reasonable part of the

73 Austria, Austrian Ombudsman Board (2017), p. 119.
74 Council of Europe, CPT (2018).

day (i.e. eight hours or more) outside their cells engaged in purposeful activities of a varied nature (work, preferably with a vocational value; education; sport; recreation/association).

- United Kingdom (England and Wales): while there are legal provisions with respect to time spent in the open air and physical education, time spent out of cells is not regulated by any legal instrument. In practice, the HM Prison Inspectorate found in 2017 that "in local prisons 31 % of prisoners report being locked in their cells for at least 22 hours a day, rising to 37 % at young adult prisons (holding prisoners aged 18–21)."[75]

Conclusion

Time spent outside cells was identified by the ECtHR as one of the "compensating" factors for the overcrowding of cells. Monitoring bodies stress the importance of outside and inside activities. Most Member States have rules concerning the amount of time spent outdoors, which is usually a minimum of one hour a day. However, Member States do not always regulate the amount of time spent indoors, outside cells. All Member States have indoor sports facilities, common rooms or libraries; however, access to them often depends on various factors, such as the particular prison regime. NPMs recommend reducing lock-up times, as 23 hours a day is considered intolerable.

75 United Kingdom, HM Inspectorate of Prisons (2017), p. 3.

4 Access to healthcare

Access to healthcare is another important element of detention conditions. This chapter looks at European and international standards, national standards, and the findings of monitoring bodies on the situation on the ground with regard to access to healthcare. In addition, this chapter reports on some findings from semi-structured expert interviews conducted in eight Member States with staff members of NPMs or other organisations engaged in monitoring detention facilities.

FRA's database on detention conditions

See FRA's online database of national standards, relevant international jurisprudence and reports by competent monitoring bodies concerning prison conditions for further information on access to healthcare.

4.1. European and international standards

In principle, the ECtHR stipulates that prisoners must have access to the medical assistance they need in a timely manner.[76] Medical treatment within prison facilities must be comparable to the quality of treatment provided to the entire population.[77] Authorities must ensure that diagnosis and care are prompt and accurate[78] and that, if necessitated by the nature of a medical condition, supervision is regular and involves a comprehensive therapeutic strategy aimed at ensuring the detainee's recovery or at least preventing their condition from worsening.[79] Detainees are entitled to the medical care from the moment of the deprivation of their liberty, meaning from the moment of arrest, throughout the whole period of detention on remand and then after the trial.

The CPT, in particular, identifies access to a doctor upon arrest as one of the three rights for persons detained by police – together with access to a lawyer and the right to inform another person of the arrest – that protect against unlawful treatment.[80] A medical examination should be performed at the beginning of any period in custody.[81] In addition, the CPT recommends that "a doctor should always be called without delay if a person requests a medical examination; police officers should not seek to filter such requests." Furthermore, the right of access to a doctor should include the right of a person in custody to be examined, if the person concerned so wishes, by a doctor of their own choice (in addition to any medical examination carried out by a doctor called by the police).[82] Detainees should be informed of this right and should be given any results of the medical examination and the doctor's conclusions, which must be formally re-

76 ECtHR, *Kudła v. Poland*, No. 30210/96, 26 October 2000, para. 94; ECtHR, *Nogin v. Russia*, No. 58530/08, 15 January 2015, para. 83.
77 ECtHR, *Topekhin v. Russia*, No. 78774/13, 10 May 2016, para. 69.
78 *Ibid.*, para. 69; ECtHR, *Nogin v. Russia*, No. 58530/08, 15 January 2015, para. 84.
79 ECtHR, *Pitalev v. Russia*, No. 34393/03, 30 July 2009; ECtHR, *Vladimir Vasilyev v. Russia*, No. 28370/05, 10 January 2012.
80 Council of Europe, CPT (2002), paras. 40 and 42.
81 In the EU, Directive 2012/13/EU on the right to information (Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, Art. 4.2 (c), Annex I, Indicative model Letter of Rights) further provides that persons deprived of their liberty should be informed of their right of access to urgent medical assistance, if they so need, in accordance with national law, which is also spelled out in the model letter of rights to be used in European Arrest Warrant proceedings and given to persons upon arrest or detention (contained in the annex to the directive).
82 Council of Europe, CPT (1992), para. 36.

corded.[83] All medical examinations of persons in police custody must be conducted out of the hearing of law enforcement officials and, unless the doctor concerned requests otherwise in a particular case, out of the sight of such officials. It is also important that persons who are released from police custody without being brought before a judge have the right to directly request a medical examination/certificate from a recognised forensic doctor.[84]

Furthermore, the CPT stipulates that prisoners must be entitled to the same level of medical care as persons living in the community. [85] This means that prisoners should have access to a doctor without delay after their admission and at any time on demand, regardless of their prisoner status. Moreover, a prison's healthcare service should be able to at least provide regular outpatient consultations and emergency treatment. Psychiatric care and preventive healthcare must also be provided for prisoners, and privacy should be ensured, which is not always the case (see Section 4.3, 'Privacy during medical examinations').Patients' consent and medical confidentiality must be upheld. In addition, authorities must pay special attention to the needs of particularly vulnerable prisoners. Any decisions taken by doctors should be governed only by medical criteria.

The European Prison Rules reflect the above CPT standards. The Nelson Mandela Rules contain a section on healthcare (Rules 24 to 35),[86] establishing minimum standards, such as the provision of the same standards of healthcare as those available in the community, emphasising the need to protect both physical and mental health.

The ECtHR applies a fair degree of flexibility when it comes to the required standards of healthcare, deciding on a case-by-case basis.[87] It takes into account elements such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the person concerned.[88] States do not have a general obligation to release a detainee on health grounds apart from in exceptional cases.[89] However, a lack of appropriate medical treatment may give rise to an issue under Article 3 of the ECHR, even if the applicant's state of health does not require their immediate release.

4.2. National standards

All EU Member States have legal provisions to ensure that detainees have access to healthcare. In general, the level of healthcare provided in prison should be the same as that provided by the public health system in a given state. This requirement is either spelled-out in law (in the vast majority of Member States) or recommended by the NPMs (e.g. in Austria[90] and Bulgaria[91]). In all Member States, care is provided in detention facilities and the right to choose an outside doctor is limited, with the possibility of transfer in an emergency or when more specialised care is needed.

All Member States have requirements in place that stipulate a person arriving at a facility must be examined. However, the rules and practice may vary in terms of how promptly the initial examination takes place. For example, prison standards in Ireland explicitly state that all prisoners are to be medically assessed upon reception into prison, which will involve a clinical assessment within the first 24 hours.[92] This 24-hour requirement seems to be prevalent in most Member States; however, in Hungary, all prisoners have to go through a general medical check-up within 72 hours of their reception.[93]

In most Member States, healthcare in pre-trial facilities is governed by the same rules as in post-trial facilities; however, there might be some differences. For example, in Austria, dental care is explicitly foreseen during imprisonment after conviction but not mentioned in the rules governing pre-trial detention.[94] There are no specific provisions in law in Belgium regarding pre-trial detention and it relies on the Belgian Constitution.

Some Member States have clearly defined standards in place regarding how soon after initial imprisonment

83 *Ibid.*, paras. 37–38.
84 Council of Europe, CPT (2002).
85 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT standards, *Extract from the 3rd General Report [CPT/Inf (93) 12],* CPT/Inf/E (2002) 1 – Rev. 2015, Strasbourg, January 2015, para. 31, p. 38.
86 Nelson Mandela Rules (2015).
87 ECtHR, *Topekhin v. Russia*, No. 78774/13, 10 May 2016, para. 70; ECtHR, *Nogin v. Russia*, No. 58530/08, 15 January 2015, para. 85.
88 See, for example, ECtHR, *Nogin v. Russia*, No. 58530/08, 15 January 2015, para. 81.
89 ECtHR, *Papon v. France* (No. 1), No. 64666/01, 7 June 2001.
90 Austria, Austrian Ombudsman Board (2016), p. 90.
91 Bulgaria, Ombudsman of the Republic of Bulgaria (2018), pp. 21-22.
92 Ireland, Irish Prison Service (2011).
93 Hungary, Decree of the Minister of Justice No. 8/2014 on access to healthcare to prisoners in detention facilities (*8/2014. (XII. 12) IM rendelet a büntetés-végrehajtási intézetekben fogvatartott elítéltek és egyéb jogcímen fogvatartottak egészségügyi ellátásáról*), 1 January 2015, Art. 72 (5).
94 Austria, Penal Code (*Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz*), BGBl. Nr. 144/1969, 26 March 1969, § 73; Austria, Code of Conduct for Detention (*Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung*), BGBl. II Nr. 128/1999, 22 December 1995, § 10.

prisoners must have access to healthcare, while others do not specify. For example, the national standard in Bulgaria is that prisoners who have requested a medical examination must have access to and be seen by a doctor within 24 hours. Prisoners with a high temperature, who have experienced trauma or have any other emergency condition, must be seen by a doctor immediately at any time.[95]

The vast majority of Member States have various special rules relating to the provision of specialist care – for example, for long-term diseases, sick and elderly prisoners or young prisoners, the mentally ill, drug-addicted prisoners and pregnant women. For example, in Czechia, there are crisis departments in prisons for prisoners who experience sudden mental crises.[96] Moreover, in Cyprus a block was established especially to accommodate prisoners with mental health issues; however, the CPT has criticised the material conditions of this block.[97]

Some Member States also have special programmes in place for prisoners addicted to drugs. For example, in Greece,[98] France[99] and Poland,[100] prisoners with addictions, mental disabilities or physical disabilities requiring specialist treatment, in particular psychological care, medical care or rehabilitation, can serve their sentences in so-called therapeutic systems. The execution of a prison sentence must be adapted to the prisoner's needs in terms of medical treatment, hygiene and sanitation. Finally, convicted persons who require specialist treatment should not be transferred to another less appropriate prison regime. The idea of a therapeutic regime is to guarantee that inmates are provided with psychological, medical and physician care.[101]

There are special rules regarding pregnant women in some Member States. For example, in Hungary pregnant women should be transferred to a hospital upon discovering their pregnancies, to conduct a check on the mother and the child.[102] After such a check, either the woman is sent back to prison or her imprisonment is suspended. If the pregnant woman's sentence is not suspended, four weeks prior to the expected date of birth, the mother is transferred to hospital.[103] In Ireland, pregnant prisoners must be allowed to give birth outside the prison.[104] In Italy, in female detention wings, specialist medical care must be provided for pregnant women and new mothers.

4.3. Findings of monitoring bodies on the situation on the ground

Problems arise in practice when it comes to detainees exercising their rights to access healthcare in a number of areas, as confirmed by recent reports by monitoring bodies and official data. This is particularly the case in relation to the promptness of access to a medical examination upon arrest and privacy during medical examinations. A lack of medical staff in detention facilities was also highlighted as an issue by NPMs in several countries. Some of these issues surrounding access to healthcare in practice were also raised in the interviews with monitoring bodies conducted for the FRA research *Rights in practice: access to a lawyer and procedural rights in criminal and European Arrest Warrant proceedings*.[105] These findings will be referred to throughout this section.

4.3.1. Prompt access to a medical examination upon arrest

The NPMs from Finland and Lithuania emphasised that sometimes people either are not medically examined at all or are examined after a considerable delay. They recommend that a doctor should see a detainee no more than 24 hours after arrest, noting that delays often occur in practice when a person is detained during a weekend.[106]

95 Bulgaria, Execution of Penalties and Detention in Custody Act (*Закон за изпълнение на наказанията и задържането под стража*), 3 April 2009, Art. 143.
96 Czechia, Rules of Procedure of the Exercise of the Punishment of the Deprivation of Liberty (*vyhláška, kterou se vydává řád výkonu trestu odnětí svobody*), Regulation No. 345/1999, 21.12.1999, para. 23, section 5.
97 Council of Europe, CPT (2018).
98 Greece, Law No. 4139/2013 on addictive substances (*Νόμος Περί Εξαρτησιογόνων Ουσιών*), (OG A 74/20.03.2013), Art. 51.
99 France, Ministry of Justice and Ministry for Solidarity and Health (2019), p. 92 and p. 268.
100 Poland, Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), 6 June 1997, Art. 96, item 652.
101 *Ibid.*, Art. 97.
102 Hungary, Decree of the Minister of Justice No. 8/2014 on access to healthcare to prisoners in detention facilities (*8/2014. (XII. 12) IM rendelet a büntetés-végrehajtási intézetekben fogvatartott elítéltek és egyéb jogcímen fogvatartottak egészségügyi ellátásáról*), 1 January 2015, Art. 20.
103 *Ibid.*, Art. 22 (1).
104 Ireland, Prison Rules 2007, SI No. 252/2007, 29 May 2007, Rule 33 (2).
105 FRA (2019).
106 Finland, Parliamentary Ombudsman of Finland (2017); Lithuania, Lithuanian Seimas Ombudsman (2018).

Medical examination upon arrest

Medical examination upon arrest is seen as optional in some countries, according to the findings of FRA's research in eight Member States published in the report *Rights in practice: access to a lawyer and procedural rights in criminal and European Arrest Warrant proceedings*.

For example, a representative from the NPM in Austria stated that:

"So all detained [at the police]: no, clearly no. This is partly because ex officio doctors are hardly available in certain rural areas. Then it is because the decision whether an ex officio doctor is consulted at all is finally taken by the police. When he says 'He has nothing, he is healthy', then there will be no medical doctor. If there are obvious injuries or if he says that the needs certain medications, then there will be a doctor." (Member of the NPM, Austria)

In Denmark, an interviewee also confirmed that:

"I know that they are not [examined by a doctor]. The reason is probably that the Danish Medical Association holds the position that examinations should be optional. The position in the Prison and Probation Service is that they are offered. But that is not always done [...]. The nurse gets in contact with most people, and if there is a health issue, they will typically agree on a time with the doctor."
(Member of the NPM, Denmark)

Findings in France and the Netherlands indicate that defendants are not as a rule examined by a doctor, but that all defendants are asked if they need any medical assistance. In the Netherlands, there are guidelines and checklists available to determine whether or not medical assistance is necessary. In France this request is typically granted within three hours; however, as pointed out by one interviewee (NPM representative), the police officer essentially decides whether or not to call a doctor.

Conversely, interviewees from Bulgaria and Romania (NPM representatives) stated that, in their countries, as a rule all arrested persons are examined by a doctor without undue delays.

"Almost immediately [medical examinations are provided]. We have received only one complaint from a detained person who claimed that he had been denied medical examination. And, even in this case, the person has received medical assistance on the next morning." (Member of the NPM, Bulgaria)

Source: FRA, 2019

4.3.2. Privacy during medical examinations

Lack of privacy during medical examinations seems to be an issue in several countries, as confirmed by the findings of the NPMs. The Swedish NPM, for example, issued recommendations regarding respect for privacy during medical examination. It stresses that a prisoner should be examined by a doctor without other persons being in the room, even during supervised hospital visits. Moreover, it recommends that the Prison and Probation Service plan visits to hospitals in such a way that, if possible, accompanying probation officers do not have to be present during examinations. This should also apply when treatment is carried out in other healthcare institutions.[107] The NPM from France also noted that the violation of medical privacy is systemic, and that supervisory staff are often present during medical examinations. Supervisory staff attend consultations and medical examinations, and are often present when doctors provide explanations to a detainee. In some cases, staff are even present during surgical operations when the detainee is not conscious. The NPM recommends that medical consultations proceed without the presence of an escort and that surveillance is only indirect (out of sight and earshot of the detainee).[108] The Spanish NPM observed that medical appointments were held through the cell door, preventing direct contact with the inmate and breaching the detainee's right of privacy, particularly in the case of multi-occupancy cells.[109] Similar practices were observed by NPMs from other states, such as Finland, where there are no separate treatment rooms and patients are, therefore, seen in their cells, as indicated by one interviewee.[110]

The NPM from Estonia noted a very disturbing practice of not respecting the privacy of pregnant women, even those in labour: "A suspicion remained that handcuffs were used to escort pregnant women from the prison to hospital for childbirth and subsequently during return to prison. Prison officers are present at childbirth; male officers also stay with the woman in a postnatal ward, sometimes around the clock. The Chancellor asked the prison to organise supervision of women at birth by using different measures."[111]

107 Sweden, Parliamentary Ombudsman, Decision 1088-2016, An initiative regarding the individual assessments made by the prison and probation services regarding security and risks in relation to the inmates' transportation to and visits in healthcare institutions (*Initiativ angående Kriminalvårdens individuella bedömningar av säkerhet och risker i samband med intagnas transporter till och vistelser vid sjukvårdsinrättningar*), 25 April 2017, p. 8.
108 France, Controller General of Detention Facilities (2016), p. 27.
109 Spain, Spanish Ombudsman (2017), p. 67.
110 Finland, Parliamentary Ombudsman of Finland (2017), p. 22.
111 Estonia, Chancellor of Justice (2017), p. 35.

ECtHR case involving pregnant detainee

In 2012, the ECtHR communicated a case *M. S.-D. and I. D. v. Poland*. The applicant, who was pregnant, was arrested a few weeks before the expected date of delivery and during the night was transported to a facility across the country. The police questioned her in the delivery room in the local hospital, and the officers carried on with their tasks including between contractions. The ECtHR instigated the proceedings under Article 3 of the ECHR (prohibition of torture and inhuman and degrading treatment); however, Poland acknowledged a violation of Article 3 and the case was struck off the list on the basis of a unilateral declaration.

See ECtHR, M. S.-D. and I. D. v. Poland, No. 32420/07, 22 October 2013.

Presence of others during examination

This issue was also raised in interviews with monitoring body representatives, conducted as part of FRA's research in eight Member States and published in the report *Rights in practice: access to a lawyer and procedural rights in criminal and European Arrest Warrant proceedings*.

Interviewees from Poland noted that there are cases in which detainees are examined in the presence of police officers. Research from Austria suggests a similar situation, indicating that other inmates are present during medical examinations, to act as interpreters for instance.

"Privacy is not always guaranteed because, for example, prison staff are present […]. Partly other inmates provide interpretation […]. (Member of a monitoring body, Austria)

In addition, the right to privacy might be restricted for security reasons, as explained by a member of a monitoring body from Bulgaria:

"There are cases, when they [police officers or guards] are present, but this is always based on medical assessment, if the respective doctor decides that there is a risk, for example, the detained person is aggressive or is in condition that will somehow hamper the examination. Then, a police officer or a guard is present, I am saying that again, depending on the place, where this is taking place." (Member of a monitoring body, Bulgaria)

Source: FRA, 2019

4.3.3. Lack of medical staff in detention facilities

Finally, the issue of the availability of medical staff in detention facilities for the provision of prompt access to medical examination was highlighted by the findings of several NPMs.

In Belgium, there is no contingency in the case of a strike, and it is not unusual for multiple prison strikes to occur in a single year. In such situations, the services provided in Belgian prisons are limited and, as stated in a communication of 2016 by the National Order of Physicians,[112] there are concerns about how access to healthcare is provided during a strike of prison staff. The National Order of Physicians requests that the Belgian government provide some regulation or policy regarding the provision of a minimal level of service to prevent incidents from occurring. The National Order of Physicians suggests transferring the competence in this matter from the Federal Public Service Justice to the Federal Public Service Healthcare.

In Czechia, problems exist relating to the availability and quality of care, which is connected with the lack of physicians willing to work in prisons. In the view of the Public Defender of Rights, the concept of prison healthcare needs to be reviewed.[113]

Latvia reports a problem with access to dental care; for example, of 20 dentist's offices in the second largest city, Daugavpils, only two were willing to provide dental services to prisoners.[114]

In its 2017 annual report, the NPM in Greece notes the complete lack, in the vast majority of detention facilities, of any permanent in-house medical personnel, and that a member of the non-medical staff undertakes the administrative aspects of nurse duties, such as registering medical information:[115]

"Important issues still remain, […] the lacklustre staffing of the facilities with permanent doctors, nurses, sociologists, and psychologists."
"We noticed the absence, in the vast majority of detention facilities, of permanent medical personnel and hence, of its capacity to be present in the facilities on a 24-hour basis. The common practice of assigning administrative duties […] normally carried out by nurses to a member of the detention facility's staff is not appropriate for the performance of medical acts."
(NPM, Greece, 2017 annual report [unofficial translation by the Centre for Constitutional Law])

112 Belgium, National Order of Physicians (2016).
113 Czechia, Public Defender of Rights (2016), p. 20.
114 Latvia, Ministry of Health (2017).
115 Greece, Greek Ombudsman (2018).

Understaffing in medical units

During the interviews in the course of FRA's 'access to a lawyer' research, NPMs from some Member States also highlighted the problem of understaffing in medical units.

The NPM from Denmark explained that the lack of medical staff in detention centres is a "big issue in Denmark". In pre-trial detention facilities, it can be many days before a defendant sees a doctor or nurse. As there are too few resources, a doctor is unavailable many days a week. The interviewee is of the opinion that for this reason mental health problems very often go unnoticed. Another member of the Danish NPM added that the CPT criticised Denmark for not ensuring access to a doctor for all detained persons.

The interviewees from Greece confirmed that a similar problem has been noted in Greek detention facilities.

Conclusion

Persons deprived of liberty should have access to healthcare from the beginning of the deprivation of their liberty. Moreover, they should be examined by a doctor soon after arrest.

Inmates should benefit from the same level of healthcare as the general population. In all Member States, medical services are provided within the premises of detention facilities. However, in many cases there is a shortage of medical staff, which leads to delays with examinations, as pointed out by the NPMs from all Member States. Another problem is the lack of privacy during medical examinations, as also discovered by the NPMs.

5 Protection from inter-prisoner violence

The protection of prisoners from violence at the hands of other inmates (inter-prisoner violence) is the final aspect of detention conditions dealt with in this report. In addition to examining this aspect from a general point of view, special measures in place to protect lesbian, gay, bisexual, transgender and intersex (LGBTI) prisoners, as well as specific rules for the protection of juvenile offenders, will be looked at. Finally, while violence at the hands of officials was not specifically covered by the research on national standards, some NPMs refer to violent acts by police in recent reports. This issue is therefore referred to under Section 5.3.

As in Chapter 4, this chapter reports on some findings from semi-structured expert interviews conducted in eight Member States with staff members of NPMs or other organisations engaged in monitoring detention facilities,[116] in addition to looking at European and international standards, national standards, and the findings of monitoring bodies on the situation on the ground.

FRA's database on detention conditions

See FRA's online database of national standards, relevant international jurisprudence and reports by competent monitoring bodies concerning prison conditions for further information on protection from violence.

116 FRA (2019).

5.1. European and international standards

The ECtHR emphasises that States are obliged to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment and requires them to protect any prisoner from violence at the hands of other inmates.[117] States are obliged to exercise supervision and control in relation to detention to prevent such violence from occurring, and apply the necessary preventive measures to avert incidents.[118] In particular, the ECtHR examines whether, in the circumstances of each case, the authorities knew or ought to have known that an inmate was at risk of being or had been subjected to violence by other prisoners. If the answer is yes, the ECtHR examines whether prison authorities took all reasonable steps within their powers to avert and protect the inmate from violence.[119]

The CPT also requires that any form of bullying, threat or violence between prisoners should be avoided by ensuring adequate staff supervision. To this end, prison staff must be in a position, including in terms of staffing levels, to effectively exercise supervision and authority.[120] Prison health services should record and

117 ECtHR, *Premininy v. Russia*, No. 44973/04, 10 February 2011, paras. 82-88; ECtHR, *Gjini v. Serbia*, No. 1128/16, 15 January 2019, paras. 78-80.

118 ECtHR, *Premininy v. Russia*, No. 44973/04, 10 February 2011, para. 83; ECtHR, *Gjini v. Serbia*, No. 1128/16, 15 January 2019, paras. 78, 85-87.

119 ECtHR, *Premininy v. Russia*, No. 44973/04, 10 February 2011, para. 84.

120 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT standards, *Extract from the 11th General Report [CPT/Inf (2001) 16],* CPT/Inf/E (2002) 1 - Rev. 2015, Strasbourg, January 2015, para. 27, p. 23.

report any signs of violence for individual instances, and also when violence occurs, in a systematic way.[121]

Similarly, the European Prison Rules promote this duty of care towards prisoners, requiring rules that protect all prisoners from fear of assault or other violence and allowing them to participate in daily activities in safety (Rule 52).[122] It is important that prisoners are able to contact guards at all times, even at night (Rule 52).[123] Accordingly, detainees should be individually assessed to examine whether or not they pose such a risk to others (Rule 52). Only those who are suitable for associating with each other should share the same accommodation (Rule 18).[124]

Some detainees should be kept separate from others – for example, because of their personality, their sexual orientation or their offence.[125] Women should be held separately from men (Rule 18).[126] Children should not be detained in a prison for adults but in an establishment specially designed for that purpose (Rule 11). This rule reflects Article 37 of the UN International Convention on the Rights of the Child, which requires special detention facilities for children and forbids the detention of children with adults, other than in exceptional circumstances and if in the child's best interest.[127] The ECtHR applies this requirement in its case law, drawing on the Convention of the Rights of the Child.[128]

The Nelson Mandela Rules emphasise the need to protect all prisoners from torture and other cruel, inhuman or degrading treatment (Rule 1), with special attention to vulnerable persons (Rule 2). In addition, Rule 36 stipulates that authorities should ensure safety and security in prison by using no more restriction than is necessary to that end.[129]

5.2. National standards

The relevant rules of many Member States include the general duty of care owed to prisoners by prison authorities. Half of the EU Member States have very detailed provisions for a variety of measures to protect prisoners from inter-prisoner violence (Austria, Germany, Greece, Finland, France, Latvia, Lithuania, Luxembourg, Poland, Romania, Slovenia, Spain, Sweden and the United Kingdom). These measures include facility arrangements (e.g. providing single cells to separate prisoners under threat or violent prisoners), technical measures (e.g. real-time camera monitoring, locks and special walls) and organisational measures (including the transfer of prisoners within the same or to other facilities, special prisoner regimes, exclusion from or restriction of activities, disciplinary measures, irregular checks, including during the night, and special training for officials). In addition, in eight EU Member States (Czechia, France, Finland, Ireland, the Netherlands, Slovakia, Latvia and Luxembourg) an in-cell system, usually an emergency button or phone or other intercommunication system, that can be used to call for help 24 hours per day is provided.

However, inter-prisoner violence is addressed in a repressive manner as a disciplinary or criminal offence in some Member States (e.g. in Bulgaria, Cyprus, Estonia and Hungary), with no provisions for other (including preventive) measures. In Spain and Italy, solitary confinement is imposed as a means to protect prisoners from harm by others.

5.2.1. Special measures in place to protect LGBTI prisoners

LGBTI prisoners are deemed particularly vulnerable to violence. The vast majority of EU Member States do not currently have special rules, guidelines or measures for the treatment of LGBTI prisoners, but rather apply ad hoc measures aimed at separating detainees and isolating LGBTI prisoners.[130]

There are some exceptions to this, however. So far, several EU Member States have comprehensive legislation, formal guidelines or policies with regard to the treatment and protection of LGBTI prisoners, including Finland, Malta, Romania and the United Kingdom (England and Wales as well as Scotland).

For example, the equality and non-discrimination plan of the Criminal Sanctions Agency in Finland lists the following measures: provide staff and detainees with information and training on diversity in terms of gender and sexual orientation; highlight that gender or sexual orientation is not an obstacle to participating in activities or being placed in prison; highlight that the rights to marry and have a family also apply to members of minorities; highlight the need to step in if there is any evidence of discrimination or harassment on the basis of gender or sexual orientation – including by prisoners or staff; note that harassment could

121 *Ibid.*, paras. 60-62, p. 44.
122 Council of Europe, Committee of Ministers (2006b), pp. 23–24.
123 *Ibid.*, p. 24; in addition, for juvenile/young offenders, see Council of Europe, Committee of Ministers (2008), para. 64.
124 Council of Europe, Committee of Ministers (2006b).
125 Council of Europe, Committee of Ministers (2006c); Council of Europe, Revision of the European Prison Rules (2006), p. 54 and p. 125.
126 Council of Europe, Committee of Ministers (2006b); in addition, with regard to juvenile/young offenders, see Council of Europe, Committee of Ministers (2008), para. 60.
127 Council of Europe, Committee of Ministers (2006c), p. 43.
128 ECtHR, *Güveç v. Turkey*, No. 70337/01, 20 January 2009, para. 88.
129 Nelson Mandela Rules (2015).
130 For further reading, see OSCE, ODIHR (2019).

include malicious language or jokes, asking improper questions or making reference to gender or sexual orientation. The plan stipulates that the person harassing or discriminating against another person must be told to stop, and that the matter should also possibly be raised with a superior. The plan stresses that the person who is being harassed or discriminated against should be informed of whom to contact for help in the institution.

In Malta, a policy adopted in August 2016 contains several provisions that seek to ensure the safety of LGBTI prisoners.[131] The allocation of trans, gender variant and intersex prisoners to a certain prison should be in accordance with the person's gender identity and/or gender expression. If a person is not being held in a division belonging to that of their affirmed gender identity, they should not be placed in shared cells. While transgender prisoners should be allocated to the division corresponding to their affirmed gender identity, concerns of sexual assault or violence could lead to individual assessments of each situation.

Measures in Romania[132] and the United Kingdom involve the possible separation of LGBTI prisoners from the main prison population, for example to "vulnerable prisoner areas". However, some male prisoners in the United Kingdom have reported that they did not want to live within these units and that they had to fight to remain in the mainstream prison population.[133]

In Cyprus, police guidelines are in place concerning the treatment of LGBTI persons in police custody only. Some Member States (e.g. Belgium, Greece and Ireland) are currently in the process of legislating or drafting official guidelines on specific measures for the protection and treatment of LGBTI prisoners.

5.2.2. Specific rules for the protection of children and young offenders

All EU Member States implement specific rules with regard to children (persons younger than 18 years of age)[134] and young offenders (persons over 18 years of age) for their protection and safety, findings indicate. Almost half of EU Member States detain children and young persons convicted of a criminal act[135] exclusively in specialised detention facilities. Almost another quarter of Member States detain children and young offenders in specialised facilities as a rule and only exceptionally in separate units within regular detention facilities. The remaining states detain them in separate units within regular detention facilities.

Member States apply quite different rules to determine which young offenders over the age of 18 are entitled to the same prison regime as children. Some Member States – for example, Croatia, Germany, Greece and Malta – detain offenders who are older than 18 (up to the age of 25 in some Member States) in special juvenile detention facilities under the same regime as children, regardless of whether or not they committed the crime before or after they were 18 years old. Other Member States – for example, Bulgaria, Cyprus, France, Latvia and Lithuania – allow persons older than 18 to remain in special juvenile detention facilities only for crimes they committed before the age of 18. The maximum age limit in both cases ranges from 20 to 25 years of age.

However, a group of Member States – namely Czechia, Finland, Ireland, Romania, Slovakia and Slovenia – detain only children in separate units within regular detention facilities or in special juvenile detention facilities, while young offenders, over the age of 18, are not offered such a possibility. Germany and Latvia hold female juvenile or young offenders in separate units within regular prisons for women and not in special juvenile detention facilities as they do for males. Table 3 illustrates the findings of this research.

131 Malta, Ministry for Home Affairs and National Security (2016).

132 Romania, Decision 157/2016 approving the Regulation for implementing Law 254/2013 on the execution of punishments from 10 March 2016 (*Hotărâre Nr. 157/2016 din 10 martie 2016 pentru aprobarea Regulamentului de aplicare a Legii nr. 254/2013 privind executarea pedepselor și a măsurilor privative de libertate dispuse de organele judiciare în cursul procesului penal*).

133 United Kingdom, Mia Harris, PhD researcher (publication of thesisforthcoming), University of Oxford, Faculty of Law, phone interview on 1 June 2018.

134 In line with the UN Convention on the Rights of the Child (CRC) definition of persons younger than 18 years of age, no matter which group or context; UN, United Nations Convention on the Rights of the Child (CRC), 20 November 1989.

135 See FRA's webpage on minimum age.

Table 3: Specialised/separate detention facilities used to detain young offenders and maximum age limits of young offenders detained in these facilities

Member State	Detention facilities	Maximum age	Member State	Detention facilities	Maximum age
AT	Both	21[a]	IT	Separated / Specialised	25[a]
BE	Specialised	23[b]	LT	Specialised	24[b]
BG	Specialised (males) Separated (females)	20[a]	LU	Both	21
CY	Separate	21[c]	LV	Specialised (males) Separate (females)	25[b] 21[b] (pre-trial)
CZ	Both	18 for pre-trial 19 for post-trial	MT	Specialised	21[a]
DE	Specialised (males) Separate (females)	20[a]	NL	Specialised	22[a]
DK	Both	17	PL	Specialized	21[a]
EE	Both[b]	21[b]	PT	Separate	21[b] 25[a]
EL	Specialised	18, 21[a], 25[b]	RO	Specialised	18
ES	Specialised[a] Separate[b]	25	SE	Separate	24[c]
FI	Separate	18	SL	Separate	18
FR	Both	18.5[b]	SK	Separate	18
HR	Both	23[a]	UK (England and Wales)	Specialised[b] Specialised[a]	21[b] 25[a]
HU	Specialised	21[a]	UK (Scotland)	Both	21[b]
IE	Specialised	18	UK (Northern Ireland)	Specialised	21[b]

Notes: *'Specialised' refers to specialised facilities for children and young offenders only; 'Separate' refers to units for children and young offenders within regular detention facilities; and 'Both' refers to specialised facilities for children and young offenders as a rule, and separate units for children and young offenders within regular detention facilities as an exception.*

[a] Maximum age limit for young offenders held in facilities even for crimes committed over the age of 18 and up to the age indicated, under conditions that usually apply

[b] Maximum age limit for young offenders held in facilities specifically designated for crimes committed up to the age of 18, under conditions that may apply

[c] Maximum age limit for young offenders held in facilities for crimes committed up to the age of 21.

Source: FRA, 2019

Children and young persons

See FRA's webpage on the age of majority for an explanation of the terminology used regarding children and young persons. FRA's webpage 'Mapping minimum age requirements: Children's rights and justice' provides further information on access to justice for children.

5.3. Findings of monitoring bodies on the situation on the ground

5.3.1. Inadequate protection against inter-prisoner violence

Inter-prisoner violence is an important and pressing issue in many EU Member States' detention fa-

cilities, as recent reports by monitoring bodies and official data confirm. Some examples of problems are described below.

In Poland, the prison service identified 43 examples of "drastic manifestations of prison subculture", including two rapes committed by six prisoners and 41 examples of bullying fellow prisoners in 2017. The number of prisoners victimised in relation to those activities amounted to 116. Moreover, more than 1,102 fights occurred, involving 2,445 inmates. In addition, 186 prisoners attempted suicide and 32 committed self-harm.[136]

In Cyprus, the CPT identified deficiencies in preventing inter-prisoner violence during its 2017 visit, including in the recording of incidents, and a lack of prompt reactions to incidents. The CPT recorded allegations of inter-prisoner violence, including an alleged rape that was not immediately addressed with medical attention and investigation. According to the CPT, the investigation that followed was inadequate and methodologically flawed. The CPT called on the authorities to adopt measures to prevent inter-prisoner violence, including a comprehensive anti-bullying policy, systematic and regular risk-assessments regarding the allocation and placement of inmates, staff training in taking proactive measures to identify risk and the regular monitoring of CCTV cameras.[137]

Inter-prisoner violence is also still a reality in Luxembourg, according to the 2015 CPT report.[138]

In its 2016 visit to Latvia,[139] the CPT found that, in Daugavgrīva, Jelgava and Rīga central prisons, "inter-prisoner violence remained a problem. This is attributed to insufficient staff presence in prisoner accommodation areas, the existence of informal prisoner hierarchies and the lack of purposeful activities for most inmates. The delegation gained the impression that the management of the prisons were making efforts to prevent inter-prisoner violence, in particular by segregating prisoners who were vulnerable and/or sought protection and prisoners known for aggressive behaviour towards fellow-inmates. [...] All alleged or detected incidents of inter-prisoner violence, as well as any injuries indicative of such violence, were recorded by staff (including health-care staff) and reported to the internal investigation unit of the Latvian Prison Administration. However, as acknowledged by staff, even the inquiries regarding cases clearly indicative of the infliction of bodily injuries were usually inconclusive, as the victims chose not to denounce the perpetrators (as did any witnesses among the prisoners) and claimed to have sustained the injuries accidentally. The CPT recommended that the Latvian authorities vigorously pursue their efforts to combat the phenomenon of inter-prisoner violence. It also calls upon the authorities to review staffing levels at Daugavgrīva, Jelgava and Rīga Central Prisons, with a view to increasing the number of custodial staff present in the detention areas."

136 Poland, Central Board of the Prison Service (2018b), p. 39.
137 Council of Europe, CPT (2018).
138 Council of Europe, CPT (2015b).
139 Council of Europe, CPT (2017b), para. 40.

Inter-prisoner violence

Inter-prisoner violence was also highlighted in the interviews with monitoring bodies conducted as part of FRA's research published in the report *Rights in practice: access to a lawyer and procedural rights in criminal and European Arrest Warrant proceedings*.

For example, two members of monitoring bodies from Greece reported that many prisoners are in a state of terror, are being victimised by prison gangs and will think twice before attempting to file a complaint. One of the representatives of a monitoring body described the peril of serious physical abuse, or even death, as being omnipresent. Both interviewees mentioned that prisons are understaffed and are frequently controlled by groups affiliated with organised crime groups that victimise weak prisoners and undermine their safety.

"Look... the prisoners who may be beaten... to tell you the truth... do not give away each other, they avoid to [...] If someone goes to the doctor and has an injury, he says that he fell from the stair or slide and fell... What stairs, this is a knife injury... He does not admit that he has been injured by a knife [..] They do not say this because they are afraid... " (Member of a monitoring body, Greece)

Members of the monitoring body from France shared the opinion that detainees are not effectively protected from inter-prisoner violence:

"They are not protected. [...] [T]here are some who are absolutely terrorised... and who do not want to leave their cell, they refuse to go to walk because they will be attacked". (Member of a monitoring body, France)

Members of monitoring bodies interviewed in Romania also conclude that prisoners are reluctant to report violence from other prisoners. They admit that they do not receive many complaints about violence. This however is not because there is no violence, explains one of them. The reason is apparently that defendants deprived of liberty are somehow reluctant to complain about violence.

Assessments such as those by monitoring bodies in Greece, France and Romania indicate that there is possibly a significant 'dark' or unreported figure of incidents of violence between prisoners.

Source: FRA, 2019

5.3.2. Protection of children and young offenders

Findings reveal that the situation with children and young offenders is problematic in some Member States. The Austrian Ombudsman Board repeatedly highlighted, in 2015, 2016 and 2017, that there must be a structured and balanced daily routine with the shortest possible lock-up times to prevent violent assaults of children and young detainees.[140] The Greek Ombudsman also called for the establishment of structures of an educational character and possibly the differentiated treatment of children depending on their personality and progress. In addition, the Greek Ombudsman called for the detention of children to be restricted, in combination with taking legislative steps to ensure the less harsh penal treatment of children for specific crimes.[141] In Cyprus, young adults remain in specialised juvenile facilities after they turn 18, provided this is feasible. Moreover, they work in the same spaces as other detainees.

In France, the NPM is concerned about the situation for female juvenile offenders. The Controller General of Detention Facilities highlighted in 2016 that the situation for female juvenile offenders in particular must be given special attention and that they should receive the same treatment as boys. In this respect, the imprisonment of young women in an area for adult women is against the law. They must be able to benefit from care within establishments adapted for young people. In particular, the Controller General of Detention Facilities commented in 2016 that female juvenile offenders held in detention establishments other than correctional juvenile facilities should be (as far as is possible and according to the organisation of the institution) detained in "juvenile" areas in the same way as male juvenile offenders are.[142]

The CPT criticised the situation in Poland, as in some cases juvenile offenders serve their sentences with older prisoners, who can be allowed to serve their sentences in juvenile units despite exceeding the age of 21. It also noted that juvenile offenders in Polish prisons are sometimes placed in the same cell as one or more adult prisoners.[143]

5.3.3. Violence at the hands of police and prison guards

While violence at the hands of officials was not specifically covered by the research on national standards, some NPMs refer to violent acts by police in their recent reports.

For example, the NPM in Cyprus repeatedly refers to violence by police against detainees in police detention centres. Following a widely publicised incident of police officers using violence against a detainee in a police station, in 2016 the NPM referred to a mentality within the police force that glorifies and perpetuates police violence. It recommended the compilation of a long-term action plan leading to comprehensive and targeted measures for the prevention of police violence.[144]

A visit to the central prison in Cyprus carried out by the NPM in 2012 also revealed widespread discontent among juvenile detainees due to ill treatment from prison staff, including incidents of insults, informal punishments without due process and in many cases without the young detainees having committed any offence, and isolated incidents of violence.[145]

A recommendation aimed at protecting inmates from violence at the hands of officers was also issued in Italy by the Authority for the Protection of People who are Detained or Deprived of their Personal Freedom.[146] Italian authorities should introduce a strict monitoring system to identify acts of violence perpetrated by police officers against prisoners, as well as making such violence a specific criminal offence, according to a recommendation by the Italian Authority for the Protection of People who are Detained or Deprived of their Personal Freedom.[147]

140 Austria, Austrian Ombudsman Board (2016, 2017, 2018).
141 Greece, Greek Ombudsman (2015).
142 France, Controller General of Detention Facilities (2017), p. 47.
143 Council of Europe, CPT (2014), p. 24.
144 Cyprus, Independent Authority for the Prevention of Torture (2016).
145 Cyprus, Commissioner for Administration and Human Rights, Independent Authority against Torture (2013).
146 Italy, Authority for the Protection of People who are Detained or Deprived of their Personal Freedom (2018).
147 Italy, Authority for the Protection of People who are Detained or Deprived of their Personal Freedom (2018), p. 47.

Police violence

The issue of police violence against detainees was also highlighted in the interviews conducted as part of FRA's research *Rights in practice: access to a lawyer and procedural rights in criminal and European Arrest Warrant proceedings*.

A representative of a monitoring body interviewed in Poland stated that violence is used by the police almost all the time, and there is no culture of reporting such incidents.

"Police violence, according to my experiences, happens at all stages [of criminal proceedings], also at the moment of an arrest. What we're talking about here is the unreasonable use of physical violence, say [tear] gas, hitting somebody when this is not necessary. Or things like punching or pushing a person on the way to a police station. But this most often happens during initial questioning, where detectives come in and need to establish some line of inquiry and pass information to officers handling the formal interview. It is when they beat people to extract intelligence which is later recorded in a memo. And at that point, the proceedings start and a formal interview takes place." (Member of a monitoring body, Poland)

A representative of a monitoring body in Bulgaria held the opinion that detainees are at greater risk of violence from police officers than from other detainees:

"I have not heard and have not received complaints, for so many years now, about clashes between detainees [...]. But as regards the use of excessive, unnecessary force – there are many cases. [...] In many of these cases, there is unnecessary rudeness, and, when there is an inspection by the Inspectorate, it is usually justified by resistance to the arrest or by non-execution of a police order. Our colleagues from the RPDs have learned how to justify such violence. But there was a case of violence, and there was even a statement by the head of the police station concerned, when physical force was used because she [the arrested person] had taken pictures and she had no right to interfere with their [the police officer's] private life "
(Member of a monitoring body, Bulgaria)

A representative of a detention monitoring body in the Netherlands opined that defendants are most vulnerable to violence when first apprehended by the police, before they become suspects and are subsequently placed in official custody. In the opinion of the representative, this is when defendants are not only theoretically vulnerable but are also subjected to abuse by the police in practice.

Source: FRA, 2019

Conclusion

Prisoners are in the state's custody and authorities are therefore under an obligation to ensure their security. Prison authorities are therefore obligated to prevent acts of inter-prisoner violence by implementing various facility, technical and organisational measures. However inter-prisoner violence is a cause for extreme concern in most Member States, according to the findings of monitoring bodies. Fights between prisoners, acts of sexual violence, bullying, attempted suicide, inadequate monitoring and security measures by prison authorities, and numerous other issues demonstrate that inter-prisoner violence is a critical issue in most Member States.

Concluding remarks

Detention conditions vary across the EU Member States, as shown by the findings described in this report. Details of the practical implementation of laws regulating the conditions of detention are provided in reports from monitoring bodies – international bodies such as the CPT and national bodies such as NPMs.

- Cell overcrowding remains the main issue. Rules in some Member States stipulate 4 m^2 or less of floor space per prisoner – which, according to the applicable international standards, should be the absolute minimum. If cell space measures less than 3 m^2 for an individual, there is a strong presumption of a violation of the prohibition of torture and inhuman and degrading treatment. The level of overcrowding in many Member States is in violation of those national rules and international standards, according to NPMs' observations, with some inmates being reported to have less than 3 m^2 of a floor space at their disposal.

- Most EU Member States have legislation in place regarding sanitary conditions and the use of hot water for personal hygiene in prisons. However, NPMs across the EU report various problems concerning, for example, access to hot water, limited use of toilets and lack of separation of sanitary areas in cells.

- Most EU Member States' laws provide that inmates spend at least one hour a day outdoors. Participation in sport or other recreational activities remains unregulated. In many prisons, inmates benefit from only one hour a day outside their cells. NPMs recommend reducing lock-up time, as 23 hours a day is intolerable.

- Inmates should benefit from the same level of healthcare as the general population. As a principle, detainees should have a medical check-up no more than 24 hours after arrest. Medical services are provided within the detention facility premises in all Member States; however, in many cases there is a shortage of medical staff, which leads to delays with examinations, as pointed out by the NPMs from all Member States. Another issue is a lack of privacy during medical examinations, as also highlighted by NPMs.

- Protection from violence remains challenging in some Member States. NPMs emphasise the need to develop systems for the protection of detainees from violence both from other inmates and from officials. This is particularly true for persons with special needs, such as elderly people, people with disabilities or pregnant women.

Nelson Mandela Rule 4 stipulates that the "purposes of a sentence of imprisonment or similar measures deprivative of a person's liberty are primarily to protect society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life."[148] In a similar vein, the European Prison Rules require that "[a]ll detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty."[149]

States should provide respectful detention conditions to facilitate the rehabilitation of offenders and prevent recidivism. If inmates' own rights are respected – for example, through the provision of decent living conditions, of healthcare and protection against violence – they are more likely to learn to respect the rights of others. States therefore have a vested interest in making all possible efforts to respect the human dignity of persons detained as offenders – ultimately for the benefit of all members of the community.

FRA's database on detention conditions

This report complements the database available from the FRA website. The database combines in one place national standards, jurisprudence and monitoring reports regarding detention conditions in all 28 EU Member States.

148 Nelson Mandela Rules (2015), Rule 4.
149 Council of Europe, Committee of Ministers (2006a), Rule 6.

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Annex 1: List of National Preventive Mechanisms established in the European Union

Country	NPM body
Austria	Austrian Ombudsman Board
Belgium	*No NPM established*
Bulgaria	Ombudsman of the Republic of Bulgaria
Croatia	Ombudswoman, in cooperation with representatives of the academic community and human rights NGOs
Cyprus	Commissioner for Administration and Human Rights
Czechia	Public Defender of Rights
Denmark	Danish Parliamentary Ombudsman in collaboration with Dignity (NGO) Danish Institute for Human Rights (National Human Rights Institution)
Estonia	Chancellor of Justice
Finland	Parliamentary Ombudsman of Finland
France	Controlled General of Detention Facilities
Germany	National Agency for the Prevention of Torture, comprising the Federal Agency for the Prevention of Torture and Joint Commission of the *Länder*
Greece	Greek Ombudsman
Hungary	Commissioner for Fundamental Rights
Ireland	*No NPM established*
Italy	Authority for the Protection of People who are Detained or Deprived of their Personal Freedom
Latvia	*No NPM established*
Lithuania	Parliamentary Ombudsperson's Office
Luxembourg	Ombudsperson's Office
Malta	Board of Visitors for Detained Persons Board of Visitors of the Prisons
Netherlands	Four bodies are designated as the NPM: the Inspectorate of Security and Justice, which also acts as coordinating body; the Dutch Health Care Inspectorate; the Inspectorate for Youth Care; and the Council for the Administration of Criminal Justice and Protection of Juveniles
Poland	Commissioner for Human Rights
Portugal	Ombudsperson's Office
Romania	The People's Advocate
Slovakia	*No NPM established*
Slovenia	Human Rights Ombudsman, in collaboration with NGOs (Slovenian Red Cross, Legal Information Centre for NGOs, Primus Institute, Slovenian Federation of Pensioners' Organisations and Novi paradoks)
Spain	Ombudsperson's Office
Sweden	Parliamentary Ombudsmen
United Kingdom	Twenty-one bodies are designated parts of the UK NPM, coordinated by Her Majesty's Inspectorate of Prisons

Source: FRA, 2019 [based on information from the Association for the Prevention of Torture]

Annex 2: Relevant international and European standards for conditions of detention

	Nelson Mandela Rules[150]	European Prison Rules[151]	CPT Standards[152]	European Court of Human Rights
Cell space	Each prisoner shall occupy a cell or room by himself/herself except for special reasons, such as overcrowding. (Rule 12.1 and indicator 3.1.1 in the UNODC checklist). Pre-trial: Each prisoner shall sleep singly in separate rooms, with reservation [...] (Rule 113 and indicator 3.1.1 in the UNODC checklist).	The accommodation should meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air (Rule 18.1). Prisoners shall normally be in individual cells except where it is preferable for them to share sleeping accommodation (Rule 18.5). National law shall provide mechanisms for ensuring that these minimum requirements are not breached by the overcrowding of prisons (Rule 18.4) via the establishment of clear maximum capacity levels for all prisons (Commentary). Pre-trial: As far as possible untried prisoners shall be given the option of single cells unless they may benefit from sharing accommodation with other untried prisoners or unless a court has made a specific order on how a specific untried prisoner should be accommodated (Rule 96).	6 m^2 in a single occupancy cell.[153] 4 m^2 in a multiple-occupancy cell.[154] 2 m between the walls of the cell. 2.5 m between the floor and the ceiling of the cell.[155]	Less than 3 m^2 of floor space per inmate in a multi-occupancy cell (including space taken up by furniture but not the space taken up by sanitary facilities) triggers a presumption of a violation of Article 3.[156]

150 Nelson Mandela Rules.
151 European Prison Rules.
152 The CPT Standards with regard to detention conditions have been developed over the years and can be found in general and national reports of the CPT, see Council of Europe, CPT (2015a).
153 The same standards do not apply to short-term detention establishments and the set standard excludes sanitary facilities within the cell, Council of Europe, CPT (2015a) para. 6.
154 For multiple-occupancy cells, the desirable standards are 10 m2 for two prisoners, 14 m2 for three prisoners and 18 m2 for four prisoners, Council of Europe, CPT (2015a) para. 16.
155 Council of Europe, CPT (2015a).
156 ECtHR, *Muršić v. Croatia*, No. 7334/13, 20 October 2016; ECtHR, *Rezmives and others v. Romania*, Nos. 61467/12, 39516/13, 48231/13 and 68191/13, 25 April 2017.

	Nelson Mandela Rules	European Prison Rules	CPT Standards	European Court of Human Rights
Hygiene conditions in cells	All parts of a prison shall be properly maintained and kept clean at all times (Rule 17 and indicator 3.1.4 in the UNODC checklist).	The accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene (Rule 18.1). All parts of every prison shall be properly maintained and kept clean at all times (Rules 19.1, 19.2). Prisoners shall keep their persons, clothing and sleeping accommodation clean and tidy. The prison authorities shall provide them with the means for doing so, including toiletries and general cleaning implements and materials (Rules 19.5–6). The prison authorities must enable prisoners to keep themselves and their quarters clean by providing them, as required by Rule 19, with the means to do so. It is important that the authorities take overall responsibility for hygiene, also in the cells where prisoners sleep, and that they ensure that these cells are clean when prisoners are admitted. Conversely, all prisoners can, if able to do so, be expected at least to keep themselves and their immediate environment clean and tidy (Commentary).	-	Good hygiene conditions shall be maintained as an essential element of a human environment. Authorities shall get rid of rats, cockroaches, head lice, bedbugs and other parasites by effectives means such as disinfection; cleaning products; fumigation; regular inspections of cells; checks on bedding and food storage places.[157]

157 ECtHR, *Rezmives and others v. Romania*, Nos. 61467/12, 39516/13, 48231/13 and 68191/13, 25 April 2017.

	Nelson Mandela Rules	European Prison Rules	CPT Standards	European Court of Human Rights
Access to sanitary facilities	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 15 and indicator 3.2.1 UNODC checklist).	Every prisoner shall have access to sanitary facilities that are hygienic and respect privacy (Rule 19.3). These include sanitary facilities and baths and showers. Such access requires the close attention of the prison authorities to ensure both that the facilities are available and that access to them is not denied (Commentary).	Toilet facilities should be located in cells or the prisoner shall be released to use the toilet without undue delay at all times, including at nights.[158] Toilets in double occupancy cells should be fully partitioned.[159] Ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment.[160]	Sanitary facilities shall be accessible and should be able to be used in a private manner. In a multiple-occupancy cell, a sanitary facility annex, separated by a partition, is not sufficient. Intimacy should be protected. Unhygienic, unsanitary conditions, which are often found in combination with overcrowding, contribute to an overall judgment of degrading treatment.[161]
Access to shower/ bath facilities	Adequate shower/bath installations shall be provided at a minimum once a week (Rule 16 and indicator 3.2.2 in the UNODC checklist).	Adequate shower and bath facilities shall be provided. If possible daily or at a minimum twice a week (Rule 19.4). These include sanitary facilities and baths and showers. Such access requires the close attention of the prison authorities to ensure both that the facilities are available and that access to them is not denied (Commentary).	Adequate access to shower and bathing facilities.[162]	

158 Council of Europe, CPT (2001).
159 Council of Europe, CPT (2017b).
160 Council of Europe, CPT (1992), para. 49.
161 ECtHR, *Kalashnikov v. Russia*, No. 47095/99, 15 July 2002; ECtHR, *Peers v. Greece*, No. 28524/95, 19 April 2001; ECtHR, *Dougoz v. Greece*, No. 40907/98, 6 March 2001.
162 Council of Europe, CPT (2001).

	Nelson Mandela Rules	European Prison Rules	CPT Standards	European Court of Human Rights
Time out of cell, out-door physical exercise	All prisoners, including those subject to disciplinary sanctions or restrictive measures, should spend at least one hour of suitable exercise per day in the open air (Rule 23.1 and indicator 5.1.1 in the UNODC checklist). Those with physical aptitude, in particular young prisoners, have access to physical/recreational training/equipment during exercise (Rule 23.2 and indicator 5.1.3 in the UNODC checklist).	Every prisoner shall be provided with the opportunity of at least one hour of exercise every day in the open air, if the weather permits (Rule 27.1). When the weather is inclement alternative arrangements shall be made to allow prisoners to exercise (Rule 27.2). Prison authorities shall facilitate such activities by providing appropriate installations and equipment (Rule 27.4).	Minimum one hour per day.[163] 15 m^2 exercise yard for remand prisoners was considered too small and inadequate.[164]	Limitations of out-of-cell activities can contribute to the overall inhuman conditions of detention.[165]
Time out of cell, recreational and cultural activities	Prisoners shall spend a reasonable time outside of their cells engaged in purposeful activity (Rules 4.2, 5.1, and indicator 5.1.2 in the UNODC checklist). Recreational and cultural activities shall be provided in all prisons for the benefit of the mental and physical health of prisoners (Rule 105, and indicator 5.1.4 in the UNODC checklist). The treatment shall be such as will encourage their self-respect and develop their sense of responsibility. To these ends, appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character (Rule 92).	Prison authorities shall make arrangements to organise special activities for those prisoners who need them (Rule 27.5). Recreational opportunities, which include sport, games, cultural activities, hobbies and other leisure pursuits, shall be provided and, as far as possible, prisoners shall be allowed to organise them (Rule 27.6). All prisoners, including those subject to disciplinary punishment, need exercise and recreation, although these activities should not be compulsory. Opportunities for exercise and recreation must be made available to all prisoners rather than only as part of a treatment and training programme for sentenced prisoners. Prisoners who have a need for physical exercise of a specialised nature, for example, a prisoner who has been injured may require additional exercises to build up wasted muscles (Commentary).	As a rule all prisoners shall spend a minimum of eight hours or more outside their cells. [166]	Little access to recreational and cultural activities contributes to the overall inhuman conditions of detention.[167]

163 Council of Europe, CPT (1992).
164 Council of Europe, CPT (2016).
165 ECtHR, *Simeonovi v. Bulgaria*, No. 21980/04, 12 May 2017; ECtHR, *Mathew v. The Netherlands*, No. 24919/03, 29 September 2005.
166 Council of Europe, CPT (1992).
167 ECtHR, *Gegeny v Hungary*, No. 44753/12, 16 July 2015.

	Nelson Mandela Rules	European Prison Rules	CPT Standards	European Court of Human Rights
General provision of healthcare	Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status (Rule 24.1 and indicator 6.2.1 in the UNODC checklist). Prisoners can approach the health-care service on a confidential basis, without respective requests being screened by prison staff. Medical information of prisoners is confidential (Rules 26.1, 31, 32.1.c and indicator 6.3.2–3 in the UNODC checklist). Prompt access to medical attention in urgent cases (e.g. on call arrangements on a 24 hours basis) shall be provided (Rule 27.1 and indicator 6.2.2 in the UNODC checklist). Physicians or other qualified health-care professionals have daily access to prisoners who require their attention (Rule 31 and 6.2.4 in the UNODC checklist). The health-care service shall keep accurate and up-to-date medical files of all prisoners. (Rule 26.1 and indicator 6.3.5 in the UNODC checklist).	Medical services in prison shall be organised in close relation with the general health administration of the community or nation. Health policy in prisons shall be integrated into, and compatible with, national health policy. Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation. Medical services in prison shall seek to detect and treat physical or mental illnesses or defects from which prisoners may suffer. All necessary medical, surgical and psychiatric services including those available in the community shall be provided to the prisoner for that purpose. Medical and health care personnel. Every prison shall have the services of at least one qualified general medical practitioner. Arrangements shall be made to ensure at all times that a qualified medical practitioner is available without delay in cases of urgency. Where prisons do not have a full-time medical practitioner, a part-time medical practitioner shall visit regularly. Every prison shall have personnel suitably trained in health care. The services of qualified dentists and opticians shall be available to every prisoner. (Rules 40–41)	Prisoners should have access to a doctor at any time, irrespective of their detention regime [...]. The health care service should be met without undue delay.[168]	Providing medical assistance and needed healthcare to prisoners is a positive obligation of a state.[169] In exceptional situation of state of health incompatible with the prison regime, authorities need to consider other measures.[170] Mentally-ill inmates require special measures and protection.[171]

168 Council of Europe, CPT (1992).
169 ECtHR, *Kudla v. Poland*, No. 30210/96, 26 October 2000; ECtHR, *Kondrulin v. Russia*, No. 12987/15, 20 September 2016.
170 ECtHR, *Contrada v. Italy (N.2)*, No. 7509/08, 11 February 2014.
171 ECtHR, *Slawomir Musial v. Poland*, No. 28300/06, 20 January 2009; ECtHR, *Claes v. Belgium*, No. 43418/09, 10 April 2013.

	Nelson Mandela Rules	European Prison Rules	CPT Standards	European Court of Human Rights
Access to medical treatment for prisoners	Prisoners who require specialised treatment/surgery exceeding the capacity of the prison's health facilities shall be transferred to outside hospitals (Rule 27.1 and indicator 6.2.3 in the UNODC checklist).	Sick prisoners who require specialist treatment shall be transferred to specialised institutions or to civil hospitals, when such treatment is not available in prison (Rule 46.1).		
For disabled persons and the elderly and sick		Sick prisoners who require specialist treatment shall be transferred to specialised institutions or to civil hospitals, when such treatment is not available in prison (Rule 46.1).		
For mentally ill prisoners	Qualified health-care professionals cater for the needs of prisoners with mental disabilities, including psychiatric treatment. Those who should not be detained in prison due to severe mental disabilities or health conditions are transferred to mental-health facilities (Rules 109.1–109.3 and indicators 6.2.10, 6.2.11 in the UNODC checklist).	Specialised prisons or sections under medical control shall be available for the observation and treatment of prisoners suffering from mental disorder or abnormality (Rule 47.1). The prison medical service shall provide for the psychiatric treatment of all prisoners who are in need of such treatment and pay special attention to suicide prevention (Rule 47.2).		

	Nelson Mandela Rules	European Prison Rules	CPT Standards	European Court of Human Rights
Children and young prisoners	Professional childcare and child-specific healthcare services is offered to children who remain in prison with their parent (Rule 29.1, indicator 6.2.9 in the UNODC checklist). In line with other UN standards and norms (Rule 67 UN Rules for the Protection of Juveniles Deprived of their Liberty), the use of solitary confinement and similar measures is prohibited in cases involving children (Rule 45). Body cavity searches should not be applied to children (Rule 60.2).	Persons under the age of 18 years should be kept out of adult prisons and held in prisons designed for the purpose (Rule 11.1). Exceptional circumstances exist for detaining children in adult prisons e.g. a risk of total isolation if there are few children in the prison system. (Commentary). Where children are detained they be separated from adults, unless it is determined that this is not in their best interest (Rule 35.4). Generally it is normally in the best interest of the children to be held separately. An exceptional circumstance could be there are very few children in the prison system (Commentary). If children under the age of 18 are held in an adult prison, the authorities shall ensure that they have access to social, psychological and educational services, religious care and recreational programmes or their equivalent that are available to children in the community (Rule 35.1). Special attention should be given to protection against threat, violence, sexual abuse; provision of education and schooling; helping maintain contact with families; support for emotional development; and provision of appropriate sport and leisure activities (Commentary). If a child is subject to compulsory education, they shall have access to such education in prison (Rule 35.2). Infants may stay in prison with their parent if it is in their best interest, and may not be treated as prisoners (Rule 36.1). The best interest of the child should be the determining factor, but the parental authority of the parents should be recognised (Commentary). Special provision for a nursery should be made (Rule 36.2).		

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This report looks at five core aspects of detention conditions in EU Member States: the size of cells; the amount of time detainees can spend outside of these cells, including outdoors; sanitary conditions; access to healthcare; and whether detainees are protected from violence. For each of these aspects of detention conditions, the report first summarises the minimum standards at international and European levels. It then looks at how these standards are translated into national laws and other rules of the EU Member States. To provide more context, the report also presents an overview of how these rules play out in practice according to the findings of existing National Preventive Mechanisms. The report should be used alongside FRA's new online database of relevant jurisprudence and reports by competent monitoring bodies, which is available on the agency's website.

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