

12. LGBTI+ persons

12.1. Considerations before your visit to LGBTI+ detainees

Under the umbrella heading of “persons with other vulnerabilities” together with general non-discrimination clauses, international and European prison standards, including the European Commission Recommendation, try to address all issues that persons belonging to sexual minorities and others can face in detention. Special attention is paid to the protection of these persons from violence and abuse by staff or other detainees. In fact, the European Commission Recommendation limits itself to “sexual orientation” as an explicit ground for discrimination; but it adds “any other ground” as a catch-all clause, thereby also including gender identity and sex characteristics.

It must be highlighted that also the acronym “LGBTI+” is imprecise, as it is used to describe a vastly heterogeneous group of persons, **mixing concepts of sexual orientation, gender identity and expression, as well as sex characteristics**. Homosexual, bisexual, transgender or other gender diverse persons often have very different life experiences and hence different needs also while deprived of their liberty. However, what they have in common in these settings is that they are more likely to be (sexually) victimised, including being raped, to have mental health disorders or experience situations of isolation.

In addition to being at a higher risk of ill-treatment and inter-detainee violence, which is undoubtedly at the core of any NPM’s mandate, monitors should also be aware of other, more subtle forms of discrimination against LGBTI+ persons. On the one hand, this could be discriminatory treatment in comparison with other detainees (*e.g. isolation in conditions and with a regime that is below the standards applied to the mainstream prison population, or discrimination with regard to visiting rights*). On the other hand, LGBTI+ persons could also be discriminated against in relation to the outside community, *e.g. regarding gender reassignment and recognition provisions available for the general population that they might be denied while in detention*.

It is therefore vital that NPMs have a firm awareness of the national legal framework applying to the different groups contained under the LGBTI+ acronym in order to better understand which obligations the State has vis-à-vis these persons also within detention. In recent years, considerable progress has been made in many European countries with regard to LGBTI+ rights, although many obstacles and challenges still remain.²³ While the focus of NPMs naturally remains on persons deprived of their liberty, NPMs can play a role in promoting a positive change in attitudes towards LGBTI+ persons in general.

When focusing on discrimination and violence against LGBTI+ persons in prisons, it is **imperative that all members of the NPM are adequately trained and prepared**, in order to avoid risking harm to detainees (*e.g. by inadvertently disclosing private information to others*), making assumptions based on stereotypes, or adding to victimisation. Monitors should focus on patterns of discrimination rather than prying on detainees’ sexual orientation or gender identity, and they should be aware that many LGBTI+ detainees have experienced discrimination and trauma and might perceive some questions as intrusive or offensive.

As noted at the outset, NPMs should invest considerable time to their assessment of reception procedures and to the individual risk and needs assessments done during the initial phase of detention (see above at [Chapter 5.2](#)). These procedures should address the specific vulnerabilities associated with sexual orientation, gender identity, gender expression and sex characteristics. Dynamic security can equally play an important role in the continuous awareness of staff to vulnerabilities and security threats faced by detainees belonging to different sexual minorities (see above at [Chapter 12](#)). Isolation measures for the protection of LGBTI+ detainees should be seen as a measure of last resort. The principles surrounding segregation and isolation for protection have been outlined in [5.11](#).

Particularly the placement and treatment of **transgender persons** in detention has in recent years become a prominent topic. For this reason, the CPT has dedicated a specific set of standards to this group, noting that “the treatment of transgender persons living in prisons mirrors broader societal attitudes to persons who do not fall into historical understandings of gender”. The CPT considers that, **as a matter of principle, transgender**

23. For an overview of developments, challenges and recommendations see European Commission against Intolerance and Racism (ECRI), [General Policy Recommendation No. 17 on preventing and combating intolerance and discrimination against LGBTI persons](#) of 28 June 2023.

persons should be accommodated in the prison section corresponding to the gender with which they identify. If, after an individualised risk assessment, there are exceptional security or other reasons to accommodate them elsewhere, those reasons should be clearly documented, and subject to regular review. In any case, just as for cisgender persons living in prisons, transgender prisoners should always be held in locations that best afford their safety and that of others. If they are held, even briefly, in any form of separate or dedicated section of a prison, they should be offered activities and association time with other suitable prisoners of the gender with which they identify, if they so wish. United Nations Special Procedures have highlighted in this respect that “judicial and prison authorities, when deciding allocation of transgender persons to either a male or female prison, do so in consultation with the prisoner concerned and, on a case-by-case basis” and noted that “safety considerations and the wishes of the individual must be paramount”.

Prisons should furthermore be prepared for the accommodation of transgender persons by providing for specific protocols, inter alia on body searches. Particularly, full body searches of transgender women by male officers can be perceived as deeply degrading, highlighting the need for such measures to be used only when strictly necessary. Such searches should respect the self-identified gender of the person, be performed by officers of the same gender identity, and avoid full nudity at once. Staff should be trained in respectful search procedures, and transgender prisoners should be consulted upon admission about their search preferences.

Other issues to take into consideration by NPMs with regard to transgender detainees are their specific health care needs, the right to be addressed by their chosen names, and the possibility to obtain and keep clothes and hygiene or cosmetic products. A clear policy and guidelines for the management of transgender prisoners should be in place, guaranteeing that their specific needs are met.

12.2. Prevention of discrimination and violence against LGBTI+ persons

“Member States should ensure that placement in detention does not further aggravate the marginalisation of persons because of their sexual orientation, [...] or on the basis of any other ground.

Member States should take all reasonable measures to prevent any violence or other ill-treatment, such as physical, mental or sexual abuse, against persons because of their sexual orientation, [...] or on the basis of any other ground by staff in the detention facility or other detainees. Member States should ensure that special protection measures are applied where there is a risk of such violence or ill-treatment.”

Paragraphs 77 and 78 of the Commission Recommendation



Relevant international laws and standards:

- ▶ Articles 8 and 14 ECHR
- ▶ Rule 13 of the revised European Prison Rules 2020
- ▶ Rules 2 and 7 (a) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)
- ▶ CPT Standards “Transgender persons in prison”
- ▶ The 2006 Yogyakarta Principles / 2017 Yogyakarta Principles plus 10

Questions to ask and ways to find out



Preliminary assessment:

Are the national laws and policies in line with [paragraphs 77 and 78](#) of European Commission Recommendation?

- ▶ *Make a preliminary assessment of LGBTI+ rights in your country and assess whether persons belonging to any of these groups have the same rights when deprived of their liberty.*
- ▶ *Check laws, regulations and policies with a view to determining whether transgender persons are as a principle placed in detention facilities corresponding to the gender they identify with, which procedures are in place to determine placement, and whether they have a say in the decision-making process.*



Are the reception and placement procedures mindful of specific vulnerabilities associated with sexual orientation, gender identity and sex characteristics?

- ▶ Find out by talking with the management and staff whether any specific policies are in place for the reception and placement of LGBTI+ persons.
- ▶ Visit the reception unit and speak with staff there about the manner in which they conduct individual risk and needs assessments of newly arrived detainees with a particular focus on specific vulnerabilities associated with sexual orientation, gender identity and sex characteristics. Discuss with staff whether they have the training, time and resources to comprehensively inform LGBTI+ persons of their options concerning placement.
- ▶ Try to identify (NB: without involuntarily “outing” them!) concerned detainees and privately discuss with them how they have perceived the reception procedures and whether they feel safe with the placement that was decided.



Are measures of “protective isolation” for LGBTI+ persons really used as a last resort?

- ▶ Ask the management for the criteria and procedures to be placed in protective isolation. Find out if LGBTI+ persons are automatically and possibly against their wishes held in protective isolation or special units, and if there are remedies open to them to challenge such decisions.
- ▶ Interview persons held in protective isolation and inquire about their treatment and conditions; find out in particular if steps are taken to allow for association with selected other detainees to avoid de facto solitary confinement.
- ▶ Verify that all other precepts for protective isolation are respected (see above at 5.11).
- ▶ Discuss with the management and staff if pro-active measures are in place to tackle homophobia, transphobia or similar sentiments among the mainstream prison population.



Are LGBTI+ detainees treated with respect for their dignity?

- ▶ In addition to assessing generally the question of ill-treatment by staff and inter-detainee violence (see above at 5.3), verify with the management whether any ill-treatment or inter-detainee violence explicitly recognising an LGBTI+ dimension has been recorded. Discuss whether these would be treated as hate crimes.
- ▶ Check the staff training curriculum whether specific training relating to LGBTI+ persons is included.
- ▶ Find out whether there are specific protocols in place for body searches of transgender persons, adhering to the respect for dignity.
- ▶ Always keeping the do-no-harm principle in mind, try to identify relevant interview partners who could inform you of any harassment, insults or violence they might have suffered in detention.



Do LGBTI+ detainees benefit from the same privacy and family rights as those outside of detention?

- ▶ Verify that any information on sexual orientation, gender identity and sex characteristics of detainees contained in registers, individual files etc. are kept strictly confidential and is shared with staff only on a need-to-know basis.
- ▶ Discuss with the management whether there are procedures in place to assist detainees in any legal or administrative procedures to change their gender.
- ▶ Find out with staff whether transgender detainees are permitted to wear clothes and hairstyles and keep hygiene and cosmetic products in accordance with their self-identified gender.

- ▶ *Observe whether staff address transgender detainees with their chosen names, honorifics (Mr, Ms, Mx) and pronouns (he, she, they).*
- ▶ *Check regulations in place to verify that LGBTI+ persons can receive visits from partners and children on an equal basis with other detainees, even if, e.g. not legally married or adoptive parents.*



Is the health care in the facility adapted to the needs of LGBTI+ persons?

- ▶ *Examine the existing laws, rules and regulations to find out whether transgender persons can start or continue gender affirming treatment and/or surgery in the facility.*
- ▶ *Discuss with health care staff whether they have received the necessary specialised training in dealing with the medical needs of LGBTI+ detainees.*
- ▶ *Check in particular if the initial medical and psychological examination upon entry into the facility is mindful of these needs; whether indications of sexual violence before entry are properly understood; whether condoms and other prophylactic means of avoidance of STIs are made available and easily accessible; and whether sexual health education is offered.*
- ▶ *Determine whether sufficient mental health care is available to LGBTI+ detainees.*