

## 5. The general prison population

---

### 5.1. Considerations before a visit to male adult detainees

The penal statistics published every year by the Council of Europe in the so-called [SPACE](#) reports<sup>12</sup> indicate that EU member states are by no means homogenous when it comes to the rate of imprisonment, the proportions of pre-trial to sentenced detainees, or other characteristics of their prison populations. In total, almost half a million persons are held in prisons in EU member states, either in pre-trial detention or sentenced. On average, some 5% of these persons are women, and less than 1% minors under the age of 18. This means that the vast majority of detainees in EU member states – as in other countries – consists of **male adults**.

Nevertheless, also this large group of persons is not homogenous, and monitors should keep in mind the **differences in experiences and needs** of the many sub-categories of male detainees when visiting a prison. *For example, foreign detainees who make up a considerable proportion in many European prison populations, will face different problems in coping with imprisonment than nationals; and it goes without saying that the legal status of pre-trial detainees, and the presumption of innocence corresponding to this status, give rise to a whole set of other issues than for sentenced prisoners.*

The European Commission Recommendation pays particular attention to the initial risk assessment and placement of detainees suspected or convicted of terrorist and violent extremist offences, in order to avoid (further) radicalisation.

---

*“Member States are encouraged to carry out an initial risk assessment to determine the appropriate detention regime applicable to detainees suspected or convicted of terrorist and violent extremist offences.*

*Based on this risk assessment, these detainees may be placed together in a separate terrorist wing or may be dispersed among the general prison population. In the latter case, Member States should prevent such individuals from having direct contact with detainees in situations of particular vulnerability in detention.”*

*Paragraphs 82 and 83 of the Commission Recommendation*

---

Besides this specific group, a range of other categories of detainees can be identified, each with specific pre-dicaments. These categories include (but are not limited to): persons serving life imprisonment or long-term sentences, first-time offenders, persons in high security settings, detainees who are particularly vulnerable to inter-detainee violence, such as LGBTI+ persons, former police officers or other public officials, sex offenders, more generally persons on protection from other detainees, young adults, elderly detainees, persons suffering from a disability or an illness, including mental illnesses, persons prone to suicide or self-harm, persons prone to engage in violence vis-à-vis other prisoners and/or prison staff, etc. In other words, the **rules contained in the European Commission Recommendation for individual initial assessments and placement should not only concern detainees suspected or convicted of terrorist and violent extremist offences, but apply *mutatis mutandis* to all newly arrived detainees.**

The list of special categories of detainees could be continued, and one and the same person can also fall into a number of different subcategories (*e.g. a transsexual person can be at the same time a foreign detainee, and/or suffer from a disability or an illness*). Hence, it becomes clear that NPMs should not only be alert to the differences between individual detainees when carrying out their own work, but that **among the first things to establish** when visiting a detention facility is how the management **classifies detainees and caters for their individual needs, vulnerabilities and risks they might pose.**

---

12. Aebi, M. F. & Cocco, E. (2024), SPACE I - 2023 – Council of Europe Annual Penal Statistics: Prison populations

## Questions to ask and ways to find out



### Which subcategories of detainees has the management identified?

- ▶ In the initial talks with the management or by independently consulting the prison database, obtain a list of all detainees, including names, dates of birth, dates of arrival at the facility, wing and cell numbers; lengths of sentence and special status of the detainee, if applicable (e.g. life sentenced etc.).
- ▶ Obtain an overview of the different units within the facility (a map, if available).
- ▶ If applicable, determine the exact numbers of sentenced prisoners, pre-trial detainees, women, children, and foreign detainees in the visited detention facility.
- ▶ Ask the management about other classifications applied (see the non-exhaustive list in the text above) and find out in which part of the facility diverse groups of detainees are held.
- ▶ Even if there is no formal categorisation in a given detention facility, staff almost always informally classify different groups of detainees and put them in particular cells or units; ask staff members about such informal classifications.

Also, the **occupancy rates** of entire prison systems within EU member states, and within these states of individual prisons, vary considerably. While a few countries have in recent years closed down prison space that was no longer needed, many other European countries experience unprecedented levels of overcrowding, i.e. a prison occupation rate of (partially considerably) more than 100% of all available spaces. Further, often not all beds counting into the official bed capacity can actually be used due to various needs to keep certain prison populations apart (particularly due to rivalries and other segregation and protection measures). Thus, the actual operational capacity of a detention facility is often lower than the official bed capacity. The Council of Europe's Committee on Crime Problems has held that, *"If a given prison is filled at more than 90% of its capacity this is an indicator of imminent prison overcrowding. This is a high-risk situation, and the authorities should feel concerned and should take measures to avoid further congestion."*<sup>13</sup>

It should be kept in mind that prison **overcrowding has many negative effects** and does not only signify a lack of personal space for detainees in their cells. For instance, levels of inter-prisoner violence regularly rise in overcrowded facilities, regime and rehabilitation activities are negatively affected, and the strain on staff and health care staff is considerably higher in detention facilities that exceed their occupancy rates. These issues will be addressed below.

## 5.2. Reception procedures

The importance of professional reception procedures cannot be overemphasised. Such procedures should entail a comprehensive and thorough **assessment** of any newly arrived detainee (whether they come for the first time to the detention facility, have been transferred from another detention facility, or have been in the facility on previous occasions), with a view to establishing any particular vulnerability and needs the detainee might present, as well as risks they might pose. Such assessment should be conducted according to a standardised procedure, by an interdisciplinary team. The outcome of this assessment should be the primary basis for placement (rather than basing it primarily on the category of crime a person is suspected or convicted of) as well as the starting point for any individual sentence plan; such assessments should be regularly repeated.

In addition to the assessment, newly arrived detainees should benefit from an **induction** procedure, which allows them to learn about their rights and duties within a given facility. This should include the provision of information in writing, in language that is easy to understand, and in the languages most commonly spoken by prisoners. Leaving the task of informing new arrivals about the rules and regulations of the detention facility to other detainees entails the risk of misinformation and of putting longer serving detainees in a superior role vis-à-vis newcomers.

13. European Committee on Crime Problems (CDPC), [White Paper on Prison Overcrowding](#), PC-CP (2015) 6 rev 7



**How do staff members evaluate the needs of newly arrived individual detainees and the risks they might pose? Is there a formal risk- and needs assessment procedure in place? Is it comprehensive (including individual interviews with health care staff, psychologists, educators, security staff)?**

- ▶ Ask the management and staff members (particularly those working in reception areas) about the assessment procedures of newly arrived detainees; let them pretend to carry out such a procedure on one member of the monitoring team.
- ▶ Ask staff if they are facing problems in the classification and allocation of detainees (e.g. overcrowding of certain sections etc.).
- ▶ Follow the assessment procedure of a newly admitted detainee (**NB:** medical examinations should always be carried out respectful of medical confidentiality; this means that also non-medical monitors should as a rule not be present at such examinations).
- ▶ Visit the quarantine or recent arrivals unit and speak to detainees in quarantine or those who have recently arrived about their assessment of the risk- and needs assessment procedures.



**Is there an immediate response to any detected vulnerability/risk? Can newly arrived detainees be put under special supervision? Are different groups of detainees already separated during their time in quarantine?**

- ▶ Ask the management and reception staff if they follow a protocol in case they detect vulnerabilities, such as a suicide risk, in a newly arrived detainee, and discuss the measures taken.
- ▶ Find out with the management and reception staff whether there are any special measures taken upon committal of detainees with a known history of violence.



**What are other consequences of the risk- and needs assessment procedure?**

- ▶ Discuss with management and staff placement policies and review a number of files to ascertain that the outcome of the assessment procedure has been taken into account when allocating the detainee in a particular cell or unit, and when deciding on the regime of these detainees.
- ▶ Check sentenced detainees' files if individual sentence plans have been drawn up.
- ▶ Identify (e.g. by reference to the incidents register) if there has been a need to re-assess specific detainees' classification (for example, if detainees were perpetrators or victims of inter-detainee violence, have attempted suicide, or if relevant new background information on the person is revealed), and verify if staff have taken the necessary steps to re-assess and re-allocate the detainees in question.

While a diligent individual assessment of the risks and needs of newly arrived detainees is vital for the security and functioning of any detention facility and for upholding individual detainees' rights, this procedure should nevertheless be done in a timely manner, i.e. in a couple of days.

## **Questions to ask and ways to find out**



**How long do newly arrived persons have to stay in quarantine? Do they have the same entitlements as other detainees in terms of outdoor exercise and contact with the outside world? Are the conditions in quarantine or recent arrivals' cells adequate?**

- ▶ Check the length of stay in quarantine cells after arrival by consulting the list of detainees, which should always include the arrival date in the facility.
- ▶ Speak to detainees in quarantine in order to assess whether they get the minimum entitlements in terms of outdoor exercise, and whether they are able to contact their families and lawyers.
- ▶ Assess the material conditions in the quarantine cells in terms of living space per detainee, number of beds, ventilation, light (natural and artificial), cleanliness, access to toilet and washing facilities, etc.

---

*“Member States should ensure that all detainees are clearly informed of the rules applicable in their specific detention facility.”*

*Paragraph 61 of the Commission Recommendation*

---

Finally, a detention facility should not only classify newly arrived detainees in terms of needs and risks they pose, but also take the opportunity to acquaint these new arrivals with the **prison rules**, which should include information on the rights and duties of detainees, the daily routine, the disciplinary procedures, avenues for complaint etc.

## **Questions to ask and ways to find out**



### **Preliminary assessment:**

Are the national laws and policies in line with [paragraph 61](#) of the European Commission Recommendation?



### **Is a formal induction procedure in place?**

- ▶ Find out with the management and staff if brochures, presentations or other means of information of newly arrived detainees, if necessary in different languages, are used, and get a copy of any written material handed out to detainees at arrival.
- ▶ Speak to newly arrived detainees and ask if they have been sufficiently informed of their rights as well as of the rules of the detention facility (house rules, including rules on disciplinary infringements, avenues for complaint etc.)

One of the most important measures during any reception procedure is the first **medical examination** detainees receive upon arrival. This will be discussed below in [Chapters 5.7](#) and [6.2](#).

## **5.3. Prevention of violence and ill-treatment**

---

*“Member States should take all reasonable measures to ensure the safety of detainees and to prevent any form of torture or ill-treatment. In particular, Member States should take all reasonable measures to ensure that detainees are not subject to violence or ill-treatment by staff in the detention facility and that they are treated with respect for their dignity. Member States should also require staff in the detention facility and all competent authorities to protect detainees from violence or ill-treatment by other detainees.*

*Member States should ensure that the fulfilment of this duty of care and any use of force by staff in the detention facility are subject to supervision.”*

*Paragraphs 52 and 53 of the Commission Recommendation*

---



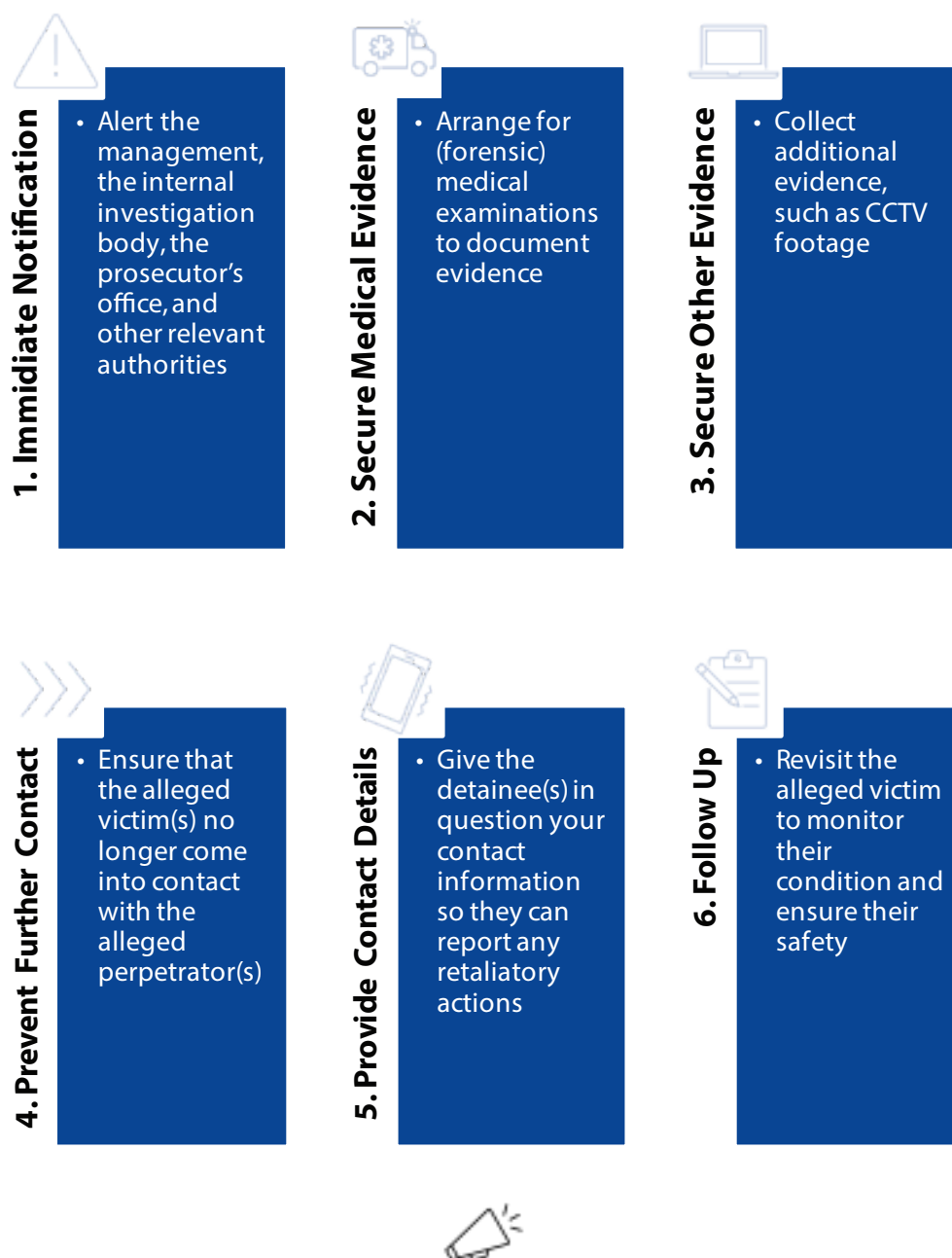
### **Relevant international laws and standards:**

- ▶ Article 3 ECHR, Article 7 ICCPR
- ▶ UN Convention Against Torture
- ▶ Rules 52.1-52.2 and 64.1-67.3 of the [revised European Prison Rules 2020](#)
- ▶ Rules 1 and 82 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)
- ▶ CPT Standards “Imprisonment”; “Developments concerning CPT standards in respect of imprisonment”
- ▶ Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)

The manner in which detainees are treated within a detention facility is certainly the most important assessment a monitoring body should make. This evaluation includes actual **ill-treatment by staff** of detainees, such as physical ill-treatment (beatings, slaps, sexual ill-treatment etc.), but also more subtle forms of ill-treatment, such as insulting and disrespectful behaviour by staff, racial discrimination or discriminatory attitudes based on other grounds, such as vis-à-vis persons who are known or perceived to belong to a sexual minority, or negative treatment against persons suspected or convicted of certain categories of crimes, *e.g. child abuse*.

In case a monitor finds out about ill-treatment by staff, there should be a protocol in place which outlines the **next steps to take in order to prevent further violence and to protect the detainees** who have spoken out about it.

### Handling Allegations of Ill-Treatment: Key Steps for Monitors



Act promptly to ensure safety and justice

In some cases, NPMs might not have the option of keeping allegations of ill-treatment confidential but are under the obligation to forward any such reports to other bodies. This should be made clear to interview partners, in order to let them decide whether they wish to divulge instances of ill-treatment. On the other hand, interview partners should not be discouraged to speak out about violence against them, but the monitor should rather explain further steps and protective measures they intend to take to follow up such allegations.

## Questions to ask and ways to find out



### Preliminary assessment:

Are the national laws and policies in line with [paragraphs 52 and 53](#) of the European Commission Recommendation?



### What is the situation regarding (physical) ill-treatment by staff?

- ▶ *The main way of finding out about ill-treatment is to speak with as many detainees as possible, in a private setting. Guidance on conducting such interviews is described in Chapter 3.5.*
- ▶ *You can choose your interview partners randomly; however, a more effective way is to concentrate on certain groups of persons who are more likely to have suffered some kind of ill-treatment by staff, such as detainees who frequently receive disciplinary punishments, who are often in conflict with staff or other detainees, or who belong to a specific category, such as sex offenders.*
- ▶ *Start with checking in particular the following journals/ logbooks/registers in order to determine who to speak to: Special incidents register; Disciplinary punishment register; Register of special security cells; Complaints register; Medical register on traumatic lesions obtained in the detention facility; etc.*
- ▶ *Examine general lists of detainees and determine whether there are persons belonging to special groups (e.g. sex offenders, minorities), who are more likely to have suffered abuse.*
- ▶ *In case you have received allegations of ill-treatment, cross-check the information by, inter alia, speaking with witnesses (e.g. fellow detainees), examining CCTV footage, reading incident reports and the general file of the detainee in question, and getting a copy of the medical file for examination by a qualified person with medical background.*
- ▶ ***Make sure to take all necessary steps to protect the person who has made allegations of ill-treatment from repercussions and further harm!*** 



### How is the general relationship between staff and detainees?<sup>14</sup>

- ▶ *Conduct interviews with detainees and ask about the general attitude of staff vis-à-vis detainees.*
- ▶ *Speak to members of special groups of detainees (e.g. foreign detainees, national or sexual minorities) if they have experienced racism or other insults.*
- ▶ *Speak to staff and try to find out if they have any resentment against detainees in general, or certain groups of detainees.*

**Inter-detainee violence** is a common occurrence in many detention facilities.

- ▶ Monitors need to be very skilled to find out about it.
- ▶ Diligent follow-up is necessary in order to avoid further harm; this could include, but is not limited to, transferring the detainee in question to another cell/unit or another detention facility.

The occurrence of **inter-detainee violence**, sometimes reaching extreme forms of severe physical and sexual abuse, is probably more widespread than actual ill-treatment by staff in most detention facilities in Europe.

14. For the application of dynamic security principles, see below at [5.11](#).

At times, this form of violence happens with the knowledge or even consent by staff, but more often staff is oblivious to partly severe inter-detainee violence, and also for monitors it is extremely difficult to find out about it. A code of silence among detainees, threats and fear of further abuse, deficient reception and placement procedures (see above, [Chapter 5.2](#)), and a lack of staff oversight and functioning complaints mechanisms foster violence among detainees. It takes a very experienced and sensitive interviewer to find out about such abuse, and diligent follow-up of detected cases of inter-detainee violence are vital in order to avoid further harm to a detainee who has confided in a monitor. Similar steps as outlined above (alerting the higher and (criminal) investigative authorities, ordering a medical examination, transferring the detainee or the perpetrator(s), providing the detainee with contact details, follow-up visits etc.) should be taken.

### **Questions to ask and ways to find out**



#### **How prevalent is inter-detainee violence and are sufficient measures in place in order to prevent it?**

- ▶ *Focus on detainees who are at higher risk of inter-detainee violence. Check in particular the following registers in order to determine who to speak to: Special incidents register; Disciplinary punishment register; Register of special security cells; Complaints register; Medical register on traumatic lesions obtained in detention; etc.*
- ▶ *Conduct private interviews with detainees and ask about their relationship with other detainees.*
- ▶ *In case you have received allegations of inter-detainee violence, cross-check the information by, inter alia, speaking with witnesses (e.g. fellow detainees), examining CCTV footage, reading incident reports and the general file of the detainee in question, and getting a copy of the medical file for examination by a qualified person (authority) with medical background.*
- ▶ ***Make sure to take all necessary steps to protect the person who has made allegations of ill-treatment from repercussions and further harm!*** !
- ▶ *Determine the number of security staff in relation to the number of detainees by examining staffing complement lists and actual shifts.*
- ▶ *Speak with staff about the prevalence of inter-detainee violence, and the measures they take to avoid it.*
- ▶ *Determine whether there are any violence-reduction programmes in place in the facility.*
- ▶ *Check whether there is a protocol in place in case of inter-detainee violence, containing inter alia reporting obligations and protective measures.*
- ▶ *Gather statistics on inter-detainee violence and compare with other detention facilities.*

Another related problem is **violence against staff members**, who must be sufficiently trained and protected in order not to suffer irreparable harm.

### **Questions to ask and ways to find out**



#### **How prevalent is violence against staff?**

- ▶ *Speak with the management and find out how many cases of more severe attacks on staff have taken place in a certain period of time, and what is done to prevent such incidents.*
- ▶ *Conduct interviews with staff and find out if they feel sufficiently trained to deal with aggressive detainees, and how they perceive safety in their workplace.*
- ▶ *Get statistics on attacks on staff resulting in staff absences from the workplace and compare with other detention facilities.*

Finally, monitors should be aware that **certain events in detention facilities pose a higher risk of abuse**; they include *inter alia* the use of special intervention groups in specific situations, such as riots, escapes or fights among detainees.<sup>15</sup> If the NPM becomes aware of a major special intervention, this could possibly trigger an

<sup>15</sup> For more generally the use of force, see below, [Chapter 5.11](#).

*ad hoc* visit. But even routine situations, including cell and body searches (including at reception), contain risks of abusive or degrading behaviour, and should be scrutinised by the monitors.

### **Questions to ask and ways to find out**



**How often were special interventions necessary in a specific period of time? Are special intervention groups operating in the detention facility? How are they trained; and how are they equipped? Are special interventions registered appropriately? What are follow-up measures after special interventions?**

- ▶ *Speak with the management about the number of special interventions in a specific period of time (e.g. in the last year), in incidents such as major fights among detainees, riots, escapes etc.*
- ▶ *Find out with the management and the chief of security who carries out special interventions, and how these members of staff are trained and equipped, and which reporting and accountability structures are in place in case they are deployed.*
- ▶ *If it exists, check the general register of special incidents/special interventions, or get the compilation of all reports made after such events.*
- ▶ *If persons involved in the incident are still held within the detention facility, speak with them about their experiences during the special intervention.*
- ▶ *Find out with the medical services if all persons against whom force has been used are routinely presented to them for a medical examination; make a copy of all medical files of detainees subjected to a special intervention in order to have it examined by a qualified person (authority) with medical background.*
- ▶ *Examine whether special means of force (handcuffs, pepper spray, batons etc.) are properly stored and in an adequate state.*
- ▶ *Speak with members of staff who are part of special intervention groups about their training, including training in de-escalation methods.*



**What are the criteria for body searches? Are such searches conducted in a manner compatible with human dignity?**

- ▶ *Find out with staff in which cases they conduct body searches of detainees (or visitors).*
- ▶ *Determine whether these searches are full body searches, pat-down searches, searches with electronic means, cavity searches, searches involving dogs, or else; establish with staff which criteria they use for each of these forms of searching, and the procedures applied.*
- ▶ *In case women are held in the facility, check staffing rosters to determine whether there is always a female member of staff available for necessary body searches.*
- ▶ *Ask detainees who have been subjected to body searches about their experiences, and experiences made by their visitors.*



**What are the criteria for cell searches? Are such searches conducted in a manner respectful of the personal space and belongings of detainees?**

- ▶ *Find out with staff in which cases they conduct cell searches.*
- ▶ *Try to be present during a routine cell search.*
- ▶ *Speak with detainees about their experiences with cell searches.*

## **5.4. Material conditions**

It goes without saying that the material conditions within a detention facility are of primary concern for a monitoring body. This includes first and foremost an assessment of the occupancy levels in the facility overall,

as well as in different sections and cells; and the conditions within cells and in-cell sanitary facilities; and the conditions in communal areas and outdoor facilities.

Most of the necessary information on material conditions can be gathered by direct observations of the monitors, and it is not necessary to let detainees describe certain shortcomings, *e.g. a water leak or similar, that the members of the monitoring delegation can see, feel or smell themselves*. Considering the importance of living space for the determination of the overall conditions, it is advisable that monitoring delegations bring technical equipment to the cells for measuring the floor surface (*e.g. laser measurement tools*).

For an objective assessment, it is necessary to visit several cells in different parts of the detention facility; *for example, cells on the ground floor are sometimes far worse in terms of light and ventilation than cells on the top floor; and cell sizes may vary*. Different categories of detainees, *e.g. life-sentenced prisoners, women or pre-trial detainees*, might have different material conditions than the rest of the prison population.

---

***“Member States should assign each detainee a minimum amount of surface area of at least 6m<sup>2</sup> in single occupancy cells and 4m<sup>2</sup> in multi-occupancy cells. Member States should guarantee that the absolute minimum personal space available to each detainee, including in a multi-occupancy cell, amounts to the equivalent of at least 3m<sup>2</sup> surface area per detainee. Where the personal space available to a detainee is below 3m<sup>2</sup>, a strong presumption of a violation of Article 3 of the ECHR arises. The calculation of the available space should include the area occupied by furniture but not that occupied by sanitary facilities.***

***Member States should ensure that any exceptional reduction of the absolute minimum surface area per detainee of 3m<sup>2</sup> is short, occasional, minor and accompanied by sufficient freedom of movement outside the cell and appropriate out-of-cell activities. Furthermore, Member States should ensure that, in such cases, the general conditions of detention at the facility are appropriate and that there are no other aggravating factors in the conditions of the concerned person’s detention, such as other shortcomings in minimum structural requirements for cells or sanitary facilities.***

***Member States should guarantee that detainees have access to natural light and fresh air in their cells.”***

*Paragraphs 34, 35 and 36 of the Commission Recommendation*

---



**Relevant international laws and standards:**

- ▶ Rule 18.1-18.4 of the [revised European Prison Rules 2020](#)
- ▶ Rule 13 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)
- ▶ Article 3 ECHR (cf. *Muršić v. Croatia*, Appl. No. 7334/13, Court’s Grand Chamber judgment of 20 October 2016)
- ▶ CPT Standards “Living space per prisoner in prison establishments”; “Imprisonment”; “Developments concerning CPT standards in respect of imprisonment”

The Court has in its Grand Chamber judgment in the case of *Muršić v. Croatia* determined that if prisoners in multi-occupancy cells are afforded less than 3m<sup>2</sup> of living space (excluding any sanitary facilities), a strong presumption of an Article 3 ECHR violation arises. This “absolute minimum” is mirrored in the [Commission Recommendation](#), with further details as to the manner in which states can counteract possible Article 3 ECHR violations in exceptional cases when persons have to be held in conditions that offer even less than 3m<sup>2</sup> of living space.

Having said that, the relevant provision of the Commission Recommendation commences with a clear reference to the minimum standards developed by the CPT, namely 4m<sup>2</sup> per person in multi-occupancy cells and 6m<sup>2</sup> in single cells. Furthermore, the CPT has determined that preferably, detainees in multi-occupancy cells should be afforded more living space (i.e., at least 10m<sup>2</sup> for two occupants, 14m<sup>2</sup> for three and 18m<sup>2</sup> for four persons living together in one cell). Also, the CPT has long advocated a move away from large-capacity dormitories towards smaller living units.

With the [Muršić case](#), the Court has made it clear that individual prisoners held in cells offering 3m<sup>2</sup> (or even less, with counterbalancing measures) have little chance of a finding of “inhuman or degrading treatment or

punishment” by the Court in Strasbourg. Nevertheless, NPMs should not be solely guided by just about avoiding inhuman and degrading treatment in individual cases. Their preventive mandate entails that they should be at the forefront of promoting higher standards in terms of living space than the absolute bare minimum.

It should also be noted that NPMs need to be aware of the manner in which the “official capacity” of detention facilities in their respective country is calculated. In some countries, prisons are built with a certain “design capacity”, which is more often than not later increased (substantially) to match the actual need. In other countries, the available floor space per detainee is used as a benchmark (occasionally with differences made between pre-trial and sentenced detainees), while in others the “bed capacity” is decisive. Other factors, such as staff complements, are sometimes taken into the equation to assess the “operational capacity” of detention facilities. In this connection, it should be noted that the actual operational capacity of prisons is often lower than the official bed capacity, and local overcrowding in individual units can occur also in prisons that are not officially overcrowded. If a given prison is filled at more than 90% of its capacity this is an indicator of imminent prison overcrowding.

## Questions to ask and ways to find out



### Preliminary assessment:

Are the national laws and policies in line with [paragraphs 34, 35 and 36](#) of the European Commission Recommendation 2022?



### How is the “official capacity” of the facility calculated and what is the occupancy level in the detention facility in relation to the official capacity?

- ▶ *Determine with the management of the facility and of the overall prison system on which basis the “official capacity” of detention facilities is calculated (e.g. is it on the number of available beds or rather floor size in cells; has there been an increase in the design capacity with or without additional constructions; does the facility have an official operational capacity taking into account other factors).*
- ▶ *Get the current list of detainees from the database or the management, check statistics of detainee levels over the year. Compare numbers with the official capacity. In case the “official capacity” is not calculated based on the outlined CPT standards, make a calculation of how much floor space detainees have.*



### Are there sections within the detention facility that are overcrowded?

- ▶ *Discuss with the management whether detainees are evenly distributed throughout the facility, or whether certain units (e.g. for women, pre-trial detainees, life-sentenced prisoners etc.) are overcrowded.*
- ▶ *If there are units in the detention facility that are overcrowded, visit them and get the maximum levels of occupation in the diverse cells.*



### Which measures does the management take in the face of (temporary/sectoral) overcrowding?

- ▶ *Ask the management which measures are in place in order to alleviate phases of overcrowding, and whether it is guaranteed that every detainee has a proper bed.*
- ▶ *Discuss with the management if they are taking any other measures to reduce the harmful effects of overcrowding (e.g. by offering more out of cell time etc.).*



### What is the situation of living space, ventilation and light in individual cells?

- ▶ Visit diverse cells in different units, including single cells, multi-occupancy cells or, if they still exist, larger dormitories, cells for specific groups within the detention facility, such as pre-trial detainees, women, life-sentenced prisoners etc.; visit cells on different floors of the detention facility, from the top to the ground floor. Do not just visit cells that are shown to you by staff or the management.
- ▶ Get the number of detainees in each of the cells you visit.
- ▶ Measure the cells and determine the living space per detainee; this calculation should not include the space taken up by the in-cell sanitary facilities.
- ▶ Check the cells for any sign of dampness, e.g. mould on the walls.
- ▶ Check ventilation – you will smell it if ventilation is insufficient.
- ▶ Assess whether detainees are permitted to smoke within their cells, and if there are measures taken to protect non-smokers.
- ▶ Check whether there is access to natural light (i.e. a window) in the cell.
- ▶ Check whether there is access to artificial light; with the light provided you should be able to read without straining your eyes.



### What are the material conditions in individual cells like?

- ▶ Check the furniture in the cells and determine whether every detainee has a bed with mattress and bedding; a place to sit (chair, bench); and some storage room for personal belongings.
- ▶ In the cold season, check whether the cells are sufficiently heated; and in the warm season, check whether the temperatures are not overly high in the cells; you should bring a digital thermometer with you. If you come to the detention facility only once a year or even less frequently, ask long-term detainees whether they experience problems with either too hot or too cold temperatures.
- ▶ Check whether the call-bells in the cells are functioning; in case there are no call-bells, find out with detainees how they can attract the staff's attention in case of need.

***“Member States should ensure that sanitary facilities are accessible at all times and that they offer sufficient privacy to detainees, including effective structural separation from living spaces in multi-occupancy cells.***

***Member States should establish effective measures to maintain good hygienic standards through disinfection and fumigation. Member States should furthermore ensure that basic sanitary products [...] are provided to detainees and that warm and running water is available in cells.***

***Member States should provide detainees with appropriate clean clothing and bedding, and with the means to keep such items clean.”***

*Paragraphs 40, 41 and 42 of the Commission Recommendation*



### Relevant international laws and standards:

- ▶ Rules 18.1, 19.1-19.6, 20.1-20.4 and 21 of the [revised European Prison Rules 2020](#)
- ▶ Rules 15-21 of the [United Nations Standard Minimum Rules for the Treatment of Prisoners \(the Mandela Rules\)](#)
- ▶ CPT Standards “Imprisonment”; “A decency threshold for prisons – criteria for assessing conditions of detention”



### **Preliminary assessment:**

Are the national laws and policies in line with [paragraphs 40, 41 and 42](#) of the European Commission Recommendation?



### **How is access to sanitary facilities guaranteed and what are the conditions of the sanitary facilities like?**

- ▶ *Determine whether each cell has their own sanitary facilities (toilet and sink with warm running water at all times as a minimum, shower facilities).*
- ▶ *In case certain cells (e.g. disciplinary punishment cells, isolation cells) or all cells do not have their own sanitary facilities, find out with staff how access to the toilet and to washing facilities is guaranteed at all times; discuss with detainees in these cells whether they encounter any problems with access to sanitary facilities.*
- ▶ *Check the in-cell sanitary facilities and determine whether they are fully partitioned from the rest of the cell, at least in multi-occupancy cells.*
- ▶ *Check common sanitary facilities and determine whether they are sufficient for the number of detainees.*



### **Can detainees regularly take a shower?**

- ▶ *Ask detainees how often they are permitted to have a shower per week.*
- ▶ *Find out with staff if certain categories of detainees, e.g. workers, can take more frequent showers; or if at certain periods, e.g. during the summer, access to the shower is increased. (Regarding women, see below at 7.6).*
- ▶ *Check the shower facilities and assess their general state, cleanliness, appropriateness in terms of privacy but also security, and availability of hot water for all detainees.*



### **What are the general hygiene and sanitary conditions like?**

- ▶ *Check the general cleanliness of the cell (floor, tables etc.), check whether the bedding appears clean.*
- ▶ *Look out for cockroaches or other vermin or rodents in the cells.*
- ▶ *Talk with detainees about the possibilities to change and wash the bed linen; ask whether there are problems in the cell with vermin (cockroaches, mosquitos, flies etc.), mice or rats etc.*
- ▶ *Talk with the management and staff about the frequency of disinfection and fumigation measures.*



### **Are detainees enabled to look after their own cleanliness, including cells, bedding and clothes?**

- ▶ *Ask the detainees whether they receive any cleaning products (for free) in order to keep their cells clean.*
- ▶ *Talk with detainees about the possibilities to change and wash the bed linen; ask the detainees if they are enabled to keep their own clothing clean.*
- ▶ *Ask the detainees if they would get any personal hygiene products (toilet paper, soap, toothbrush and toothpaste, shampoo, shaving equipment etc.) for free or if they have to buy or get them from their families; establish if there are free products at least for indigent detainees.*
- ▶ *Check the laundry and other facilities for detainees to wash their bedding and clothes.*
- ▶ *Discuss with the management the provision of cleaning and personal hygiene products, as well as the provision of clean clothes for indigent detainees, and let staff show you the stocks.*



### What are the material conditions in the other parts of the detention facility like?

- ▶ Assess the communal areas, including outdoor exercise yards and workshops, in particular regarding space, ventilation, light, cleanliness and health and safety.



### What are the workplace conditions for staff like?

- ▶ Visit staff offices, canteens, rest rooms etc. and assess the material conditions.
- ▶ Discuss with staff of all levels if they are content with their workplace conditions and which improvements they would suggest.

## 5.5. Nutrition

*“Member States should ensure that food is provided in sufficient quantity and quality to meet the detainee’s nutritional needs, and that food is prepared and served under hygienic conditions. Furthermore, Member States should guarantee that clean drinking water is available to detainees at all times.*

*Member States should provide detainees with a nutritious diet that takes into account their age, disability, health, physical condition, religion, culture and the nature of their work.”*

*Paragraphs 43 and 44 of the Commission Recommendation*



### Relevant international laws and standards:

- ▶ Rules 22.1-22.6 and 31.5 of the [revised European Prison Rules 2020](#)
- ▶ Rules 22 and 114 of the [United Nations Standard Minimum Rules for the Treatment of Prisoners \(the Mandela Rules\)](#)
- ▶ CPT Standards “[A decency threshold for prisons – criteria for assessing conditions of detention](#)”

The provision of **food** forms part of the overall evaluation of conditions in a given detention facility. Without the assistance of a dietician, NPMs will find it difficult to come to a comprehensive and objective assessment of the food on offer; particularly the question whether the detention facility can cater for detainees with specific dietary requirements (*e.g. diabetics, persons suffering from food allergies, etc.*) is often better left to experts in this field.

However, certain indicators relating to food should be taken up by the monitoring team, such as consistent and widespread complaints about the quantity and quality of food in a given detention facility, the actual appearance and taste of the food, the state of the facility’s kitchen, the availability or lack of fresh products, or regular cases of detainees falling ill after eating the prison food. Furthermore, the monitors should also control the times at which food is served to detainees (which should align with regular mealtimes in the outside community), and the possibility for detainees to buy additional food items at the canteen or to receive them from outside.

Drinking water could be supplied by tap or, if the tap water is not of drinking quality, by handing out sufficient filtered and/or bottled water. In case an NPM has doubts about the quality of tap water, an expert diagnosis might have to be ordered, or the prison system has to be recommended to carry out an analysis.

## Questions to ask and ways to find out



### Preliminary assessment:

Are the national laws and policies in line with [paragraphs 43 and 44](#) of European Commission Recommendation?



### Is the food sufficient in quantity and quality?

- ▶ *Speak to the management about the budget they receive for food per prisoner and ask whether this budget is regularly increased in line with rising food prices.*
- ▶ *Speak to a large number of detainees about their views on the food; alternatively, use a specific questionnaire to receive the opinion of many detainees about the food.*
- ▶ *Get a copy of the menu for several weeks, including special menus for specific groups of detainees (e.g. elderly or ill persons, persons with disabilities, working detainees, persons adhering to different religions) for evaluation by an expert (dietician). (Regarding women and juveniles, see below at Chapters 7 and 9).*
- ▶ *Observe in reality at which times during the day food is served to detainees.*
- ▶ *Try a sample of the food on any of the days of your visit; test whether it is warm and appetising.*
- ▶ *Cross-check invoices for food with the actual menu and stock.*



### Do the facility's kitchen and areas where food is stored and distributed meet the appropriate hygienic levels?

- ▶ *Check the facility's kitchen, storage facilities and food distribution areas for hygiene and state of repair.*
- ▶ *Discuss with health care staff whether detainees frequently suffer from gastro-intestinal diseases.*



### Can detainees buy additional food items in the canteen, and can they receive food parcels from outside?

- ▶ *Check the offer of the canteen.*
- ▶ *Speak with detainees whether they consider the range of food items they can buy in the canteen sufficient. Pay particular attention to whether fresh and healthy food is available to purchase.*
- ▶ *Compare the prices of items that can be purchased in the canteen with similar items outside of prison.*
- ▶ *Verify the regulations for receiving food from families outside.*



### Do detainees have unrestricted access to drinking water?

- ▶ *Have the quality of tap water in the cells checked by experts.*
- ▶ *Check the stocks of drinking water available in the detention facility in case the tap water is not drinkable.*
- ▶ *Discuss with detainees whether they regularly receive drinking water in sufficient quantities.*

## 5.6. Regime

*"Member States should allow detainees to exercise in the open air for at least 1 hour per day and should provide spacious and appropriate facilities and equipment for this purpose.*

*Member States should allow detainees to spend a reasonable amount of time outside their cells to engage in work, education, and recreational activities as are necessary for an appropriate level of human and social interaction." [...]*

*Paragraphs 45 and 46 of the Commission Recommendation*



#### Relevant international laws and standards:

- ▶ Rules 25.1, 25.2, 27.1, 27.2 of the [revised European Prison Rules 2020](#)
- ▶ Rule 23 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)
- ▶ CPT Standards “[Imprisonment](#)”

NPMs should spend a considerable time assessing the regime offered in any given detention facility. In general, detainees should **spend at least eight hours per day engaged in meaningful activities, but preferably more** outside their cells. Of course, the regime will vary in accordance with the type of detention facility – open, semi-open, closed, high security – and the status of the individual detainees.

As an absolute minimum, the regime offered to detainees must comprise **outdoor exercise** of at least one hour per day, which should give them the opportunity to physically exert themselves. At times, the facilities for outdoor exercise are so unappealing (*e.g. bleak and very small*) that detainees prefer to stay indoors; other obstacles could be inclement weather conditions and a lack of shelter and/or appropriate clothing to go outside. NPMs should not stop at examining the theoretical possibility to go to the fresh air but should find out the reasons why detainees do not take up this offer.

### Questions to ask and ways to find out



#### Preliminary assessment:

Are the national laws and policies in line with [paragraphs 45 and 46](#) of European Commission Recommendation ?



**How many hours do detainees spend on average outside their cells? Is every detainee *de facto* enabled to spend at least one hour per day outdoors? What are the conditions of outdoor exercise yards?**

- ▶ Check the daily programme and verify that all categories of detainees are offered at least one hour per day outdoors; calculate the average out-of-cell time for the entire prisoner population (minimum and maximum times).
- ▶ Interview detainees to find out if they get to go outdoors one hour per day; in case detainees are offered to go outdoors but do not avail themselves of this possibility, find out why.
- ▶ Check whether detainees have clothes and shoes appropriate for the weather conditions at their disposal to go outside.
- ▶ Ask staff if they actively encourage detainees to go to the fresh air once a day.
- ▶ Examine the material conditions of outdoor exercise facilities and assess whether efforts have been made to render them less carceral, *e.g.* by planting flowers or other greenery.
- ▶ Measure the courtyard and find out how many detainees exercise at the same time in the courtyard.
- ▶ Find out if the courtyard has any equipment, such as benches or other means of rest; sports/workout equipment; shelter against inclement weather.

*“Member States should invest in the social rehabilitation of detainees, taking into account their individual needs. To that effect, Member States should strive to provide remunerated work of a useful nature. With a view to promoting the detainee’s successful reintegration into society and the labour market, Member States should give preference to work that involves vocational training.*

*To help detainees prepare for their release and to facilitate their reintegration into society, Member States should ensure that all detainees have access to safe, inclusive and accessible educational programmes (including distance learning) that meet their individual needs while taking into account their aspirations.”*

[Paragraphs 47 and 48 of the Commission Recommendation](#)



#### Relevant international laws and standards:

- ▶ Article 10 (3) ICCPR
- ▶ Rules 26 and 28 of the [revised European Prison Rules 2020](#)
- ▶ Rules 4, 91, 92, 96-105 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)
- ▶ CPT Standards “Imprisonment”

Offering only outdoor exercise to detainees is certainly not enough. The vast majority of detainees should have **work (preferably with a vocational value), education, cultural activities, organised sports activities** etc., and therapeutic programmes if appropriate.

For each sentenced prisoner,<sup>16</sup> an **individual sentence plan** should be drawn up after careful initial assessment, which outlines the activities suitable to support the individual to move away from crime and lead a self-supporting life once they leave prison.

Linked to the individual sentence plan is the issue of a **progressive or incentivised regime**, which can take various forms. Monitors should ensure that progression takes place in a transparent, non-discriminatory, equal manner, and that detainees are encouraged and enabled to move through their sentence to more relaxed and richer regimes on the basis of their individual behaviour and co-operation with programmes, staff and other detainees. Accountability for any decisions regarding progressive or incentivised regimes should be established, and detainees should have the possibility to appeal such decisions.

In summary, the assessment of the regime by NPMs lies at the core of their analysis whether a detention facility or the prison system as a whole lives up to its primary goal of rehabilitation and re-integration of prisoners into society.

### Questions to ask and ways to find out



#### Preliminary assessment:

Are the national laws and policies in line with [paragraphs 47 and 48](#) of the European Commission Recommendation?



#### How many detainees are engaged in structured activities? How many hours per day do they have work, education etc.?

- ▶ *Collect with the management and civilian staff a list providing an overview of the number of detainees engaged in organised activities, such as work, education, sports activities etc.*
- ▶ *Calculate the percentage of detainees involved, and the number of hours they spend daily engaged in such activities.*
- ▶ *Be sure to verify how many detainees are actually present in work, school and sports facilities at the time of the NPM's visit.*
- ▶ *Find out with the management and civilian staff which criteria they apply for providing detainees with a workplace or education.*
- ▶ *Discuss with the management and civilian staff obstacles to engaging every sentenced prisoner in purposeful activities, and ways to increase the activities on offer.*

16. For pre-trial detainees, specific rules pertaining to activities might apply (see below in [Chapter 6.3](#) on pre-trial detainees). Nevertheless, as a rule also pre-trial detainees should spend a considerable time per day – eight hours or more – outside their cells and they should not be excluded from meaningful activities due to their pre-trial status.



**Is an individual sentence plan drawn up for every sentenced prisoner?**

- ▶ Discuss with civilian staff – educators, psychologists, social workers etc. – if every prisoner has an individual sentence plan, and how these sentence plans are drawn up.
- ▶ Check individual files whether they contain sentence plans; examine their content and whether they are regularly updated.
- ▶ Cross-check whether the goals and activities set out in the sentence plans are implemented in practice.
- ▶ Speak with individual prisoners about their sentence plan; find out whether they are aware of its content and if they were involved in drawing up and updating the sentence plans. Verify in interviews with prisoners whether they are taking part in the activities mentioned in the plans, or whether there are any obstacles to implementing the sentence plans.



**What are the working conditions for detainees like?**

- ▶ Speak with staff responsible for oversight of working detainees about their views on working conditions.
- ▶ Verify that every working detainee either works on a voluntary basis or is remunerated in accordance with the regulations.
- ▶ Speak with detainees about their working conditions.
- ▶ Assess the workshops or other places of work for detainees with a view to their overall material conditions, work safety etc.



**What are the conditions for education and vocational training like?**

- ▶ Speak with educators and other staff responsible for providing education or vocational training about their views on the conditions relating to education and vocational training.
- ▶ Get information about possibilities to follow education outside of detention, and of obtaining certificates.
- ▶ Speak with detainees who are enrolled in educational or vocational training courses about criteria they had to fulfil for receiving education or training, obstacles they are facing, and support they are receiving from side of civilian staff.
- ▶ Assess classrooms and equipment for education and training.



**Are there any other activities organised for detainees?**

- ▶ Discuss with the management which other activities, such as sports or cultural events, are offered for detainees. Find out how often these events take place, and how many detainees participate in them.
- ▶ See the library, any existing common areas, and assess their accessibility for detainees (e.g. opening hours), and whether detainees actually take up the offer. Check whether the library has a broad range of books and other reading material on offer, including in the languages most often spoken by foreign detainees.
- ▶ Speak with detainees and ask them if they participate in joint sports or cultural activities and make use of the library or other common areas.



**Is a progressive/incentivised regime in place for detainees and is it implemented in an equal and transparent manner?**

- ▶ Speak with the educators, psychologist(s) and other civilian staff, and get an overview of the system of progressive/incentivised regime applied.

- ▶ Establish with staff the criteria detainees must meet in order to progress through the regime and/or to receive benefits.
- ▶ Get the numbers of detainees on the different levels of regime.
- ▶ Verify that detainees are informed of regime progression, including a possibility to appeal a regression, by, e.g. information leaflets and regular oral explanations.
- ▶ Speak with detainees on different levels of the regime and ask them about their experiences with the progressive/incentivised regimes.
- ▶ Try to find detainees who have recently progressed/regressed to assess the procedures.
- ▶ Check individual files of recently progressed/recessed persons to assess the procedures. Verify that recession is not being used as a surrogate disciplinary system, denying prisoners the due process safeguards that should accompany the imposition of a disciplinary penalty.



**How do detainees spend their time inside the cells? Is every cell equipped with a TV set? Can detainees get their own radios and/or TV sets? Can they get reading material – either from the library or from outside? Are they allowed to play board games, cards etc.?**

- ▶ Visit several cells and speak with detainees about activities within the cells.
- ▶ Check if prisoners have to pay for TV sets and, if so, whether indigent prisoners can be assisted to acquire one.



**Are any therapeutic and rehabilitative programmes on offer in the prison?**

- ▶ Speak with the psychologist(s) and other civilian staff, and get an overview of therapeutic and rehabilitative programmes, such as offending behaviour and anger management courses, substance abuse treatment, etc.
- ▶ Establish with staff the criteria detainees have to meet in order to qualify for such programmes.
- ▶ Get the numbers of detainees who actually participate and the number of hours they spend taking part in these programmes.
- ▶ Speak with detainees who are enrolled in such programmes about their experiences.

The European Commission Recommendation pays particular attention to measures taken to address radicalisation in prisons (see below, [Chapter 13.1](#)), and NPMs could assess whether rehabilitation, deradicalisation and disengagement programmes for detainees convicted of terrorist and violent extremist offences are on offer.

*“Member States should implement measures providing for rehabilitation, deradicalisation and disengagement programmes in prison, in preparation of release, and programmes after release to promote reintegration of detainees convicted of terrorist and violent extremist offences.”*

*Paragraph 86 of the Commission Recommendation*

## 5.7. Health care

Guidance for the in-depth assessment of all matters relating to health care in a detention facility would warrant its own handbook. In addition to existing norms and standards pertaining to these questions, the Court has delivered a wealth of jurisprudence on, *inter alia*, medical assistance for detainees with a physical illness, for HIV-positive detainees, for detainees with disabilities, for the elderly and sick, for mentally ill detainees and those with a substance use disorder, as well as on questions of diet and passive smoking in detention. In a large proportion of these cases, the Court has found violations of [Article 3 ECHR](#) as **inadequate health care for detainees was found to be amounting to inhuman or degrading treatment**.

For this reason, the assessment of health care provisions in any detention facility should be at the forefront of an NPM's concern. NPMs engaging in a comprehensive examination of all the different aspects of health care for detainees might require the assistance of one or more health care professionals, preferably with expertise in prison health care, taken along on the visit (either as members or as external experts). While the presence of a medically trained person in the delegation would enhance the comprehensiveness and credibility of the NPM's findings with regard to health care, there are a range of issues that also other non-medical members of a visiting delegation can check.

Health care for detainees start at reception, continues throughout their stay in detention and should not end with release but arrangements should be in place for aftercare of released persons. Throughout the assessment of health care for detainees, monitors should keep some **principles** in mind:

The state has an obligation to ensure that a person is detained under conditions which are compatible with respect for their human dignity, that the manner and method of the execution of the measure do not subject them to distress or hardship exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their **health and well-being are adequately secured**.

**Equality of care**, i.e., the principle that health care in detention should be of an equivalent standard to that provided in the wider community, has to be understood as **equity of care**, which means that health care resources need to be adjusted to the higher health care needs of detainees (e.g. higher prevalence of substance abuse, higher incidence of mental health disorders, somatic problems caused by imprisonment etc.) in order to truly **create equal outcomes for all patients**.

**Health profession ethics** do not stop at the prison door; detainee-patients have the same rights to medical ethics, including in particular medical confidentiality, as other patients.

Health care professionals working in prison should be **independent** of the prison administration. In particular, they should not be involved in fit-for-punishment assessments or security related tasks (e.g., drug testing, body searches) and should not be obliged to follow orders by the administration relating to health care decisions. On the contrary, prison management should be obliged to have due regard to the recommendations of health care staff working in prisons, including on such matters as the need for hospitalisation, early release on health grounds and end of life care. Additionally, continuity of care should be ensured, with consistent medical oversight and appropriate follow-up on any health-related concerns.

Matters relating to medical examinations of newly arrived detainees ([Chapter 6.2](#)), after violent incidents including the use of force by staff ([Chapter 5.3](#)), and medical attention provided for persons in segregation or solitary confinement ([Chapter 5.11](#)) are dealt with in the respective chapters. In particular, NPMs should be aware of and promote the important role prison health care can play in the prevention of ill-treatment by law enforcement authorities. In many countries, the CPT has repeatedly called upon the authorities to sensitise prison health care staff to this role. All newly arrived detainees should undergo comprehensive medical examinations by a doctor or a nurse reporting to a doctor within 24 hours after admission. A record should be drawn up containing a full account of objective medical findings, an account of statements made by the person, including any allegations of ill-treatment, and the healthcare professional's observations, indicating the consistency between any allegations made and the objective medical findings. Prison health care services should keep a specific "trauma register", and any injuries should be recorded on body charts and photographed, in line with the Istanbul Protocol. Any findings of injuries consistent with allegations of ill-treatment should be systematically brought to the attention of the competent legal authorities (prosecutors, investigative judges etc.). Further, a separate chapter is dedicated to persons with disabilities or serious medical conditions, including in particular mental health condition, and to the prevention of suicide in detention.

---

*"Member States should guarantee that detainees have access in a timely manner to the medical, including psychological, assistance they require to maintain their physical and mental health. To this end, Member States should ensure that healthcare in detention facilities meets the same standards as that provided by the national public health system, including with regard to psychiatric treatment.*

*Member States should provide regular medical supervision and should encourage vaccination and health screening programmes including communicable (HIV, viral hepatitis B and C, tuberculosis and sexually transmitted diseases) and non-communicable diseases (especially cancer screening), followed up by diagnosis and*

*initiation of treatment where required. Health education programmes can contribute to improving screening rates and health literacy. In particular, Member States should ensure that special attention is paid to treatment for detainees with drug addiction, infectious diseases prevention and care, mental health and suicide prevention.*

*[...] In particular, Member States should ensure [...] that continuity of healthcare is provided for detainees in preparation of release, where necessary."*

*Paragraphs 49, 50 and 75 of the Commission Recommendation*



#### Relevant international laws and standards:

- ▶ Articles 3 and 8 ECHR (Factsheets "[Detention and mental health](#)" and "[Prisoners health-related rights](#)" for a summary of case law by the Court)
- ▶ Rules 39 to 43.1 and 46.1 to 46.2 of the [revised European Prison Rules 2020](#)
- ▶ Rules 24 to 35 of the [United Nations Standard Minimum Rules for the Treatment of Prisoners \(the Mandela Rules\)](#)
- ▶ CPT Standards "[Health care services in prison](#)"

## Questions to ask and ways to find out



#### Preliminary assessment:

Are the national laws and policies in line with paragraphs [49](#), [50](#) and [75](#) of European Commission Recommendation?



#### Is equivalence of care guaranteed for all detainees?

- ▶ Get the numbers of health care staff working in the prison (including whether they are on a full-time basis, part-time or visiting experts), information on shifts, their respective expertise (e.g. trained mental health nurses) and compare with provisions outside prison to establish whether they are at equivalent.  
(NB: Due to the comparatively higher morbidity and incidence of health problems among prisoners, equivalence of care in practice often requires a greater staff complement than required for the general population.)
- ▶ Verify that health care staff are only responsible for detainees' health care needs and not also responsible for treating staff.
- ▶ Visit health care facilities within the detention facility, e.g. infirmary, sick bay, etc., and establish whether they offer comparable conditions to those found in health care establishments in the wider community.
- ▶ Check whether the medical facilities (infirmary or similar) are equipped with life-saving equipment such as oxygen, nebulisers, defibrillator etc.
- ▶ Establish with health care staff whether they have ready access to commonly needed medication and first aid equipment.
- ▶ Establish whether detainees are included in social security schemes foreseen by the national public health system and receive health-care services free of charge.
- ▶ Check within the infirmary whether the medical filing system is in line with national standards and guarantees confidentiality (e.g. that prisoners working in the infirmary cannot gain access to the files).



#### Are health care services within the detention facility accessible?

- ▶ Verify with detainees and health care staff whether detainees have unrestricted and confidential access to medical services by, e.g. nurses doing daily rounds throughout the facility to collect requests or by other confidential means such as electronic booking systems.

- ▶ Ask detainees whether they have to disclose reasons for their requests to be seen by a doctor or nurse to non-health care staff.
- ▶ Check staff rosters to verify that a medically trained person (with Basic Life Support and Defibrillation (BLSD) certification, first responder training, etc.) is available at all times, including at nighttime and weekends. In smaller detention facilities, verify that there is always a member of staff with first aid training available.
- ▶ Verify in medical files the time periods it takes from a request to be seen by the medical service to the actual appointment.
- ▶ Observe whether health care staff enters the detention units and whether they can be easily approached by detainees.



#### **Are the precepts of medical confidentiality and ethics observed during consultations?**

- ▶ Observe whether detainees are attended to by medical staff in the presence of guards or other detainees.
- ▶ Observe whether detainees would be attended to by health care staff while handcuffed or through bars.
- ▶ Check whether the medical consultation rooms are covered by CCTV.
- ▶ Discuss with medical staff the measures in place for securing their own safety during consultations.



#### **Is the distribution of medication to detainees adequately and safely done?**

- ▶ Verify whether medication is handed out exclusively by health care staff. In case non-health care staff is involved in the distribution of medication, assess whether the preparation of medication is done by health care staff and whether the precepts of medical confidentiality and safety are observed.
- ▶ Observe the manner in which staff hands out medication to detainees and determine whether measures are in place to avoid misuse of substances, trading of prescribed medications, bullying or other adverse practices.
- ▶ Discuss with detainees whether they can keep certain medication with them in their cells, and about their experiences when queuing for medication.



#### **Are regular medical checks conducted and screening and vaccination programmes offered? Are health education measures in place?**

- ▶ Verify with health care staff whether they run a system of regular health checks of all detainees, what these checks entail, and in which intervals they see all detainees after the initial screening.
- ▶ Discuss with detainees and health care staff whether detainees are made aware of the availability of health screening and vaccination programmes.
- ▶ Discuss with health care staff whether they have the resources to conduct health education events for detainees and have health education material to hand out.



#### **Do detainees have access to medical specialists?**

- ▶ Verify with health care staff that a dentist regularly visits the facility for necessary treatment and regular checks of detainees' dental health.
- ▶ Visit the dentist's treatment facility if it exists or find out where in the facility dental treatments are carried out; assess whether the facilities are adequate for dental treatment in terms of hygiene, equipment, etc.

- ▶ Discuss with the management and health care staff the general needs of the detainees (e.g. elderly detainees, patients with chronic diseases etc.).
- ▶ Verify in registers or rosters which medical specialists (e.g. psychiatrists, ophthalmologists, dermatologists, geriatric medical experts, specialists for infectious diseases, etc.) visit the facility, and in which intervals.
- ▶ Discuss with health care staff whether these visits are sufficient to meet demand in the detention facility.
- ▶ Discuss with detainees and health care staff whether there are any obstacles to receiving specialised medical care.



### **Can detainees be transferred to hospital or outside medical care if necessary?**

- ▶ Discuss with health care staff the procedures for speedy transport to hospital in cases of medical emergency and verify that there are no obstacles to such transfers
- ▶ If medical specialists needed for the care of detainees do not visit the prison, establish with health care staff the procedures for appointments of detainees with medical specialists outside the detention facility.
- ▶ Establish with health care staff and the management whether the ultimate decision to transfer a detainee to an outside medical facility lies with the medical staff or if the security staff or management staff have the possibility to object to a transfer.
- ▶ Check security and restraint measures used in civilian hospitals or other health care facilities for the accommodation of detainees.
- ▶ Identify the person responsible for providing compulsory health treatment (e.g. in cases of prolonged hunger strikes or acute psychotic episodes) in prison and ensure that the monitor receives information on relevant procedures and data.



### **Are the needs of individuals with substance use disorders (SUDs) adequately met in the facility?<sup>17</sup>**

- ▶ Assess with the management whether there is a general awareness of SUDs in the facility, and find out which substances are most often used by the detainees.
- ▶ Discuss with medical staff which methods they use for screening for SUDs at reception of newly admitted detainees.
- ▶ Find out whether there are specialised treatment programmes and therapeutic environments provided for SUDs.
- ▶ Check the staff complement to assess whether sufficient specialised health care staff for the treatment of SUDs work in or regularly visit the facility; assess whether these staff members are working in close cooperation with other medical staff members.
- ▶ Discuss with these health care staff members or general health care staff whether they have means at their disposal for medically assisted withdrawal treatment.
- ▶ Discuss with these health care staff members or general health care staff whether opiate agonist therapy (OAT) programmes (formerly known as substitution programmes) are available for detainees, whether such treatment can be continued or started in prison, and if there are measures for after-release continuity of care in place.
- ▶ Discuss with health care staff and other civilian staff whether detainees are offered psycho-social therapies for substance use disorders.
- ▶ Verify with health care staff whether the facility implements harm reduction measures (e.g. needle-syringe exchange programmes, availability of condoms, drug-free units etc.). Discuss with them whether the

17. Note that national rules for the treatment of substance use disorders in prison vary considerably in EU member states and that NPMs would have to engage from the outset in a comparison of national laws with existing good practices in Europe (e.g. regarding the possibility to start OAT in prison, the preventive handing out of Naloxone, etc.).

*prison makes Naloxone, which can rapidly reverse an opioid overdose and thereby save lives, available to prisoners. Further, discuss with health care staff whether they are aware of any abuse issues of prescription medication.*

- ▶ *Check whether information material on drug use is publicly available to detainees.*
- ▶ *Speak with general staff about their training in SUD and overdose awareness.*
- ▶ *Discuss with detainees and health care staff whether they are confronted with any obstacles in the treatment of substance use disorders.*



#### **Is dignified palliative and end of life care offered in the detention facility?**

- ▶ *Determine in discussions with the management and health care staff the need for palliative and end of life care in the detention facility.*
- ▶ *Check the staffing complement to verify that sufficient and sufficiently trained staff for this form of care is available.*
- ▶ *Discuss with health care staff whether they have the necessary equipment (e.g. oxygen cylinders) and medications for the care of these detainee-patients.*
- ▶ *Visit units or cells for older persons in detention and verify that accommodation is adapted to their needs (e.g. hospital beds).*
- ▶ *Discuss with the management and health care staff which measures are being taken to provide such persons with contact with the outside world, and time outdoors if their condition allows.*
- ▶ *Assess the existing rules for compassionate release from prison or possibilities of transfer to a hospice.*



#### **Does the detention facility foresee aftercare for detainees?**

- ▶ *Determine in discussions with the management and health care staff whether measures are in place to prepare detainees at the end of their detention for continuity of health care measures initiated in detention and to assist released detainees in this respect.*

## **5.8. Contact with the outside world**

For the great majority of detainees, keeping in contact with the outside world is of primary importance, and many of them just live for the short moments when they can see and talk to their loved ones. The frequency and length of different types of visits and telephone calls, the possibility of writing letters and of receiving parcels, options relating to new forms of technology (VoIP or similar), are regulated through national laws and bylaws, and monitors should primarily verify during a visit whether in practice all detainees can benefit from their national legal entitlements. However, also the national laws and regulations for all categories of detainees should be scrutinised to verify that they are allowed to receive regular visits and make phone calls. In this regard, the CPT has repeatedly recommended that detainees should get the equivalent of one hour per week in visit time.

*“Member States should allow detainees to receive visits from their families and other persons, such as legal representatives, social workers and medical practitioners. Member States should also allow detainees to correspond freely with such persons by letter and, as often as possible, by telephone or other forms of communication [...].*

*Member States should provide suitable facilities to accommodate family visits under child-friendly conditions, compatible with the demands of security but less traumatic for children. Such family visits should ensure the maintenance of regular and meaningful contact between family members.*

*Member States should consider enabling communication via digital means, such as video calls, in order to, inter alia, enable detainees to maintain contact with their families, to apply for jobs, to take training courses or to look for accommodation in preparation for release.”*

*Paragraphs 54, 55 and 56 of the Commission Recommendation*



#### Relevant international laws and standards:

- ▶ Article 8 ECHR
- ▶ Rules 24.1, 24.4, 24.5 of the revised European Prison Rules 2020
- ▶ Rule 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)
- ▶ CPT Standards "Imprisonment", "A decency threshold for prisons – criteria for assessing conditions of detention"

### Questions to ask and ways to find out



#### Preliminary assessment:

*Are the national laws and policies in line with paragraphs 54, 55 and 56 of the European Commission Recommendation?*



#### Are the visit entitlements for various categories of detainees in practice in line with national regulations?

- ▶ *Collect with the management and civilian staff a list providing an overview of the different categories of detainees and their respective visit entitlements, including the frequency, duration and modalities of visits (open/behind glass partition, supervised/unsupervised, conjugal etc.).*
- ▶ *Speak with detainees to find out if there are any obstacles regarding visits.*

From the standpoint of re-socialisation of prisoners, contact with the outside world should be actively promoted, as it greatly supports prisoners' return into society after a term in prison. Visiting facilities should therefore be appropriately inviting so that families, and in particular children, are encouraged to come and visit detained persons. Moreover, security considerations, such as searches of visitors, need to be well balanced and not aimed at discouraging visitors from coming. Finally, visits by social workers, civil society and welfare organisations, religious groups etc. could play a role in allowing detainees to stay in touch with the outside.

### Questions to ask and ways to find out



#### Are the visiting facilities appropriate? Are special arrangements in place to encourage family visits? Are security measures vis-à-vis visitors implemented in a proportionate manner?

- ▶ *Examine the visit facilities for different categories of visits, such as visit booths with glass partitions, open visit facilities, rooms for family visits, conjugal visit facilities etc.*
- ▶ *Find out with staff during which times detainees can receive visits.*
- ▶ *Speak with detainees and possibly visitors about their experiences regarding security checks and searches of visitors.*
- ▶ *Observe the procedure of security checks and searches of visitors.*



#### Are social workers, medical practitioners, civil society, welfare or religious organisations or others permitted to visit detainees?

- ▶ *Discuss with the management their policy in allowing unrelated persons visiting detainees, and more generally cooperation with civil society in their efforts to re-socialise prisoners.*

Similar to visit entitlements, NPMs can assess detainees' **access to the telephone** from different angles. For a start, national legislation should be critically assessed with a view to establishing if phone entitlements are still in line with modern day practices. In some European countries, newly built detention facilities are equipped with in-cell phone lines, which constitutes a good practice.

The NPM should also assess in practice whether the material conditions are provided to allow detainees to make use of their right to access to the phone.

### Questions to ask and ways to find out



#### **Can detainees make frequent phone calls in line with existing regulations?**

- ▶ *Discuss with the management of the detention facility their policy regarding phone calls, with a view to determining the frequency and length of this entitlement, possibly divided into different categories of detainees.*
- ▶ *Examine the availability of functioning phones and determine if a sufficient number of phones for the entire prison population exists.*
- ▶ *Check the conditions for making phone conversations (e.g. pay phones on noisy corridors or in exercise yards).*
- ▶ *Discuss with staff how detainees can acquire pre-paid phone cards or similar, what the costs of phone calls are in comparison with the outside world, and whether there are measures in place to provide indigent detainees with phone calls free of charge.*
- ▶ *Generally, speak with detainees whether they have experienced any problems when making phone calls.*

For many years, the CPT has advocated for the installation of modern means of communication and technology that allows to make voice and/or video calls using a broadband Internet within detention facilities. The Covid-19 pandemic has accelerated many penitentiary systems' willingness to invest in such technology and detainees were given a statutory right to regularly use it, subject to certain restrictions. Besides its value for detainees to stay in contact with their families, the European Commission Recommendation highlights the benefits of modern technology for preparing detainees for release.

### Questions to ask and ways to find out



#### **Are detainees allowed to use the Internet for phone/video calls? Are they enabled to use it for job applications, training courses or other reasons?**

- ▶ *Discuss with the management of the detention facility whether video-call equipment is installed within the facility and under which conditions detainees are entitled to use it.*
- ▶ *Discuss with the management whether detainees, and in particular those coming to the end of their sentence, are entitled to use the Internet for job applications, search for accommodation etc.*
- ▶ *Check with civilian staff whether they assist detainees in the use of the Internet, be it for online education or for other reasons.*
- ▶ *Examine the conditions under which the Internet can be used and whether there are a sufficient number of terminals.*

Written **correspondence** from and to detainees can usually be restricted or censored in accordance with the legal regulations; monitors could verify during a visit whether restrictions applied in practice are in accordance with national law, and whether the restrictions are necessary and proportionate. Some letters directed to certain complaints and oversight bodies, such as the National Human Rights Institution, the Ombudsman and the NPM itself, should be exempted from opening and censorship; the monitors could find out whether this rule is implemented. Further, it should be verified if detainees are given the means (*i.e., paper, envelopes, stamps, pens*) to write letters. Lastly, detainees are often dependent on **parcels** from their families to cover daily needs; again, the monitors could mirror the practice as applied in the detention facility with the legal regulations.

## Questions to ask and ways to find out



**Are the practice regarding the writing and receiving correspondence as well as the practice regarding the receiving of parcels in the detention facility in line with existing regulations?**

- ▶ Speak with staff responsible for controlling mail from and to detainees; find out if certain detainees are limited in their right to receive mail (e.g. censorship or withholding of letters).
- ▶ Cross-examine these persons' files to find out if the restriction is necessary and proportionate.
- ▶ Establish whether detainees are given writing material.
- ▶ Generally, speak with detainees whether they have experienced any problems in writing or receiving letters.
- ▶ Observe staff responsible for controlling parcels and speak with them about restrictions they apply.
- ▶ Speak with detainees to find out if they have experienced any problems in receiving parcels. Establish whether family members who lack the financial means to pay postal charges can personally deliver parcels to the prison.



**Is the confidentiality of correspondence to certain complaints and oversight bodies guaranteed?**

- ▶ Let staff explain the manner in which detainees can write confidential letters to certain national and/or international bodies.
- ▶ Discuss with detainees if they are confident that their mail to certain outside bodies is not restricted by staff.

---

*"Member States should ensure that, where detainees are exceptionally prohibited from communicating with the outside world, such a restrictive measure is strictly necessary and proportionate and is not applied for a prolonged period of time."*

*Paragraph 57 of the Commission Recommendation*

---



### Relevant international laws and standards:

- ▶ Article 8 ECHR
- ▶ Rule 24.2 of the revised European Prison Rules 2020
- ▶ Rule 43 (2) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)
- ▶ CPT Standards "Imprisonment"

Visit entitlements and access to the telephone can be **restricted** by prison administrations for reasons of good order and security. NPMs should be very attentive to such restrictions and start with scrutinising national legislation to assess whether the legally possible restrictions are in line with international standards or whether they could lead to arbitrary applications. During the visit, they can evaluate whether any individual restrictions on specific detainees or categories of detainees regarding contact with the outside world are in line with national legislation and applied in accordance with the principles of necessity and proportionality, and only for reasons of good order or security. Disciplinary punishments should never lead to a complete ban of family contact (see below at 5.10).

## Questions to ask and ways to find out



### Preliminary assessment:

Are the national laws and policies in line with [paragraph 57](#) of the European Commission Recommendation?



**Are restrictions of communication with the outside world exceptional measures? Are they necessary and proportionate? How long can such restrictions last?**

- ▶ Find out with the management and/or civilian staff if specific detainees are exempted from or restricted in receiving visits or making phone calls, or in other means of communication.
- ▶ Cross-examine these persons' files to find out if the restriction is in accordance with the law, necessary and proportionate.

---

***"Member States are encouraged [...] to allocate detainees, as far as possible, to detention facilities close to their homes or other places suitable for the purpose of their social rehabilitation."***

*Paragraph 37 of the Commission Recommendation*

---

The European Commission Recommendation clearly acknowledges the importance of being detained close to one's home or similar place for social rehabilitation. In many countries, however, prisons are built in remote places and detainees are often kept a long way away from their families. Families in turn face great difficulties in regularly visiting their relatives in prison. The CPT has recommended compensatory measures to make up for long distances, such as additional phone calls, the right to accumulate visit times, and financial support and/or assistance with transport for families who cannot afford to travel to visit prisoners held far from their homes. NPMs should scrutinise whether there are legal provisions and/or a general policy to accommodate detainees as a rule close to their homes, which exceptions can be made to this rule (*e.g. accommodation in a high security prison*), and whether any compensatory measures are in place if detainees are kept a long way away from their families. For foreign detainees see below at [Chapter 8](#).

It should also be kept in mind, however, that there can be many other reasons why a detainee does not receive any or only very few visits, and NPM members carrying out interviews have to have a certain sensitivity when inquiring about family visits. For instance, detainees might not have any family or be estranged from their family due to the underlying crime. In such cases, prisons should pro-actively encourage civil society led prison visitor schemes, religious representatives, social workers or others to provide regular contact with the outside world.

Finally, the CPT has on occasion criticised a practice of regular transfers from one prison to the next of certain challenging detainees. While the authorities see these practices as legitimate and often last-resort security measures, detainees often perceive them as punishments and call them "the ghost train", "Shanghai" or similar. In any case, prisoners' rights to family visits and hence resocialisation are greatly impacted by frequent transfers. NPMs should be very attentive to these cases and assess whether there are no less intrusive measures than transferring these detainees.

## **Questions to ask and ways to find out**



**Preliminary assessment:**

Are the national laws and policies in line with [paragraph 37](#) of the European Commission Recommendation?



**Are detainees as a rule accommodated in facilities close to their homes and families?**

- ▶ Conduct a general survey in individual facilities or the entire penitentiary system to find out whether the majority of detainees are accommodated in facilities close to their homes and/or families. This could be done by way of a questionnaire.
- ▶ Ask the management and staff how many persons receive regular family visits.
- ▶ Analyse whether exceptions to the rule of accommodation close to detainees' homes are based on clear and foreseeable rules, are necessary and proportionate, and whether detainees can challenge their placement by applying to an independent authority.

- ▶ Find out with the management whether certain detainees are regularly transferred from one prison to the next and pay particular attention to these cases; cross-examine files to find out whether transfers are legal, necessary and proportionate.
- ▶ Speak with detainees about obstacles to family visits due to long distances.

## 5.9. Legal assistance

The European Commission Recommendation contains three provisions on access to legal assistance for detainees. Rather than in the part on procedural safeguards for pre-trial detainees,<sup>18</sup> these provisions can be found in the part on “material conditions”, which is applicable to both pre-trial and sentenced prisoners. In this context, access to effective legal assistance for detainees has to be regarded more from the standpoint of “real access”, i.e. *practicalities that have to be in place in detention facilities so that detainees can communicate with their lawyers and prepare for their legal proceedings*. While “effective” access to a lawyer is of particular importance to pre-trial detainees, also sentenced prisoners could need legal assistance, e.g. *for making a complaint, assisting in early release or parole proceedings, appealing against a disciplinary punishment etc.*

---

*“Member States should ensure that detainees have effective access to a lawyer.*

*Member States should respect the confidentiality of meetings and other forms of communication, including legal correspondence, between detainees and their legal advisers.*

*Member States should grant detainees access to, or allow them to keep in their possession, documents relating to their legal proceedings.”*

*Paragraphs 58, 59 and 60 of the Commission Recommendation*

---

## Questions to ask and ways to find out



### Preliminary assessment:

*Are the national laws and policies in line with paragraphs 58, 59 and 60 of the European Commission Recommendation?*



### Is information on legal assistance available to detainees? Are detainees assisted in applying for legal aid?

- ▶ Verify whether information on practicing lawyers is easily available to detainees, e.g. in public spaces.
- ▶ Speak with civilian staff (social workers, legal staff) and ask whether they would assist detainees who wish to make a request for legal aid.
- ▶ Speak to detainees and ask whether they know where to turn to in case they require legal assistance.



### Can detainees in practice contact their lawyers by phone and/or receive lawyers' visits? Are the meetings of an appropriate length to discuss the matters at stake? Is confidentiality of the meetings ensured?

- ▶ Examine the visiting facilities for lawyers with a view to their appropriateness and confidentiality requirements.

---

18. Note that access to a lawyer as a procedural safeguard is already regulated in the binding [EU Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013](#) on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

- ▶ *Verify with the management that telephone calls to or correspondence with lawyers are not subjected to supervision or censorship.*
- ▶ *Examine visit records on lawyers' visits and speak to detainees and possibly visiting lawyers about their experiences regarding visits by or phone calls to lawyers to detainees.*
- ▶ *Consider speaking with the professional organisations representing criminal defence lawyers (e.g. Bar associations) in order to learn their views about the operation of the system in practice.*
- ▶ *Cross-examine files and other sources of information in case of allegations of undue restrictions to see or speak to a lawyer.*



**Can detainees access documents relating to their legal proceedings or keep them in their cell? Can they access other relevant legal documents, for example, laws or statutes?**

- ▶ *Verify with staff and detainees the practicalities for detainees who wish to consult the documents pertaining to their legal proceedings.*
- ▶ *Check in the library and/or computer room whether the most relevant and updated legal texts are made available to detainees who wish to consult them, or whether detainees can order them and keep them in their cells.*

## 5.10. Disciplinary procedures and sanctions

The European Commission Recommendation does not explicitly foresee any provisions on disciplinary procedures and sanctions for adult detainees. However, a wealth of other international and European standards exists, and both the revised [European Prison Rules](#) and the [Mandela Rules](#) provide for detailed guidance on disciplinary sanctions and in particular the question of solitary confinement as a punishment. Further, the Court has on several occasions found violations of diverse Articles of the Convention when ruling on disciplinary punishments against detainees. In particular, the following rights could be infringed:



### **Article 3 ECHR**

- e.g., in cases of complete isolation and sensory deprivation or indefinite solitary confinement; solitary confinement as a punishment for mentally ill prisoners; confinement to a punishment cell that offers inhuman and degrading conditions; or for additional and unjustified punitive elements, such as shaving off a detainee's hair before placement in a punishment cell



### **Article 5 ECHR**

- in case the punishment amounts to a further deprivation of liberty, i.e., if it entails a significant change in the manner of implementation of the detention, resulting in a major difference between the general prison regime and the conditions in isolation



### **Article 6 ECHR**

- if the disciplinary offence would also constitute an offence under criminal law and is subject to severe sanctions such as loss of remission or additional days in prison



### **Article 8 ECHR**

- if contact to families are restricted by way of disciplinary punishments



#### Relevant international laws and standards:

- ▶ Articles 3, 5, 6, 8, 13 ECHR
- ▶ Rules 56.1-63 of the revised European Prison Rules 2020
- ▶ Rules 36-46 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)
- ▶ CPT Standards “Imprisonment”, “Solitary Confinement of Prisoners”

Disciplinary punishments in detention can entail a variety of sanctions applied to diverse infringements committed by detainees while in a detention facility. The severity of these sanctions usually reflects the gravity of the disciplinary violation; they can reach from warnings to solitary confinement for a certain number of days. As an additional sanction applied to detainees, the system of disciplinary punishments must follow rule of law requirements (*e.g. have a clear legal basis, be accessible and foreseeable to all detainees and non-discriminatory*), and be in accordance with established procedures that should meet minimum fair trial guarantees.

It has to be noted at the outset that the CPT has repeatedly been very critical of the range of disciplinary sanctions foreseen in national laws, and in particular of complete bans of family contact for prolonged periods, additional arrest days added to the sentence, disciplinary punishment applied to detainees who self-harm, and prolonged solitary confinement. With the adoption of the Nelson Mandela Rules by the UN General Assembly in 2015, the rules for the application of solitary confinement as a disciplinary punishment changed profoundly. In line with the Court’s jurisprudence, Mandela Rule 43 prohibits indefinite solitary confinement as amounting to torture, cruel, inhuman or degrading punishment. Furthermore, also prolonged solitary confinement is considered to constitute such punishment and is therefore absolutely prohibited. The novelty introduced by the Mandela Rules consists in the provision of a definition of what constitutes “prolonged solitary confinement”:

“For the purpose of these rules, solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days.”

#### Rule 44 Nelson Mandela Rules.

In 2020, the Council of Europe’s Committee of Ministers followed suit by amending the 2006 European Prison Rules and introducing specific rules on the use of solitary confinement. [Rule 60.6.a](#) mirrors the definition of solitary confinement as contained in the Nelson Mandela Rules: “Solitary confinement, that is the confinement of a prisoner for more than 22 hours a day without meaningful human contact [...]”. [Rule 60.6.c](#) stipulates that solitary confinement shall not be imposed as a disciplinary punishment, other than in exceptional cases and then for a specified period, which shall be as short as possible and shall never amount to torture or inhuman or degrading treatment or punishment.

[Rule 60.6.d](#) instructs governments to declare by way of national law a specific enforceable maximum period beyond which a prisoner cannot be held in solitary confinement. When setting this period, governments should be aware that, if this maximum period is too long, it would amount to inhuman or degrading punishment. The CPT is of the view that the maximum **period of solitary confinement imposed for disciplinary purposes should be no higher than 14 days and preferably lower**. Therefore, it might be **necessary for the NPM to reflect from the outset on the compatibility of the national disciplinary regulations with international human rights standards**, before setting out to an analysis of the application of disciplinary sanctions in individual prisons.

For the assessment of the disciplinary regime in a given facility, an NPM could look at diverse issues related to disciplinary punishments, such as the correct documentation of proceedings and sanctions, the frequency and duration of disciplinary sanctions in comparison with other detention facilities, the manner in which detainees are informed of the disciplinary sanctions regime, the correct application of the law regarding procedural safeguards, the regime applied to detainees undergoing disciplinary sanctions (in particular solitary confinement), and the material conditions in disciplinary cells. Moreover, given the potentially harmful effects of solitary confinement, NPMs should make sure that solitary confinement does never exceed two weeks and that persons held under such conditions are regularly seen by medical professionals and receive sufficient human contact by staff. Particular attention should be paid to whether consecutive periods of solitary confinement for disciplinary reasons or in combination with other forms of confinement can be imposed, resulting in prolonged periods of isolation.

## Questions to ask and ways to find out



**Are disciplinary punishments applied as a last resort, and only for conduct likely to constitute a threat to good order, safety or security?**

- ▶ Compare the statistical data on diverse sanctions (e.g. solitary confinement etc.), their frequency and average duration with other detention facilities. Compare whether similar infringements have led to equal sanctions. Compare data over time to establish trends.
- ▶ Establish with staff and management whether alternative measures such as restoration or mediation are applied.
- ▶ Establish in law and practice whether disciplinary rules apply in situations not constituting a threat to good order, safety or security (e.g. anachronistic rules on “respect”, such as requirements to bow the head or turn to the wall).
- ▶ Establish in law and practice whether detainees who self-harm are punished.



**How often are diverse forms of disciplinary sanctions applied? Are disciplinary proceedings and sanctions properly documented?**

- ▶ Check the disciplinary register or get an overview of detainees subjected to disciplinary punishments in a certain period of time from the database, including names, description of infringement, type and length of punishment applied.
- ▶ Find out from the register or database whether at least in some cases the disciplinary procedures have led to an acquittal of detainees.
- ▶ Verify that all disciplinary proceedings are properly documented in the register or database, as well as in individual files.
- ▶ Identify persons against whom disciplinary punishments were applied and who are still in the detention facility, with a view to interviewing them.



**Are disciplinary sanctions foreseeable for detainees? Are they equally and proportionally applied?**

- ▶ Verify that uniform regulations on the most common disciplinary infringements and resulting sanctions are known to the management and staff, and accessible to detainees.
- ▶ Find out with staff whether detainees receive written information on the most common disciplinary infringements and resulting sanctions.
- ▶ Speak to (newly arrived) detainees about their knowledge of the house rules and disciplinary regulations.
- ▶ Examine individual files with a view to finding out whether similar infringements have led to uniform sanctions, and whether these sanctions have been proportionate to the severity of the disciplinary infringements.



**Have disciplinary proceedings been conducted in accordance with the legal regulations? Have all procedural safeguards been applied?**

- ▶ Examine individual files of detainees against whom disciplinary proceedings were held in a certain period of time, with a view to finding out whether they were informed of the charges in writing, whether an oral hearing has taken place before a decision was taken, whether a decision on a sanction was handed over to them, and whether they were informed of the right to appeal and possibly access to a lawyer.

- ▶ *Verify in individual files that foreign detainees who underwent disciplinary proceedings understood (e.g. by means of an interpreter or through forms in a language they understand) the charges, their rights and the decision, and that they were appropriately assisted during the hearing.*
- ▶ *In case detainees have refused to sign the document stating that they were informed of the charges, the decision and their rights, verify whether a higher-ranking officer has countersigned the fact that they refused to sign.*
- ▶ *Speak to detainees who have recently undergone disciplinary proceedings about the correct application of the procedural regulations and their information regarding rights.*
- ▶ *Speak to foreign detainees whether they benefitted from an interpreter or were otherwise assisted in understanding the procedure and their rights.*
- ▶ *Try to identify by speaking with detainees in individual interviews whether a system of formalised or informal hierarchy among detainees exist whereby certain detainees exercise disciplinary authority over others.*



**Which regime is applied to detainees undergoing confinement to a cell as a disciplinary punishment?**

- ▶ *Speak to detainees who are currently undergoing confinement to a cell as a disciplinary sanction, with a view to finding out whether they are offered at least one hour of outdoor exercise per day, have access to reading material, and can keep contact with their families and lawyers.*



**Are the material conditions in disciplinary punishment cells appropriate?**

- ▶ *Visit disciplinary punishment cells and examine their material conditions; in particular, verify that the cells are clean and of an adequate size, equipped with a means of rest, properly ventilated and illuminated, and of an appropriate temperature.*
- ▶ *Check whether the cells have ligature points or sharp edges.*
- ▶ *Check whether there is an alarm bell or other means of entering into contact with staff if necessary.*
- ▶ *Verify that persons in disciplinary punishment cells have access to the toilet and are offered food and water.*



**Do medical personnel regularly check persons undergoing solitary confinement as a disciplinary punishment? Do other staff members offer appropriate human contact to persons undergoing solitary confinement?**

- ▶ *Speak to detainees who are currently undergoing solitary confinement to a cell as a disciplinary sanction, with a view to finding out whether health care staff members are visiting them on a daily basis, or more often if necessary; and if other members of staff come to talk with them.*
- ▶ *Speak with health care staff to verify that they indeed visit persons in solitary confinement; on the contrary, verify that health care staff are not involved in the actual decision making whether solitary confinement should be imposed as a sanction.*
- ▶ *Discuss with psychologists, educators, social workers and security staff members their involvement and responsibility to avoid negative effects of solitary confinement on individuals.*

## 5.11. Security measures

“Security measures” can entail a vast number of different means and actions that might become necessary in a detention facility to keep order and prevent harm. For example, the use of “special means”, such as physical force, handcuffs, batons or pepper spray, the temporary isolation of a violent detainee in a security cell, but also the isolation of vulnerable detainees for their own protection fall under security measures.

What all of these measures have in common is that they severely restrict the rights of detainees, including the right to physical and mental integrity or, in extreme cases, potentially even the right to life. If not applied correctly, they can lead to serious violations of these rights. Therefore, **all of these measures have to be clearly regulated by law; applied only in pursuance of a legitimate aim, e.g. to prevent physical harm of others; only if absolutely necessary and applied as measures of last resort**, if no alternative more lenient means could have been used to achieve this aim; and **in compliance with the principle of proportionality**, i.e. the intended purpose has to be proportionate to the possible harm. Moreover, such measures must only be used by staff members that are sufficiently trained in their application; never applied in a punitive manner and in respect of the person's dignity, psychological and physical integrity and be subject to supervision. When resort to security measures is required, the individual concerned should be kept under constant and adequate medical supervision. A record should be maintained for every instance of the application of security measures. Any application of security measures, as well as any use of force, must be thoroughly documented and made available to the relevant authorities.

If they wish to assess the legality of individual security measures applied vis-à-vis detainees, an NPM should be guided by the above criteria. In addition, NPMs should consider an assessment of the overall compatibility of existing national norms with international human rights law and standards.

Studies have shown that investing in **dynamic security** in detention facilities can significantly lower the occurrence of situations that necessitate resort to use of force and restraint. This concept is broadly speaking based on a fostering of positive relations, communication and interaction between staff and detainees that allow staff to know what is going on in their facility, staff professionalism and their understanding of the situation of detainees, and the provision of constructive activities for detainees.<sup>19</sup> NPMs could play an important role in developing the dynamic security concept throughout the European penitentiary systems.

---

***"[...] To prevent a violation of the prohibition of torture and inhuman or degrading treatment or punishment, Member States should ensure that any exceptions to this rule [to spend a reasonable amount of time outside cells necessary for an appropriate level of human and social interaction] in the context of special security regimes and measures, including solitary confinement, are necessary and proportionate.***

***Member States should ensure that the fulfilment of this duty of care and any use of force by staff in the detention facility are subject to supervision."***

*Paragraphs 46 and 53 of the Commission Recommendation*

---



#### Relevant international laws and standards:

- ▶ Article 3 ECHR, Article 7 ICCPR
- ▶ UN Convention Against Torture
- ▶ Rules 43.2 and 43.3, 60.6.a, 60.6.b and 60.6.d, 64.1-66, 68.1-68.8, 69.1-69.3 of the revised European Prison Rules 2020
- ▶ Rules 37 (d), 43 (a) and (b), 44, 45, 76 (1) (c) and 82 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)
- ▶ CPT Standards "Imprisonment"; "Developments concerning CPT standards in respect of imprisonment"; "Solitary confinement of prisoners"

## Questions to ask and ways to find out



#### Preliminary assessment:

Are the national laws and policies in line with paragraphs 46 and 53 of European Commission Recommendation?

---

19. More information on the concept of dynamic security can be found, *inter alia*, in UNODC, *Handbook on Dynamic Security and Prison Intelligence*, 2015.



### Is the concept of dynamic security applied in the detention facility?

- ▶ Discuss with the management of the detention facility whether they are familiar with the notion of dynamic security and encourage staff to apply it.
- ▶ Talk with members of staff of different categories whether they feel enabled (by training, sufficient staff numbers etc.) to enter into positive relations, communication and interaction with detainees, which allow them to know what is going on.
- ▶ Observe routine interactions between staff and detainees, whether they are distant and impersonal, or attentive and understanding.
- ▶ Get the actual staffing complement of the detention facility with a view to analysing whether the staff-detainees ratio is sufficient to allow for dynamic security.

Even in modern penitentiary systems that function on the basis of dynamic security principles, exceptional situations that call for the application of **special means of force**, such as the use of physical force or batons, cannot be excluded. Because of the potentially serious consequences these measures could have, and because of the possibility of abuse (e.g. *their excessive use, or when the real aim is punishment*), the NPM should pay close attention to the overall situation in a given detention facility as well as to individual cases. In fact, any abuse of force or special means can be considered to constitute ill-treatment and should be treated as such by the NPM (see above, [Chapter 5.3](#)).

## Questions to ask and ways to find out



### How often are special means used in the detention facility? Are all instances properly documented?

- ▶ Get from the management an overview of all cases of deployment of special means in a specific period of time, and/or check the relevant registers.
- ▶ Prepare statistics on the diverse categories of special means (e.g. handcuffs, physical force, batons etc.) that have been applied and compare with other detention facilities.
- ▶ Verify whether all cases have been properly documented and reported to the relevant authorities.
- ▶ Identify individuals against whom special means were (recently) used and who are still in the facility, with a view to conducting an interview with them.



### Have the special means that were applied in individual cases been necessary and proportionate?

- ▶ Interview detainees who have been subjected to force/special means.
- ▶ Examine individual files, registers and reports, as well as medical documentation, and determine whether the relevant procedures have been followed.
- ▶ Apply the criteria outlined in the textbox in order to determine whether the use of special means was legitimate.

## Criteria for Analysing Special Means and Use of Force

### 1. Law and Guidelines

- Are the specific means of force foreseen by law?
- Are the criteria for their application clearly described?

### 2. Detainee Awareness

- Were detainees informed from the outset that force might be used in specific situations?

### 3. Legitimate Aim

- Did the use of special means/force pursue a legitimate aim (e.g. to stop violent behaviour)?

#### 4. Proportionality and Necessity

- Was the use of force proportionate and necessary?
- Was it the most lenient option to achieve the aim?
- Were there less intrusive alternatives?

#### 5. Effectiveness

- Was the means used suitable to achieve the intended aim?
- Did the use of force stop as soon as the situation was under control?

#### 6. Training and Supervision

- Were the staff members sufficiently trained?
- Was the use of force supervised by a higher authority?

#### 7. Health and Documentation

- Was the individual presented to a healthcare professional?
- Was the use of force appropriately documented?

**Isolation** from the rest of the prison population as a security measure can mean either a short-term (usually not longer than 24 hours) segregation of a detainee who poses an imminent threat of serious harm to himself or others or the safety and security of a detention facility; or the longer-term accommodation in high-security settings of detainees who are considered to be particularly dangerous. In this chapter, only the first category of isolation as a security measure shall be discussed; for persons who are detained in longer-term high security settings, see Chapter 11.

### Questions to ask and ways to find out



**How often and for how long was isolation as a security measure used in the detention facility? Are all instances properly documented?**

- ▶ *Get from the management an overview of all cases of security related isolation in a specific period of time, and/or check the relevant registers.*
- ▶ *Prepare statistics on the frequency and length of isolation measures that have been applied and compare with other detention facilities.*
- ▶ *Verify whether all cases have been properly documented and reported to the relevant authorities.*
- ▶ *Identify individuals who are currently or who were (recently) in isolation and who are still in the facility, with a view to conducting an interview with them.*



**Have the cases of security related isolation in individual cases been necessary and proportionate? How are the surrounding measures (searches, undressing etc.) conducted?**

- ▶ *Interview detainees who are currently isolated or have been subjected to isolation as a security measure. Specify whether the detainee was searched and/or undressed before being put in isolation.*
- ▶ *Examine individual files, registers and reports, as well as medical documentation, and determine whether the relevant procedures have been followed.*
- ▶ *Apply the criteria outlined in the textbox on special means mutatis mutandis in order to determine whether the use of isolation was legitimate.*
- ▶ *Verify with staff members, detainees and through the examination of the documentation that no detainee has been kept naked or inappropriately dressed in isolation.*



**Have detainees in security isolation received appropriate staff attention, including by health care staff?**

- ▶ *Speak with detainees who are or recently were in security isolation whether staff members, including health care staff, regularly came to see them.*
- ▶ *Check the documentation and registers of cases of isolation in order to verify whether members of staff, including health care staff and psychologists have regularly tried to communicate with the person in isolation with a view to ending the measure.*
- ▶ *Check the documentation whether the persons in question have received medical care for any injuries they might have sustained.*
- ▶ *Check the documentation whether the assistance of a psychiatrist has been sought in cases where it was not possible to end the measure within 24 hours or where the behaviour of the detainee indicated that he/she might suffer from a mental disorder.*



**Are the conditions in special security cells appropriate?**

- ▶ *Visit special security cells and examine their material conditions; in particular, verify that the cells are clean and of an adequate size, equipped with a means of rest, properly ventilated and illuminated, and of an appropriate temperature.*
- ▶ *Check whether the cells have ligature points or sharp edges or are otherwise designed in a manner that would make additional restraints necessary (e.g. handcuffs).*
- ▶ *Check whether there is an alarm bell or other means of entering into contact with staff if necessary.*
- ▶ *Verify that persons in security isolation have access to the toilet and are offered food and water.*
- ▶ *Examine the availability of suicide-proof clothing.*

Finally, it might be necessary to completely isolate persons from the rest of the prison population for their **own protection**, because they are particularly vulnerable or because they explicitly request such isolation. Hence, solitary confinement for reasons of protection can be voluntary or involuntary. In particular in the latter case, specific safeguards should be in place and visiting delegations should be attentive to the potentially serious consequences of long-term solitary confinement, for this kind of isolation could in principle be applied for the entire stay in detention of the individual concerned.

As a rule, the longer such isolation lasts, the more efforts the prison authorities should put into counteracting its negative consequences by offering a diversified **regime** and other measures. This principle also applies to persons who have requested to be separated from the rest of the prison population. In terms of **material conditions** and the right to **outdoor exercise** as well as **contact with the outside world** of persons in protective isolation, these should not differ from the conditions for the rest of the prison population; reference is made to Chapters 5.4, 5.6 and 5.8.

In general, it should be the aim of any penitentiary system to limit the number of persons in solitary confinement for their own protection to the absolute minimum; that is to persons for whom the prison system sees absolutely no other possibility to ensure their safety.

## **Questions to ask and ways to find out**



**How often and for how long was isolation for a detainee's own protection used in the detention facility? Are all instances properly documented?**

- ▶ *Get from the management an overview of all cases of isolation for reasons of protection in a specific period of time, and/or check the relevant registers.*
- ▶ *Prepare statistics on the frequency and length of protection isolation measures that have been applied, divided into cases of voluntary and involuntary measures, and compare with other detention facilities.*
- ▶ *Verify whether all cases have been properly documented and reported to the relevant authorities.*

- ▶ Identify individuals who are currently or who were (recently) in protective isolation and who are still in the facility, with a view to conducting an interview with them.



**Have the cases of isolation for protection in individual cases been necessary and proportionate? Are decisions to isolate a detainee for reasons of protection regularly reviewed? Have persons who are involuntarily been put in protective isolation been heard? Is a right to appeal such a decision possible?**

- ▶ Interview detainees who are currently isolated or have been subjected to isolation as a protection measure. Specify whether they are voluntarily or involuntarily in isolation for their own protection.
- ▶ Inquire whether they are aware of their rights (e.g. to be heard, to appeal etc.), and whether they have availed themselves of these rights.
- ▶ Examine individual files, registers and reports, and determine whether the relevant procedures have been followed. Establish whether regular reviews of the decision are conducted.
- ▶ Apply the criteria outlined in the textbox on special means *mutatis mutandis* in order to determine whether the use of involuntary isolation for reasons of protection was legitimate.



**Are a regime of activities and additional measures in place to alleviate the negative effects of prolonged isolation?**

- ▶ Speak with staff responsible for the regime, psychologists and other staff members about the measures they take to offer meaningful activities to and maintain regular human contact with persons in isolation for reasons of protection.
- ▶ Discuss with the management and staff whether they have made efforts to identify selected detainees with whom persons who are in protective isolation could safely associate.

## 5.12. Complaints and requests

*“Member States should ensure that all detainees are clearly informed of the rules applicable in their specific detention facility.*

*Member States should facilitate effective access to a procedure enabling detainees to officially challenge aspects of their life in detention. In particular, Member States should ensure that detainees can freely submit confidential requests and complaints about their treatment, through both internal and external complaint mechanisms.*

*Member States should ensure that detainee complaints are handled promptly and diligently by an independent authority or tribunal empowered to order measures of relief, in particular measures to terminate any violation of the right not to be subjected to torture or inhuman or degrading treatment.”*

*Paragraphs 61, 62 and 63 of the Commission Recommendation*



### Relevant international laws and standards:

- ▶ Rules 70.1-70.13 of the revised European Prison Rules 2020
- ▶ Rules 8 (d), 54-57 and 71 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)
- ▶ CPT Standards “Imprisonment”; “Complaints Mechanisms”

Complaints by detainees can be categorised according to the **subject** of the complaint, e.g. such as denouncing ill-treatment or inter-detainee violence, or more basic complaints about the food or conditions in a given facility,

*misgivings about the legal proceedings, length of detention or sentence and fair trial issues, applications for home leave or early release, or complaints concerning medical care issues.*

An effective possibility to lodge complaints relating to violence and ill-treatment, both by staff members or other detainees, is a fundamental safeguard against ill-treatment, and monitoring bodies should ensure that detainees are aware of the different avenues of complaint and have trust in the complaints systems available. The assessment should include both internal complaints, in particular to the prison management, and complaints to external mechanisms, such as an Ombudsman Institution or other independent bodies.

Every complaint about ill-treatment – or, even in the absence of a complaint, any well-founded suspicion that a person has been ill-treated – should trigger a number of steps taken first and foremost by the prison management, who are in many cases the first ones to know about such complaints. The case should be well documented, evidence (*CCTV footage, medical files, etc.*) secured, and the responsible internal as well as external bodies informed without delay. Since most cases of ill-treatment will constitute a crime, the prosecutor's office should be on the list of bodies to inform. In parallel to any investigations and possible sanctions undertaken by these mechanisms, the management will have to carry out its internal procedures to hold perpetrators to account.

In general, complaints can be further categorised in accordance with the **addressees**; these reach from the internal prison management, the penitentiary administration, the Ministry of Justice, courts, judges and prosecutors' offices, to other external bodies, such as Ombudsman or National Human Rights Institutions, Parliament or the President. However, it is by no means said that the body or person addressed is competent to deal with the complaint; clear procedures should thus be in place within all these institutions to either forward the complaint to the competent instance, or to respond to the complainant with an explanation who they should rather turn to with their concerns.

For NPMs, complaints (either addressed directly to them or forwarded by other bodies) can serve as a useful **source of information** before a visit to a facility, or even as an incentive to carry out a visit, *e.g. if there are mounting complaints about the conditions or the regime in a specific facility*. If NPMs receive individual complaints during a visit, they should have a standardised procedure in place to deal with such complaints: in principle, NPMs are not complaints bodies and should make it clear to complainants that they have no mandate to deal with individual grievances. The members of a visiting delegation should nevertheless always have the necessary information at hand to which body an individual can turn with their complaint. It goes without saying that if a number of detainees raise similar complaints the NPM should see the issue as a structural problem that they will have to deal with in their reports and recommendations.

In the course of a visit, the delegation should verify whether there is a functioning complaints system in place, in which detainees trust, and which is responsive to their concerns. A functional internal complaints system relies on a proper registration of all complaints and requests, with indications about the steps taken to respond to these complaints or requests within a defined period of time.

## Questions to ask and ways to find out



### Preliminary assessment:

Are the national laws and policies in line with [paragraphs 61, 62 and 63](#) of European Commission Recommendation?



### Are effective internal and external complaints procedures, particularly regarding alleged ill-treatment, in place?

- ▶ *When speaking with detainees who allege ill-treatment, inquire whether they have already complained to anybody; ask why not, if they have not done so.*
- ▶ *Speak with higher-ranking security staff and the management about the manner how detainees can directly approach them. Find out if directors and other members of the management team are proactive in receiving complaints regarding violence and ill-treatment, e.g. by doing rounds in the detention facility and speaking with detainees in private.*

- ▶ Check in the detention facility whether factual conditions are in place to enable detainees to make complaints, e.g. if they receive writing material to formulate complaints, and if letter boxes or other ways of confidential complaints are available.
- ▶ Check with the management if whistle-blower protection measures are in place, for staff members who wish to denounce cases of ill-treatment by fellow staff members.
- ▶ Verify that the management has protection measures at their disposal to quickly react to an allegation by e.g. placing a staff member on non-contact duty or suspending them, or by separating detainees from a source of threat.



**Is an internal disciplinary procedure in place to effectively deal with perpetrators of ill-treatment?**

- ▶ Discuss with the management how many cases of internal disciplinary procedures relating to ill-treatment cases were led in a specified period of time against staff.
- ▶ Verify that all allegations or suspicions of ill-treatment are appropriately recorded.
- ▶ Get the files of all cases and verify that the management has reported these cases to the responsible internal, or, in case of more severe ill-treatment, external (criminal law) bodies responsible for investigations, if necessary.
- ▶ In case of minor infringements by staff vis-à-vis detainees (e.g. insults or disrespectful behaviour), scrutinise the adequacy of the management's reaction to such cases.



**Are detainees informed about diverse avenues of complaint within the facility and to outside bodies? Is the management accessible for complaints?**

- ▶ Check if brochures or other information material are provided to detainees, outlining the different avenues of complaint and giving a guide as to which types of complaint should be directed to which body.
- ▶ Verify that phone numbers and addresses of external complaints bodies such as National Human Rights or Ombudsman Institutions are prominently displayed in the detention facility.
- ▶ Observe whether members of the management regularly enter into direct contact with detainees, e.g. by making rounds in detainees' accommodation areas.
- ▶ Interview detainees and ask whether they are aware of the different avenues of complaint, if they avail themselves of these possibilities, and if they face any obstacles in lodging complaints.
- ▶ Do a general survey on the confidence of detainees in the internal and external avenues of complaint, e.g. by means of a questionnaire.



**Are all complaints within the facility registered and responded to?**

- ▶ Examine the complaints register with a view to establishing whether complaints and requests to the management are properly recorded, including a note on how the complaint or request was dealt with (e.g. complaint found justified/not justified, response to detainee given, shortcomings remedied, complaint forwarded to competent body etc.).
- ▶ Check the register on complaints and find out if every internal complaint regarding ill-treatment or inter-detainee violence has been followed up appropriately, and if such complaints are forwarded and effectively investigated by the competent authorities.
- ▶ Discuss with the staff member(s) responsible for complaints if they face any obstacles in dealing with internal complaints.