

6. Pre-trial detainees

6.1. Considerations before your visit to pre-trial detainees

Within the European Union, the percentage of pre-trial detainees within the entire prison population is on average **25%**. According to the [Council of Europe's Penal Statistics](#), there are significant variations between different Member States, with some countries having only some **7.5 to 14.6%** pre-trial detainees in their detention facilities, while a number in other countries is **close to 40%** or even more pre-trial detainees within the overall prison population.

Pre-trial detainees face a number of **specific challenges** that warrant NPMs' special consideration. At the same time, it has to be acknowledged that the root causes for many of these challenges at times lie outside the NPMs' mandate. For example, international law provides that pre-trial detention is only legitimate where there is a reasonable suspicion of the person having committed the offence, and where detention is necessary and proportionate to prevent them from absconding, committing another offence, or interfering with the course of justice during pending procedures. However, the decision whether or not to apply pre-trial detention in individual cases lies with the courts, and NPMs lack the competence to review the courts' assessments. The manner in which NPMs can get engaged in monitoring the systemic factors leading to an over-use of pre-trial detention is described in [Part II of this Guide](#) below.

Further, it is a (paradoxical) fact that pre-trial detainees, who should benefit from the presumption of innocence, oftentimes lead a **far more restricted** life in detention than sentenced prisoners. They might be banned from receiving family visits, from using the telephone, from participating in structured regime activities, or have to spend considerable time in solitary confinement for the sake of investigation against them. Again, many of these restrictions are not imposed by the prison system but by courts or they are generally foreseen by law. NPMs will have to engage with underlying laws to effectively contribute to a change of harmful practices. They should, as outlined above at [Chapter 4](#), also strive to enter into a dialogue with prosecutors and the judiciary if they find that court ordered restrictions are often not proportionate and violate the rights of detainees.

Moreover, there are a number of issues specifically applying to pre-trial detainees which an NPM can look into during the visit, as they are decided upon by the penitentiary system or the respective facility. It is recalled that the [revised European Prison Rules \(Part VII\)](#) and the [Mandela Rules](#) (Chapter C) contain a separate chapter on additional safeguards for untried prisoners. Additionally, the CPT has dedicated a whole set of standards ("[Remand detention](#)") to the appropriate treatment and conditions of pre-trial detainees.

6.2. Reception and allocation of pre-trial detainees

For one, the **reception procedure** (induction and risks and needs assessment as well as placement procedures) is of particular importance for pre-trial detainees. Reference is made to [Chapter 5.2](#) above. While most international instruments stipulate that pre-trial detainees have to be kept separately from sentenced prisoners, the CPT has taken a more nuanced view, stressing that also among pre-trial detainees it might be inappropriate to mix persons who come to prison for the first time with those who re-enter prison for multiple times. Also, in the view of the CPT it is preferable to allow pre-trial detainees to mix with sentenced prisoners during the day if this results in a more varied regime for pre-trial detainees. The CPT therefore favours an individual assessment of all detainees, remand or sentenced, in order to assess their compatibility when put together.

"Member States should ensure that pre-trial detainees are held separately from convicted detainees. [...]"

Paragraph 38 of the Commission Recommendation



Relevant international laws and standards:

- ▶ Article 10 (2) (a) ICCPR
- ▶ Rule 18.8 (a) of the revised European Prison Rules 2020
- ▶ Rules 11 (b) and 112 (1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)
- ▶ Istanbul Protocol, Revised Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2022
- ▶ CPT Standards [Health care services in prison](#) “Remand detention”

Questions to ask and ways to find out



Preliminary assessment:

Are the national laws and policies in line with [paragraph 38](#) of European Commission Recommendation?



Are pre-trial detainees separated from sentenced prisoners?

- ▶ *In detention facilities that keep both categories, verify with the management that pre-trial detainees are kept in separate units from sentenced prisoners.*
- ▶ *Sometimes pre-trial detention facilities host a small number of sentenced prisoners; verify that these have separate accommodation.*

Pre-trial detention facilities are for many persons an entry point into the prison system. Therefore, meticulous **medical screening** procedures should be in place. But not only newly arrived pre-trial detainees should be medically examined: **every newly admitted detainee**, including those who were transferred from another detention facility, **should undergo a medical examination without undue delay**. These examinations serve many purposes, from the prevention of suicide and the containment of transmissible diseases to the timely and systematic recording of any injuries a pre-trial detainee might have previously sustained while with the police (or another detention facility).

“Member States should require that a medical examination is carried out without undue delay at the beginning of any period of deprivation of liberty and subsequent to any transfer.”

Paragraph 51 of the Commission Recommendation



Relevant international laws and standards:

- ▶ Rules 16 (a) and 42.1 of the revised European Prison Rules 2020
- ▶ Rule 30 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 [paragraph 51](#) of European Commission Recommendation?



Has a medical examination taken place within 24 hours after arrival at the facility? Was it done thoroughly and in respect of medical confidentiality?

- ▶ Interview newly arrived pre-trial detainees and ask them whether they have been medically examined by a doctor or a nurse reporting to a doctor. Ask at what moment after their arrival this examination has taken place.
- ▶ Ask these detainees about the extent of the examination, and whether it included a physical screening of the body and further tests or was limited to answering a few questions.
- ▶ Ask these detainees whether anybody but health care staff (e.g. a guard) was present during the examination.
- ▶ Discuss with health care staff the procedures for medical examinations, when and how they conduct these examinations and how much time they invest for each newly arrived detainee.



Is continuity of health care guaranteed for newly admitted detainees?

- ▶ Determine in discussions with health care staff whether detainees are given the possibility to continue any health care measures (medication, therapies, opiate agonist treatment etc.) started before detention.
- ▶ Speak with newly admitted detainees and find out if they have any concerns regarding the continuation of previously started treatments.

It is not entirely obvious, but penitentiary systems can play an important role in the **prevention of police ill-treatment**. Many pre-trial detainees will directly arrive to a detention facility from police custody, where they might have been subjected to ill-treatment. Any detention facility should have a protocol in place outlining the necessary steps the health care staff have to undertake when they detect, in the course of the first medical examination of newly arrived detainees, signs of ill-treatment or hear complaints of ill-treatment by the police. Clear reporting paths should be established, and the NPM could assess whether health care staff in detention facilities have adhered to their reporting obligations.

Questions to ask and ways to find out

Are clear reporting paths established for medical personnel in case they detect injuries that might be the result of police ill-treatment, or if newly arrived detainees complain about such ill-treatment? Do health care staff members know and adhere to these reporting obligations?

- ▶ Discuss with health care staff members if they know how to react in case they detect injuries or hear complaints of police ill-treatment during the first medical examination.
- ▶ Check medical files to find out whether body charts were used when recording injuries and whether photographs have been taken of injuries detected upon arrival.
- ▶ Verify if the prison health care services keep a specific register of traumatic injuries.
- ▶ Get an overview of all documented cases of such complaints/injuries and establish whether the relevant authorities were informed.
- ▶ Interview newly arrived pre-trial detainees and ask whether they have complained about police ill-treatment during the medical entry examination. Check whether these complaints were documented and reported to the relevant authorities.

6.3. Accommodation and regime of pre-trial detainees

Pre-trial detention can be implemented in dedicated facilities that primarily hold persons on remand, or pre-trial detainees can be held in detention facilities that accommodate both pre-trial and sentenced detainees. In both cases, the NPM should conduct an assessment of the **material conditions** for pre-trial detainees, in accordance with the general methodology outlined above in [Chapter 5.4](#). In case the detention facility accommodates

both categories, a comparative assessment should be done in order to establish whether pre-trial detainees are held in worse (or better) conditions than sentenced prisoners.

Questions to ask and ways to find out



Are pre-trial detention units regularly overcrowded?

- ▶ *Discuss with the management and staff and check lists of pre-trial detainees of the recent past to verify whether and for how long overcrowding of pre-trial detention units persisted.*
- ▶ *Measure the cells in order to establish personal living space per pre-trial detainee.*
- ▶ *Discuss with the management, which measures they take to tackle overcrowding in pre-trial detention units.*



In comparison to cells for sentenced prisoners in the same detention facility, are pre-trial detainee's cells less adequate in terms of material standards?

- ▶ *Observe material conditions on the spot and put them in comparison in terms of personal space, lighting, ventilation, cleanliness etc. with cells of sentenced prisoners.*

One of the most pressing issues when it comes to pre-trial detainees is that such detainees are often held for 23 hours per day in a cell, without any meaningful occupation, and that for many months or sometimes years. The **regime** of pre-trial detainees is partly determined by restrictions imposed by the courts, but for the rest the prison system should be actively pursuing a programme of activities. As a rule of thumb, the longer a person has to spend on remand, the more varied their daily regime should be, with at least eight hours out of cell engaged in voluntary work, vocational training, education, leisure activities and so on.

Questions to ask and ways to find out



Are restrictions in the regime for pre-trial detainees based on court order? In comparison to the sentenced prison population, do pre-trial detainees get the same amount of out-of-cell time? Is their regime comparable with the one offered to sentenced prisoners in terms of purposeful activities?

- ▶ *Discuss with the prison management whether they apply any regime restrictions on pre-trial detainees that are not necessitated by court orders.*
- ▶ *Get the number of pre-trial detainees who are engaged in purposeful activities.*
- ▶ *Speak to educators and other staff responsible for the regime to find out about the activities (education, work, recreation) for pre-trial detainees on offer.*

6.4. Contact with the outside world and solitary confinement of pre-trial detainees

Attention should also be paid to any **additional restrictions on contact with the outside world or with other detainees** that the respective detention facility or the courts might have put in place, either regarding individual detainees or on all pre-trial detainees. Any such restriction must have a basis in law, be necessary and proportionate, and subject to an appeal. Indiscriminate restrictions on contacts, *e.g. a rule that pre-trial detainees cannot receive visits or make phone calls*, are in clear violation of human rights norms and standards.

Questions to ask and ways to find out



Does the detention facility pose additional restrictions regarding contact with the outside world on pre-trial detainees? Are these restrictions based on the law, necessary and proportionate?

- ▶ *Discuss with the prison management whether they apply any restrictions on visits, telephone calls and/or correspondence of pre-trial detainees that are not necessitated by court orders.*
- ▶ *Check individual files of pre-trial detainees with a view to determining whether any restrictions are based on court order, and if restrictions additionally applied by the detention facility are legal, necessary and proportionate.*



Are limitations of contact of certain pre-trial detainees with other detainees based on court order? Are any additional limitations imposed by the prison management based on law, necessary and proportionate? Are measures in place to alleviate the negative effects of solitary confinement of pre-trial detainees?

- ▶ *Get a list of pre-trial detainees who are held in solitary confinement, including information on the length of their isolation.*
- ▶ *Examine in the individual files of these detainees whether solitary confinement is either based on court order, or if the prison management has imposed such confinement in accordance with the law and the principles of necessity and proportionality.*
- ▶ *Speak with staff members, both security and civilian, which measure they take to provide human contact (of at least two hours!) to detainees in solitary confinement.*
- ▶ *Speak with pre-trial detainees in solitary confinement about their views on the measures taken by staff to alleviate the damaging effects of prolonged solitary confinement.*