

9. Children and young adults in detention

9.1. Considerations before you visit children in detention

The age of criminal responsibility varies widely throughout Europe, and children as young as ten years old can be found in prison of certain European countries. In the EU, the average age of criminal responsibility is 14 years. In line with international norms, a person below the age of 18 is considered a child. As noted by the UN Committee on the Rights of the Child, “Children differ from adults in their physical and psychological development, and their emotional and educational needs. [...] the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders”. **Detention of children should therefore always be a measure of last resort** and NPMs should take an interest in general policies pertaining to criminal justice matters for children.

NPMs should also adopt a different approach when visiting children in detention and carefully consider the specificities of this age group. The strict separation of children from adults, an enhanced regime of activities, an age-adapted disciplinary regime, the heightened risk of victimisation both by staff and other detainees, and the need for specially trained personnel to deal with children should be considered before and during visits to children in detention. Furthermore, the risk of intersectional discrimination and the possibility of solitary detention faced by girls in prison must be borne in mind.

NPMs could benefit from specific training with regard to interviewing children in detention. Any member of a visiting delegation speaking to children should be capable of assessing the child’s developmental level and applying age-appropriate interview techniques. These techniques might entail slowing down the rate of speech and the use of shorter, simplified sentences; allowing more time for the child to process questions and to respond; simple, open-ended, questions, which are concrete, free of abstract ideas, and free of suggestions or double negatives. Monitors should feel comfortable with children and engage with them in whatever style of communication and language suits the child (e.g., by sitting on the ground with them, by using their terminology). Further, they should appreciate that children may perceive their situation and express their feelings in a very different form from adults, and that they are often more inclined to try and “please” an adult interviewer by responding with what they think the interviewer wants to hear. Finally, monitors should also be able to understand and tolerate certain behaviour by children, such as overly confident or even hostile expressions²².

9.2. Best interest of the child

“Member States should ensure that the child’s best interests are a primary consideration in all matters relating to their detention, and that their specific rights and needs are considered when making decisions that affect any aspect of their detention.”

Paragraph 71 of the Commission Recommendation



Relevant international laws and standards:

- ▶ Article 3 of the Convention on the Rights of the Child
- ▶ Rule 35.4 of the revised European Prison Rules 2020
- ▶ Rule 5 of the CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures
- ▶ Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, Chapter III “Fundamental Principles”, B. “Best interest of the child”

22. For an in-depth guide on monitoring detention of children see, Defence for Children International (DCI), Practical Guide. Monitoring places where children are deprived of liberty, 2016

The European Commission Recommendation reiterates the right of children to have their best interests a primary consideration in all matters involving or affecting them.

As a reminder, in assessing the best interests of the involved or affected children, their views and opinions should be given due weight; all other rights of the child, such as the right to dignity, liberty and equal treatment should be respected at all times; a comprehensive approach should be adopted by all relevant authorities so as to take due account of all interests at stake, including psychological and physical well-being and legal, social and economic interests of the child.

The role of the monitoring entities such as NPMs is to assess if the principle is effectively implemented in practice and does not remain a declarative phrase. This is not a straightforward exercise as it implies multiple variables. Nevertheless, the monitors should assess if the above precepts are integrated in the procedures and practices of the management and staff of the detention facility.

Finally, monitors should always keep in mind that according to the [Convention on the Rights of the Child \(Art. 37\)](#), the arrest, detention or imprisonment of a child shall be used **only as a measure of last resort and for the shortest appropriate period of time**.

Questions to ask and ways to find out



Preliminary assessment:

Are the national laws and policies in line with [paragraph 71](#) of European Commission Recommendation?



Is the principle of the best interest of the child embedded in regulations and endorsed in the daily management and operations of the detention facility holding children?

- ▶ *Speak with the management, social workers, psychologists and other staff involved in managerial and operational decision-making processes and identify their approach. Discuss the specialised training, guidance and advice the staff received on this.*
- ▶ *Check in the relevant standard operational procedures if the principle of the best interest of the child is directly or indirectly captured (e.g. participation of the children in decision making processes, consideration of their views and opinions).*
- ▶ *Speak with children in detention about their participation and their perception of consideration by the staff and management of their rights, needs and interests.*

9.3. Separation from adult detainees

“Member States [...] in the case of children, should make sure, 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.

Children should not be detained with adults, unless it is considered to be in the child’s best interests to do so.

When a detained child reaches the age of 18 and, where appropriate, for young adults under the age of 21, Member States should provide for the possibility to continue to hold that person separately from other detained adults where warranted, taking into account the circumstances of the person concerned and provided that this is compatible with the best interests of children who are detained with that person.

Where appropriate, Member States are encouraged to apply the juvenile detention regime to young offenders under the age of 21.”

[Paragraphs 37, 38, 39 and 74 of the Commission Recommendation](#)



Relevant international laws and standards:

- ▶ Rules 11 and 112 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)
- ▶ Rules 28 and 29 of the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (the Havana Rules)
- ▶ Rules 11.1, 11.2, 18.9 and 35.4 of the revised European Prison Rules 2020
- ▶ Rules 53.1, 54, 55, 59.1, 59.2, 59.3 and 61 of the CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures
- ▶ Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, Chapter IV. "Child-friendly justice before, during and after judicial proceedings", "Deprivation of liberty"
- ▶ CPT Standards, "Juveniles deprived of their liberty under criminal legislation"
- ▶ Paragraphs 48 and 50 of the Preamble and article 12 of the Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings

Children should as a rule not be detained in a prison for adults, but in an **establishment specially designed for the purpose**, offering a **non-prison-like environment**. If children are nevertheless exceptionally held in a facility for adults, there should be special regulations that take account of their status and needs, and they should be kept in a part of the facility that is separate from that used by adults unless it is considered that this is against the best interests of the child. In all circumstances, children should be detained in premises suited to their needs.

Monitors should keep in mind that whenever children are held in facilities that are primarily foreseen for accommodating adult detainees, their accommodation may be of a lesser standard (*e.g. overcrowded cells, old small units*); and their regime could be poorer than that of the majority prison population. At the same time, problems of keeping contact with family members arise when children are detained in a **special facility** that centralises detention of children in conflict with the law, but which might be located in a remote place far from the detained children's families.

Special attention should be paid to the allocation of children belonging to different age groups in order to accommodate their needs in the best way and to prevent unwanted influence, domination and abuse. Within detention facilities there should be an appropriate assessment system in order to place children according to their educational, developmental and safety needs.

The [European Rules for juvenile offenders](#) state that young adult offenders (*i.e., those between 18 and 21 or in some countries up to 25*) may, where appropriate, be regarded as children and dealt with accordingly. This practice can be beneficial to the young persons involved but requires careful management to prevent the emergence of negative behaviour. In this respect, the CPT considers that a case-by-case assessment should be carried out in order to decide whether it is appropriate for a particular detainee to be transferred to an adult facility after reaching the age of majority (*i.e. 18 years*), taking into consideration the remaining term of their sentence, their maturity, their influence on other children, and other relevant factors.

There can be arguments also in favour of children participating in out-of-cell activities with adult detainees, on the strict condition that there is appropriate supervision by staff. Such situations occur, *for example, when there are very few or only one child in a detention facility, where steps need to be taken to avoid children being held de facto in solitary confinement.*

Questions to ask and ways to find out



Preliminary assessment:

Are the national laws and policies in line with paragraphs 37, 38, 39 and 74 of European Commission Recommendation?

**Are children in detention enabled to keep regular contact with their families?**

- ▶ Assess the national laws with a view to find out if special regulations are in place with regard to visit rights of children.
- ▶ Determine the location of the detention facility for children and assess whether it can be easily reached, including by public transport.
- ▶ Discuss with the management if special arrangements are in place to allow indigent families to visit their children in detention.
- ▶ Find out with staff if any child does not receive visits and cannot make phone or video calls; find out why this is the case.

**Are children in adult prisons strictly separated from adult detainees?**

- ▶ Visit children's units within adult prisons and observe the accommodation arrangements, including the sanitary facilities and common areas the children are using.

**Is this separation adhered to in all circumstances, including out-of-cell activities and transport?**

- ▶ Discuss with staff arrangements for out-of-cell activities for children and check workshops, outdoor exercise yards, rooms for activities and transportation vehicles. What protocol/practice is in place for cases when there is only one child or few children in the facility?
- ▶ Speak with children in pre-trial detention about the practical implementation of separation from adults.

9.4. Specially adapted regime and disciplinary rules

"For children, Member States should establish an appropriate and multidisciplinary detention regime, that ensures and preserves their health and their physical, mental and emotional development, their right to education and training, the effective and regular exercise of their right to family life, and their access to programmes that foster their reintegration into society."

Paragraph 72 of the Commission Recommendation

**Relevant international laws and standards:**

- ▶ Rules 98 and 104 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)
- ▶ Rules 12, 18, 27, 30, 38-48 and 59 of the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (the Havana Rules)
- ▶ Rules 26.5, 28.3, 35.1 and 35.2 of the revised European Prison Rules 2020
- ▶ Rules 50.1, 50.2, 76.1, 77, 112 and 113 of the CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures
- ▶ Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, Chapter IV. "Child-friendly justice before, during and after judicial proceedings", "Deprivation of liberty"
- ▶ CPT Standards, "Juveniles deprived of their liberty under criminal legislation"
- ▶ Paragraphs 51, 52 and 55 of the Preamble and article 12.5 of the Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings

It is widely acknowledged that children deprived of their liberty should receive more individualised attention than adult prisoners in terms of **organised activities** and benefit from a variety of purposeful activities and interventions. Such activities shall support them in their development, foster their physical and mental health, self-respect and sense of responsibility. They shall be **encouraged** to take part in such activities and interventions; children in pre-trial detention should not be compelled to work or take part in any interventions or activities which children in the community cannot be compelled to undertake; they can be involved **only if they request** to participate in interventions. Monitors should consequently pay particular attention to whether the offered regime (such as education, work with a vocational value, sports, leisure and other purposeful out-of-cell activities) is tailored to the needs of children in detention.

Children held in detention in a facility for adults should have access to social, psychological and educational services, religious care and recreational programmes that are available to children in the community, **in addition** to the services available to all prisoners.

Questions to ask and ways to find out



Preliminary assessment:

Are the national laws and policies in line with [paragraph 72](#) of European Commission Recommendation?



Is a wide range of organised activities in place for children in detention? Are all children detainees engaged in purposeful activities?

- ▶ Discuss with educators, psychologists and other civilian staff responsible for the regime of children in pre-trial detention which activities (e.g. schooling; vocational training; work and occupational therapy; social skills and competence training; aggression-management; addiction therapy; individual and group therapy; physical education and sport; creative leisure time activities and hobbies etc.) are on offer. Find out whether these cover the whole range of needs you found amongst the children you spoke to.
- ▶ Get the numbers of children who are engaged in activities on a daily basis from staff; find out if there are individual children who are not taking part in activities, and discuss with staff how they are trying to motivate them to participate.
- ▶ Talk to children in pre-trial detention about their involvement/non-involvement, what do they like, and why they cannot or do not wish to participate in particular activities.

Any use of disciplinary measures, including solitary confinement, use of restraints or use of force should be subject to strict necessity and proportionality considerations.

[Paragraph 73 of the Commission Recommendation](#)



Relevant international laws and standards:

- ▶ Rule 60 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)
- ▶ Rules 64 and 67 of the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (the Havana Rules)
- ▶ Rule 60.6.a of the [revised European Prison Rules 2020](#)
- ▶ Rules 90.1, 90.2, 90.3, 91.2, 95.3 and 95.6 of the CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures
- ▶ CPT Standards, “Juveniles deprived of their liberty under criminal legislation”

The **disciplinary punishment system** for children should be adapted to the mental development of this age group, and monitors should be aware of the negative effects of solitary confinement on children and young persons, as well as the disproportionate suffering of children detainees when banned from family contacts. Solitary confinement shall never be imposed on children.

Monitors should pay attention to informal “punishment systems” such as the so-called “pedagogic slap” or other forms of physical chastisement to children who misbehave. It goes without saying that any form of violence against children is unlawful and unacceptable, and that such practices must not be perceived as part of the disciplinary system but attributed to staff abuse and ill-treatment.

Questions to ask and ways to find out



Preliminary assessment:

Are the national laws and policies in line with [paragraph 73](#) of European Commission Recommendation?



Is the disciplinary punishment system adapted to children? In comparison with the general prison population, are children in detention punished more/less often?

- ▶ Check the disciplinary register to find out which kinds of disciplinary punishment are usually (over the last year) implemented with regard to children in detention.
- ▶ From the disciplinary register, find out the names of children punished disciplinarily within a certain time frame, the description of their disciplinary infringement, the type of punishment (and length of punishment), and any other remark. Compare the number and severity of punishments with those of the general prison population. Find out if there are children in the facility who are undergoing disciplinary punishment at the time of the visit.
- ▶ Speak to those children in detention who are undergoing disciplinary punishment at the time of the visit, or to children who have recently been punished. The questions asked should focus on the procedure rather than the actual infringement; the awareness of children of their rights during the disciplinary procedure; and the perception of the children on the proportionality of the punishment vis-à-vis the infringement.
- ▶ After having spoken to children concerned, check their individual files to find out if the formal precepts of the disciplinary procedure have been adhered to.
- ▶ Interview children in pre-trial detention who, according to the register or list, regularly receive disciplinary punishments or who are regarded by staff as being “difficult”/ “troublemakers” whether they have ever received any kind of informal/illegal punishment, e.g. slaps or beatings.
- ▶ Discuss the matter of disciplinary punishments of children with staff and management.

9.5. Specially trained staff



Relevant international laws and standards:

- ▶ Rule 76 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)
- ▶ Rules 81-87 of the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (the Havana Rules)
- ▶ Rule 81.3 of the revised European Prison Rules 2020
- ▶ Rules 129 and 130 of the CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures
- ▶ CPT Standards, “Juveniles deprived of their liberty under criminal legislation”
- ▶ Paragraph 54 of the Preamble of the Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings

Staff who are to work with children and young detainees shall be sufficiently numerous to carry out their various duties effectively, shall include a sufficient range of specialists to meet the needs of the juveniles in their care and shall be given specific training for their specialised work. Steps should be taken to ensure the regular presence of specialised educators, psychologists and social workers in detention facilities for children and young adults. They should be committed to working with young people, and be capable of guiding and motivating them.

With a view to avoiding a prison-like environment, staff working in direct contact with children should as a rule not carry batons, incapacitating sprays or other means of restraint.

Staff members should be alert to signs of bullying and violence among children and young detainees (including physical and sexual assault, verbal abuse, extortion, and theft of other juveniles' belongings) and should know how to respond accordingly and adopt a pro-active attitude to prevent such incidents from occurring. Particular attention should be given to staff training in the management of violent incidents, especially in verbal de-escalation to reduce tension and professional restraint techniques.

Questions to ask and ways to find out



Are staff members sufficiently trained to deal with children and young adults in pre-trial detention?

- ▶ Discuss with members of staff (both civilian and security) the training they have received and find out whether they feel adequately prepared to care for detainees of that age group.
- ▶ Check the curriculum of staff training if it includes the necessary elements to enable staff to deal with children and young persons in detention.

9.6. Special considerations regarding girls



Relevant international laws and standards:

- ▶ Rules 35.1 and 35.4 of the revised European Prison Rules 2020
- ▶ Rule 74.1 of the CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures
- ▶ CPT Standards, "Juveniles deprived of their liberty under criminal legislation"
- ▶ Rules 36-39 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the "Bangkok Rules")

Male and female detainees under the age of 18 years who are placed in the same detention facility should be accommodated in **separate units**, although they may associate for organised activities during the day, under appropriate supervision.

Girls should under no circumstances receive less care, protection, assistance and training than male detained children, despite the fact that their numbers are much lower and that detention facilities are nearly always designed for male inmates. If necessary, additional measures should be taken to ensure **equal treatment**.

Health-care service offered to children, including girls shall constitute an integrated part of a multidisciplinary (medico-psycho-social) programme of care. Access to gynaecologists and education on women's health care should be provided. Pregnant girls and juvenile mothers in detention should receive appropriate support and medical care; as far as possible, alternatives to detention should be imposed.

Particular attention should be paid to ensuring that female juveniles are provided with ready access to sanitary and washing facilities as well as to hygiene items, such as sanitary towels.

Correspondingly, the NPMs should focus on measures to protect girls from abuse, on the regime offered to them (including if it is comparable to the regime of boys and if it includes gender specific activities and interventions) and other facilities to respond to the specific needs of girls. (See also above, at 7.9).

Questions to ask and ways to find out



Is the daily regime of girls in detention adapted to their needs? Is it comparable to the regime of boys in detention?

- ▶ *Speak to the managers and socio-educational staff about the daily regime of girls in detention. Identify the individual and group activities on offer and assess if these are covering a broad range of aspects. Find out if girls have access to age- and gender-specific programmes and services. Compare the offer with the programmes available for boys in detention and programmes in the community.*
- ▶ *Hold interviews with girls in detention about their experiences and how the offer responds to their needs and preferences.*
- ▶ *Inspect the available facilities and distributed items (sanitary and washing facilities, hygiene items).*



At the time of the visit, are girls held in conditions that amount to solitary confinement? Do such cases generally occur? Which measures does the management take to counter the effects of de-facto solitary confinement?

- ▶ *Discuss with the management and staff and check lists of girls of the recent past to verify whether and for how long girls were held alone.*
- ▶ *Discuss with the management which measures they take in case a girl has to be held on her own for prolonged periods to counteract the negative effects of solitary confinement.*
- ▶ *Hold interviews with girls who find themselves in a situation of de-facto solitary confinement to assess the impact on them, and to verify if and which measures were taken to counteract the negative effects of solitary confinement.*