A Guide for National Preventive Mechanisms on the monitoring of implementation of the European Commission Recommendation on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions

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A GUIDE FOR NATIONAL PREVENTIVE MECHANISMS ON THE MONITORING OF IMPLEMENTATION OF THE EUROPEAN COMMISSION RECOMMENDATION ON PROCEDURAL RIGHTS OF SUSPECTS AND ACCUSED PERSONS SUBJECT TO PRE-TRIAL DETENTION AND ON MATERIAL DETENTION CONDITIONS

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List of Abbreviations

BLSD	Basic Life Support and Defibrillation
CCTV	Closed-Circuit Television
CPT	Committee for the Prevention of Torture
ECHR	European Convention on Human Rights
EU	European Union
FRA	European Union Agency for Fundamental Rights
LGBTI+	Lesbian, Gay, Bisexual, Transgender, Intersex, and others
NPM	National Preventive Mechanism
OAT	Opiate agonist therapy
OPCAT	Optional Protocol to the Convention Against Torture
SUD	Substance use disorder
SPACE	Council of Europe's Annual Penal Statistics
SPT	UN Subcommittee on Prevention of Torture
UN	United Nations
VoIP	Voice over Internet Protocol

Introduction

On 8 December 2022, the European Commission adopted a "Recommendation on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions" (hereafter "the European Commission Recommendation").[1] This Recommendation provides **guidance for EU member states** to implement effective, appropriate and proportionate measures to strengthen the rights of all suspects and accused persons in criminal proceedings who are deprived of their liberty, in relation to the procedural rights of persons subject to pre-trial detention, **ensuring that they are deprived of their liberty only as a measure of last resort**. In addition, the Recommendation contains a set of standards relating to material detention conditions, in order to guarantee that **all persons subjected to deprivation of liberty – including sentenced prisoners - are treated with dignity and that their fundamental rights are upheld**.

The Recommendation provides a **consolidation** of standards established under existing policies at national, European and international level on the rights of persons deprived of their liberty and provides an overview of **selected minimum standards** for:

i) procedural rights of suspects and accused persons subject to pre-trial detention, and

ii) material conditions of detention for sentenced prisoners and pre-trial detainees, **summarising the more detailed guidance** provided in the Council of Europe standards, including of the European Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) 2, and of the case law of the European Court of Human Rights (the Court) and of the European Court of Justice, as well as other international human rights standards.

The Recommendation is designed as a **practical and accessible document for practitioners in the criminal justice field**, including judges and prosecutors in the member states who must decide on pre-trial detention and assess detention conditions before taking their decisions, either in the context of judicial cooperation in criminal matters or at national level.

The Recommendation is of **particular relevance for prison monitoring bodies** such as the CPT and the National Preventive Mechanisms (NPMs). In general, by assessing the effective implementation of the relevant standards in the daily activity of prisons, formulation of recommendations and continuous dialogue with the state authorities, these monitoring bodies contribute to the steady development of the prison systems, to the improvement of treatment of persons deprived of liberty, to the prevention of torture and other cruel, inhuman or degrading treatment or punishment and to **the same ultimate goal** – that **persons subject to deprivation of liberty are treated with dignity and that their fundamental rights are upheld**. Moreover, the European Committee for Prevention of Torture has an active role in the development of relevant standards and providing further guidance to the member states on their practical implementation.

At the European level, there is a wide network of NPMs. NPMs are independent visiting bodies established at domestic level under the framework of the **Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** (OPCAT), for the prevention of torture and other cruel, inhuman or degrading treatment or punishment. They can be composed of one or more bodies as long as they are **compliant with the requirements of the OPCAT**. The main objective of NPMs is to examine the treatment of persons deprived of their liberty, with a view to strengthening their protection against torture and other cruel, inhuman or degrading treatment or punishment. The key function of NPMs is their visiting function, namely carrying out visits to places of detention, including prisons and pre-trial detention facilities. NPMs also have an advisory function that includes providing recommendations to state authorities (opinions, proposals, reports) and submitting legislative proposals or observations on any existing or draft policy or legislation. By way of their **preventive mandate and approach**, the NPMs seek to identify patterns and detect systemic risks of ill-treatment, rather than investigating or adjudicating complaints concerning torture and ill-treatment. The European Commission Recommendation explicitly acknowledges the important functions of NPMs:

1. Commission Recommendation (EU) 2023/681 of 8 December 2022 on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions, C/2022/8987.
2. More information about Preventing torture in Europe

"Member States should facilitate regular inspections by an independent authority to assess whether detention facilities are administered in accordance with the requirements of national and international law. In particular, Member States should grant unhindered access to the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and to the National Preventive Mechanisms network."

Paragraph 79 the Commission Recommendation

NPMs play a particularly important role in translating the political will to prevent torture and ill-treatment into practical action "on the ground". The work of NPMs is focused on assessing the majority, if not all the topics included in the EU Recommendation. In line with the priorities determined by the particular NPM and **based on first-hand information collected by highly qualified members and staff**, the visit-related, thematic and annual **reports of the independent NPMs will comprise objective factual assessments and recommendations concerning material conditions of detention**, including accommodation, allocation of detainees, hygiene and sanitation, nutrition, detention regimes with regard to out-of-cell exercise and activities, work and education, healthcare, prevention of violence and ill-treatment, contact with the outside world, access to legal assistance, request and complaint procedures, and inspections and monitoring, with increased attention to the treatment of persons in pre-trial detention in situation of particular vulnerability, such as women, children, persons with disabilities or serious health conditions, LGBTI+ and foreign nationals.

With the issuing of the Commission Recommendation, the EU has taken another step towards a greater involvement in matters of treatment of detainees and conditions of detention. According to its final provisions, it is up to the EU member states to inform the Commission on their follow-up to this Recommendation. Based on this information, the Commission will monitor and assess the measures taken by member states and submit a report to the European Parliament and to the Council. NPMs could get involved in this process, either by directly contributing to their state reports, or by drafting their own reports to inform the Commission of the state of implementation in individual member states.3 With the adoption of the EU Recommendation, NPMs have been provided with an **additional instrument to reinforce their recommendations** by making reference to the specific provisions on procedural rights of suspects and accused persons subject to pre-trial detention, and on material detention conditions, alongside the usual references to regional and international standards.

With respect to procedural rights of suspects and accused persons subject to pre-trial detention, the guidance in the EU Recommendation covers key standards on the use of pre-trial detention as a measure of last resort and alternatives to detention, grounds for pre-trial detention, requirements for decision-making by judicial authorities, periodic review of pre-trial detention, the hearing of suspect or accused persons for decisions on pre-trial detention, effective remedies and the right to appeal, the length of pre-trial detention and the recognition of time spent in pre-trial detention in terms of a deduction from the final sentence. Non-implementation of **procedural rights of suspects and accused persons subject to pre-trial detention** can lead to problems such as overcrowding in detention facilities and is therefore a root cause for many problems NPMs encounter in their work, having a major impact on the lives of pre-trial detainees. Many of these subjects are already **addressed by the NPMs at a more systemic level**, such as access to legal aid or other procedural rights, solitary confinement for investigative purposes during pre-trial detention, structural causes of extended length of pre-trial detention etc., **in the context of *e.g. safeguards against torture and ill-treatment or root causes of torture and ill-treatment***. Yet another important – and binding – EU instrument NPMs can and should refer to when making such systemic assessments is Directive 2013/48 – "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".

The UN Subcommittee on Prevention of Torture (SPT) has underlined that **prevention of torture and ill-treatment embraces** – or should embrace – **as many as possible of those things which in a given situation can contribute towards the lessening of the likelihood or risk of torture or ill-treatment occurring**4 NPMs must therefore engage with the broader regulatory and policy frameworks relevant to the treatment of persons deprived of their liberty and with those responsible for them, ensuring that a **wide variety of procedural safeguards for those deprived of their liberty are recognised and realised in practice**. Since the purpose of

3. European NPMs are already involved in the EU Fundamental Rights Agency's Criminal Detention Database, which collects and analyses information on conditions of detention throughout the EU member states.
4. The approach of the Subcommittee on Prevention of Torture to the concept of prevention of torture and other cruel, inhuman or degrading treatment or punishment under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CAT/OP/12/6, 30 December 2010.

such safeguards is to reduce the likelihood or rise of torture or ill-treatment occurring, they are of relevance irrespective of whether there is any evidence of torture or ill-treatment actually taking place.

The overall assessment of a particular country context might necessitate the **inclusion of all or of specific procedural rights as safeguards in the list of priority focus areas of certain NPM**, while the availability of human and other resources could influence the comprehensiveness and methodology of work. Implicitly, **NPMs are encouraged to take a holistic approach** to the situation, informed by, but not limited to, their experience gained through the visits to particular places of detention. The **NPMs can address specific procedural rights and safeguards or assess them more generally.** They should ground their recommendations on corroboration of information deriving from the assessment of existing or draft legislation and policies, examination of statistical data and identification of trends, sampling and examination of a relevant number of court decisions included in the individual files of detainees, extracting pertinent data and indicators from prison records, complemented by observations and information gathered on the spot during regular visits to places of pre-trial detention.

Still, a number of subjects contained in the Recommendation go beyond the remit of NPMs' usual mandates, in particular those that would require a case-by-case analysis *(e.g. individual risk determination, assessment of reasonable suspicions, individual reasoned justifications for pre-trial detention)*. These issues remain within the primary responsibility of judicial oversight. **Reliable data** collected and presented on these aspects by judicial oversight bodies, civil society and academia **might complement the NPM assessment**.

From a pragmatic perspective, for the **effective functioning of an NPM** – in addition to functional **independence** – it is crucial that these mechanisms have sufficient **financial and human resources**, **unrestricted access to all places** of detention **and persons** held in detention, and have the ability to work **without threats or sanctions** against them or against those who interact or wish to interact with them to provide them with relevant information. The importance of **unhindered access to all information** relating to persons deprived of their liberty, including all prison registers and databases on persons deprived of liberty, personal files, medical files and records, video and audio records and all other information necessary for pursuing the mandates, as well as personal and sensitive information needs to be underlined. Such access shall not require the consent of the persons deprived of liberty concerned or special permission by prosecutors; nor can such access be limited to only some members of NPMs (such as limiting access to medical files to members of NPMs with a medical background).

At the same time, NPMs shall have clear strategies and methodological guidance on the modality of performing their functions.

The practical guide for NPMs to monitor and report on the implementation of the Commission Recommendation on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions **provides a general guidance, based on existing international and regional standards and best NPM practices in the field**. Individual NPMs are encouraged **to adapt and choose specific strategies and methodologies** which fully consider the national legislation, institutional framework and country specific context.

The guide was developed by Julia Kozma (former CPT member, UN SPT member), Anton Van Kalmthout (former CPT member) and Victor Zaharia (CPT member, UN SPT member), in the framework of the joint EU-Council of Europe project "Support to Council of Europe for EU network of prison monitoring bodies" (European NPM forum), with kind contributions and support of the NPMs of France (Anne Sophie Bonnet), Italy (Antonella Dionisi), Poland (Aleksandra Nowicka), and Slovenia (Ivan Selih) and the Inspector of Prisons of Ireland (Mark Kelly), as well as of the Council of Europe's Transversal Challenges and Multilateral Projects Division, to whom the authors express their sincere gratitude.

How to use this guide

Just as the structure of the European Commission Recommendation, this guide is divided into two parts. The first part concerns the "traditional" work of NPMs, namely monitoring visits to detention facilities for sentenced and pre-trial detainees, the gathering of objective information as well as drafting of reports. The second part focuses on issues surrounding safeguards for pre-trial detainees and the role NPMs can play in upholding them and ultimately contributing to a reduction of remand detention and prison overcrowding.

PART I

After a short reminder of **basic principles** of monitoring and the main considerations when **preparing a visit** to a detention facility, the chapter on **reporting and follow-up** summarises guidance on how to draft professional reports and relevant recommendations, as well as further steps NPMs should keep in mind to ensure the subsequent implementation of their recommendations.

The following chapter on how to gather information provides NPMs with a comprehensive overview of the most important **sources of information**, and guidance on how to approach these sources. *For example, practical advice on interview techniques and effective ways to examine detainees' files are given, and the relevance of other sources of information is discussed.* This chapter thus provides the **core methodology of objective fact-finding**, which is a necessary prerequisite for enunciating relevant recommendations.

The subsequent chapters are loosely structured in line with the European Commission Recommendation, in a manner that reflects a **human-centred approach**. This means that the focus is on the individuals who make up the entirety of the prison system in the narrow sense, *i.e. detainees, staff – both civilian and security staff – and the management*. They provide guidelines for visiting persons deprived of their liberty, and the logic largely follows the chronological order of a standard visit. They commence with the general prison population, which consists to a great part of male adults, and is followed by specific supplementary topics related to special categories of detainees, such as pre-trial detainees, particularly vulnerable detainees, women and children. After a reference to the provision(s) of the European Commission Recommendation relating to the respective topic, a summary of the **most pertinent international and European international legal norms and standards** is provided. The guide does not create any new standards. It should be kept in mind that there may be also other, more specific standards and that NPMs should

Terminology

Pre-trial detention: any period of detention of a person in criminal proceedings ordered by a judicial authority prior to final sentencing, not including the initial deprivation of liberty by the police or law enforcement.

The European Commission Recommendation literally speaks of detention "prior to conviction" (para. 4). However, in line with the Council of Europe's broader understanding* as applied by EU member states, also periods after conviction and before final sentencing shall be covered by the same safeguards and procedures offering the same degree of protection.

Detainee: persons deprived of liberty in pre-trial detention and convicted persons serving a sentence of imprisonment.

Detention facility: any prison or other facility for the holding of detainees.

Alternative measures: less restrictive measures as an alternative to detention.

Child: a person under the age of 18 years.

Young adult: a person above the age of 18 and below the age of 21. In some European jurisdictions, persons of up to 25 years are considered young adults. In these cases, the higher standards apply.

Persons with disabilities: should be understood in accordance with Article 1 of the United Nations Convention on the Rights of Persons with Disabilities.

NPMs: National Preventive Mechanisms established in line with the Optional Protocol to the Convention Against Torture (OPCAT).

(European) Commission Recommendation: European Commission Recommendation of 8 December 2022 on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions (C(2022) 8987 final).

* *Cf. Recommendation Rec(2006)13 of the Committee of Ministers on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse of 27 September 2006*

do further research. Moreover, this guide is addressed to NPMs around Europe and can therefore not go into the relevant national norms of each country.

After a short commentary on the respective provisions of the European Commission Recommendation and applicable European and international norms, relevant **questions** are posed and **methods** are suggested on how to answer these questions. The first question each NPM will have to answer individually is whether the national legislation or binding jurisprudence in their respective country is reflective of the provisions set forward in the Commission Recommendation.

The questions and methods outlined in the chapter on the general prison population should be, *mutatis mutandis*, applied also when visiting special categories of detainees.

In the final chapters, a number of **specific situations** that can occur in detention facilities are described, again with relevant questions and methodological guidelines on how to find answers to these questions. These situations include radicalisation, deaths in detention, self-harm and hunger strike, as well as corrupt practices in detention facilities.

PART II

The second part of the guide is reflective of a major concern contained in the European Commission Recommendation, namely that of rights of pre-trial detainees. In many EU countries, over-use of pre-trial detention has led to overcrowded conditions of detention, in addition to violations of individual rights of persons to liberty.

In line with their preventive mandates, NPMs should not be concerned with individual cases, and the examination of the legality, necessity and proportionality of pre-trial detention in individual cases rests with the courts. Nevertheless, NPMs can play an active role in **uncovering systemic challenges in the application of pre-trial detention**. According to the OPCAT, the role of NPMs is not limited to conducting visits to places of deprivation of liberty and making recommendations based on their findings, but they should also actively submit proposals and observations concerning existing or draft legislation (Article 19 (3) OPCAT) and generally feel responsible for assessing and commenting on government policies that have a bearing on persons deprived of their liberty.

Following a similar style as above, this guide will therefore highlight the provisions within the European Commission Recommendation that lend themselves to being assessed by NPMs in a systemic manner. Relevant international laws and standards will be listed. And finally, NPMs will be given ideas which questions they might ask and which methods they might use to find out about any challenges posed by pre-trial detention in their country.

In the annex, the monitors can find diverse **checklists** with the main indicators relating to the general prison population (mostly male adults), as well as shorter special lists in addition for particular groups of detainees or pertaining to exceptional situations.

! It has to be acknowledged that, even though many issues are covered, the list of questions contained in this handbook is not exhaustive, and that NPMs certainly also look into other issues in detention facilities that are not included in this handbook, such as prison transport. Equally, other matters of concern might arise during a visit that have not been considered by anybody so far. What is more, there is not always one single methodology that can be applied to answer the questions posed, and experienced monitors will have developed different or additional ways of achieving their goal of gathering objective information.

While a lot of personal experience of the authors went into this handbook, existing guidelines and checklists developed by other practitioners in this field have been drawn upon.[5]

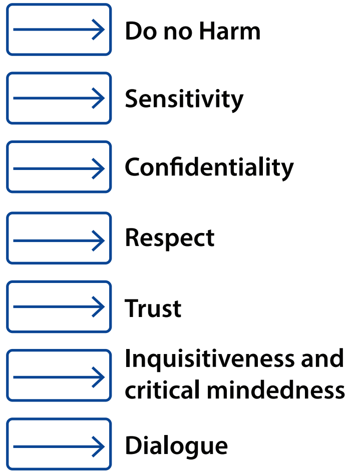
5. Cf., e.g. Office of the United Nations High Commissioner for Human Rights (OHCHR), Preventing Torture, The Role of National Preventive Mechanisms, A Practical Guide, 2018; United Nations Office on Drugs and Crimes (UNODC), Assessing Compliance with the Nelson Mandela Rules, A checklist for internal inspection mechanisms, 2017; Association for the Prevention of Torture (APT), Monitoring places of detention, a practical guide, 2004; Penal Reform International (PRI), Women in detention: a guide to gender-sensitive monitoring, second edition, 2015; Defence for Children International (DCI), Practical Guide. Monitoring places where children are deprived of liberty, 2016; APT, Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring Guide, 2018.

I. Monitoring Visits

1. Basic principles of monitoring

Most guidelines on monitoring start with an enumeration of basic principles of monitoring, and certainly European NPMs are already well aware of these principles. For that reason, the following chapter is kept rather concise. Nevertheless, it is worth repeating and shortly explaining some of the most important principles, as even the most experienced monitors should from time to time reflect whether they truly apply them in their daily work.

Principles of Monitoring



Number one on the list of basic principles is the **"Do no harm"** rule, which entails that monitors should be aware that most of their actions, particularly during a visit to a place of detention, have consequences, and that these consequences could be harmful for persons concerned, whether they are detainees or staff. Monitors, even if they have the best intentions, are therefore sometimes inadvertently contributing to a deterioration of the situation of the persons they work for and with; in the worst case, they can even put the life and security of these persons at risk. Hence, while it is important for monitors to gather as much objective information as possible, this should not be done at any cost. *For example, if a person has been traumatised by an act of violence against him or her, it could be that an insensitive interview with a monitor leads to re-traumatisation and suffering for this person.* Particularly in cases of allegations of ill-treatment (whether credible or not), but also other allegations such as corrupt practices within the detention facility, the monitor will have to apply the do-no-harm principle and seriously reflect whether the disclosure of this information could lead to grave consequences for the informant, such as reprisals or further ill-treatment.

A number of other important rules of conduct for monitors derive from the do-no-harm principle. For one, the monitors must possess a certain amount of **sensitivity** for the particular situation and mood interview partners find themselves in, including gender sensitivity, cultural sensitivity, and sensitivity vis-à-vis previously experienced suffering, such as violence against this person, but also suffering that could be based in the crime the person is accused or convicted of.

Moreover, the do-no-harm principle entails that the monitors must be able to keep certain information that could lead to reprisals or other unwanted consequences **confidential**. However, there are limits to confidentiality, and professional monitors need to discuss these limits with their interview partners before encouraging them to tell them more. *For example, while many NPMs are exempted by law from reporting information that possibly contains criminal elements (e.g. allegations of ill-treatment or corruption), others might be under an obligation to report such allegations to the relevant authorities*. If this is the case, interview partners who are about to reveal criminally relevant information – staff and detainees alike – should be made aware of this obligation and enabled to decide whether they would like to disclose further information. Generally, monitors should have clear guidelines on how to proceed in case they come across criminally relevant information. Another important limit to confidentiality lies in the prevention of self-harm: If the person concerned indicates that they think about committing suicide or self-harming, the monitor will have to clarify that this kind of information will have to be forwarded to medical and/or psychological staff and the management.[6]

Naturally, **equal respect** for all the persons held and working in a detention facility is of primary importance. This principle entails *inter alia* awareness of the fact that the prison cell is the place where detainees live, sleep and keep their personal belongings. A monitor should therefore not enter a cell without asking permission, not sit on a detainee's bed or the only chair in the cell without being invited, etc. Equally, prison staff deserve respect for the oftentimes very difficult work they have to carry out, and any service they render for the monitoring team, such as unlocking doors or bringing files, should not be seen as a matter of course. Respect should also be paid to the smooth running of a detention facility, including security arrangements in place. It is not always avoidable that a visit by a monitoring delegation to a detention facility disrupts the daily routine, but

6. More information about Confidentiality and data protection here. https://www.apt.ch/taxonomy/term/310

such disruptions should be kept to a minimum and detainees should not have to suffer serious deprivations, *e.g. of food, visiting or telephone time, outside exercise time etc.,* because the monitors insist on talking to them during mealtimes, visit times and so on.

As stated, the work of NPMs should be first and foremost concerned with human beings, rather than systems or structures. Therefore, an element of trust in all dealings with management, staff and detainees of a detention facility is vital. The management has to trust the monitors that their endeavour is to improve the functioning of the detention facility by objective findings and relevant recommendations; the staff have to trust that the monitors are interested in their workplace situation and problems they are facing when dealing with detainees; and persons deprived of their liberty have to trust that the monitors strive to uphold their rights. There are many approaches on how to gain trust, and the following precepts are only exemplary: A monitor should never make promises they cannot or will not keep; a monitor should never lie to an interview partner; a monitor should keep an open mind for all kinds of information, and not convey that they do not believe an interview partner; a monitor should not be prejudiced vis-à-vis certain groups *(e.g. special groups of detainees, persons accused or convicted of a specific crime, foreign detainees, etc.);* a monitor should be capable of a certain amount of empathy for the person concerned while keeping a professional distance.

A professional monitor is akin like an investigator, who has to try to gather as much objective information as possible while visiting a detention facility. They should therefore keep questioning until satisfied that the different viewpoints on a specific topic have been heard and other evidence gathered. While it is not necessary to suspect that all interview partners are lying, it is still a fact that detainees, staff and management alike sometimes have ulterior motives to tell or not to tell a monitor a specific version of events. Hence, members of the monitoring delegation should **cross-check** all information they receive. *E.g. if assessing the quality of regime activities for detainees, the monitors should not only speak to the educator responsible, but also to a range of detainees who are participating in these activities.*

In addition to **inquisitive mindedness** when carrying out a visit, keeping a **critical mind** vis-à-vis existing structures or rules can be of high value for a professional monitor. In principle, NPMs have a certain responsibility to act as guarantors of legality and verify that the running of the penitentiary system complies with existing national legislation, including bylaws and internal regulations. However, the role of NPMs goes further than just ensuring that national laws are upheld. If national legislation is in contradiction with European or international human rights law, contradicting the spirit of the European Commission Recommendation, then avenues have to be found to discuss legal changes.

Finally, NPMs are in a unique position: on the one hand, they are statutory bodies, established by the state. On the other hand, they are ideally completely independent from the state executive branch, and their loyalties should ultimately be with the human rights of persons deprived of their liberty. A balance has to be struck between a **cooperative dialogue with the authorities and constructive criticism if necessary**. Such a balance can best be achieved if NPMs demonstrate at all times that they take professionalism seriously, and that they base their criticism on sound findings and analyses.

2. How to prepare a visit

Most NPMs in Europe have taken up their work many years or even decades ago, and they have developed their own, professional method of preparing their visits, in line with their applicable legal provisions and their mandate. It is common practice for NPMs to prepare an **annual visit programme**, drafted with a view to facilitating resource planning and as a tool for identifying thematic priorities.

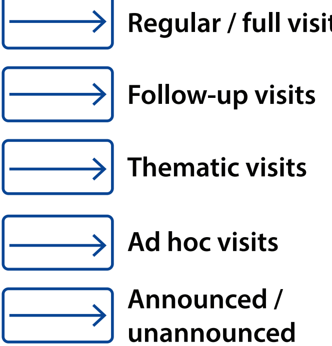
To facilitate planning, NPMs should maintain a comprehensive list of all detention facilities in the sense of the European Commission Recommendation. It is desirable that NPMs strive at paying **regular full visits** to all of these facilities. The findings and resulting recommendations deriving from these visits should be followed up after a reasonable time has elapsed, during which the prison authorities and the responsible Ministry were given the opportunity to rectify any shortcomings identified and implement general reforms. These follow-up visits will gradually take over from initial full visits; nevertheless, the monitors should still regularly re-examine the main key issues of prison life (*e.g. treatment, material conditions, regime, disciplinary sanctions etc.*).

After having acquainted themselves with the general functioning of all detention facilities in the country, NPMs usually develop a programme of **visits with a thematic focus**. Such thematic visits, which could for instance focus on the treatment of a particular group in detention *(e.g. foreign detainees, persons with disabilities, etc.*), should be undertaken to all or a large number of detention facilities, in order to gather comparative data and identify good practices or challenges in individual detention facilities.

Finally, NPMs should always be open, and have the necessary resources, to conduct **ad hoc visits** that might be necessary in a given situation. This requires not only the ability to react on short notice, but also a constant dialogue with the prison authorities and other bodies, who should inform the NPM of major incidents that could trigger an *ad hoc* visit. The NPM should pro-actively read civil society and human rights institution reports on prison issues and have an eye on media reports regarding detention facilities. In case the NPM is located within a national human rights institution, it should continuously cooperate with the unit which deals with detainees' complaints and draw its own conclusions from the entirety of complaints. Examples when an *ad hoc* visit might be necessary include reports or a substantial number of detainees' complaining of ill-treatment, riots or unrests in detention facilities and use of force against a larger number of detainees, indications of more severe instances of inter-detainee violence, suspicious deaths or suicides in a given detention facility, mass hunger strikes or self-harm of a larger number of detainees, etc.

While the OPCAT does not expressly speak of **unannounced visits** to detention facilities, it is implied in Article 20(c) that NPMs should have this option. In its guidelines on NPMs, the SPT has stated that the state should "ensure that the NPM is able to carry out visits in the manner and with the frequency that the NPM itself decides. This includes the ability to conduct private interviews with those deprived of liberty and the right to carry out unannounced visits at all times to all places of deprivation of liberty, in accordance with the provisions of the Optional Protocol".

Types of visits:



There are certain advantages to **announcing a visit** to a detention facility, in particular if the NPM wishes to have certain persons present during the visit or needs access to information that has to be prepared in advance. Further, in many cases the NPM can have trust that the prison authorities would not use an announcement of a visit to hide evidence of wrong-doing. However, detention facilities should in principle always be ready to accommodate an NPM visit and not see an unannounced visit as an unfriendly act or a sign of mistrust. The authorities should become accustomed to the fact that a monitoring visit to their facilities can take place at any time. NPMs are in the best position to judge which visits they want to announce, and when it would be more prudent to retain a certain element of surprise.

In general, it is good practice to have a **list of issues** prepared before conducting a visit, as this helps to stay focused and gather the information that is necessary for an analysis of high quality and the resulting recommendations. Nevertheless, the members of a delegation should still not turn a blind eye on any other major

issue that might arise in the course of a visit. In other words, they should **stay flexible to depart from the list of issues in case more pressing problems come to light during a visit.** !

Another important issue that should be remembered is **the composition of the visiting delegations**. In principle, all members of an NPM should be given the opportunity to regularly visit detention facilities, in order to stay in touch with reality. In case an NPM is comprised of different bodies, it makes sense to include persons who are usually responsible for, *e.g. police custody or immigration detention monitoring in visits to prisons.* In this manner, the unity of the NPM's work and main messages can be better achieved and "outsiders" might see different issues than persons who have visited prisons for many years.

The exact size of a given delegation varies in accordance with the overall objective of the visit and the issues that need to be examined. As an absolute minimum, a delegation has to be comprised of two members but given the size and complexity of most detention facilities, oftentimes more members will have to be included in a delegation. Any delegation should be well balanced in terms of gender, and in case it is planned or cannot be excluded that female detainees will have to be interviewed, the presence of at least one woman within the delegation is an absolute must. Likewise, if it is clear that the delegation will encounter foreign detainees, one or more interpreters or delegation members with the necessary language skills must be part of the delegation. Preferably, the delegation should be comprised of persons with diverse backgrounds. It is often sensible to include members with medical background into a delegation, as health related issues and questions can always appear during any visit to a detention facility. If the focus of the visit is on an in-depth assessment of the health care or mental health care of prisoners, the inclusion of medical experts is required.

In general, a **division of labour** between members is possible and often more efficient, but this should not lead to members always performing the same tasks and, *e.g. never conducting interviews with detainees*. All members of the NPM should feel confident to conduct the whole range of tasks during a visit.

The **length of visits** greatly depends on the focus of the visit and the complexity of the facility, and many NPMs around Europe have a habit of conducting visits over several days. Again, the NPM should remain flexible to shorten or prolong a visit, if this seems necessary in the circumstances.

3. How to gather information

The main task of an NPM is to **gather objective information** on many diverse aspects of the overall functioning of a detention facility, and to analyse these findings with a view to formulating relevant recommendations for improvement of the system for the benefit of those who live and work within these facilities.

NPMs should be aware that a **plenitude of sources** for information-gathering exists, each of which should be tapped in accordance with their own, specific methodology. Frequently, it will be necessary to cross-check information gained through one source, *e.g. an interview, by examining also other available sources, e.g. Closed-Circuit Television (CCTV) footage or files.*

In the following, the main sources of information for NPMs are presented, with a short description of their informative value and guidance on how to make maximum use of them.

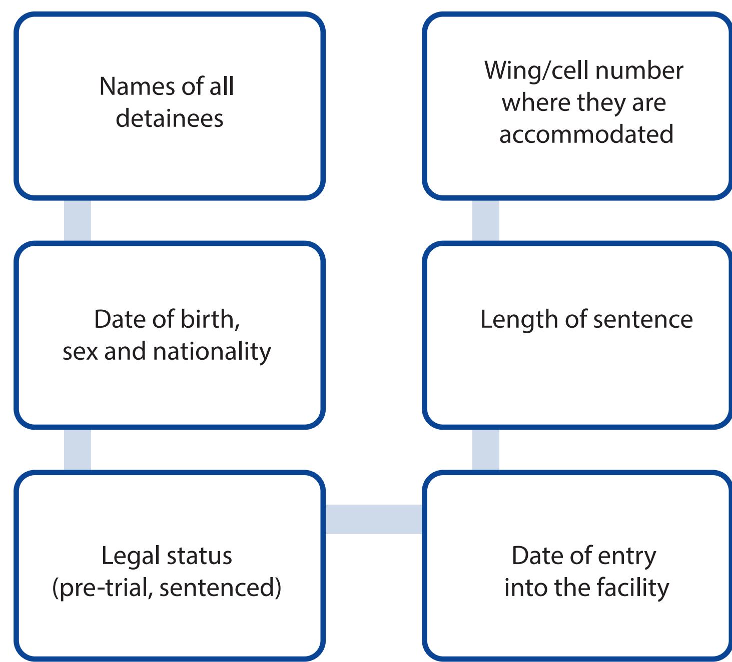
3.1. Prison database and lists of detainees

In line with the precepts of OPCAT, NPMs should have full access to information pertaining to detainees, including their number and any information necessary to assess their treatment. In European countries, prison systems typically retain databases with at least basic information on all persons detained (names, dates of birth, status, entry date, length of sentence, etc.). Preferably, NPMs should have autonomous access to these databases with their own passwords and at least some members of the NPM should have received basic training on what information is available within the system, how to navigate and retrieve it, and how to triage the data to obtain meaningful sets for analyses.

In case all detention facilities of the country uniformly use the database for storing information on certain circumstances, such as the use of disciplinary punishments or storage of incident reports, the NPM could compare and analyse this data without even visiting the detention facilities. In a thematic report on these issues, the NPM could then present its findings and recommendations.

Having said that, analysing information stored within the database can never replace actual visits to detention facilities, and the true value of access to the database lies in facilitating preparations of visits. Shortly before the visiting delegation sets off to a detention facility, all information on that specific facility stored in the database should be extracted and analysed, particularly with a view to identifying interview partners among the detainees (see below, Chapter 3.5).

Lists of detainees should as a minimum contain:



As an absolute minimum, the visiting delegation should, from the outset of the visit, have a nominative list of all detainees at their disposal, with their date of birth, sex/gender (if the facility holds both men and women, and/or transgender, transsexual or intersexual detainees), nationality, legal status (remand or convicted), date of entry into the facility, length of sentence, and cell number where they are accommodated. Other useful information that could be held in this list might relate to the security or regime status of the individual detainees, any additional classification, *e.g. "first time offender", "vulnerable", "substance abuse", or "dangerous"* that might be used by the penitentiary system; the actual arrest date and place from which the individual detainee has been transferred, *e.g. from another detention facility or the police;* and any other information pertaining to disciplinary punishments, use of force, etc. in relation to the detainees present in a given detention facility at the time of the visit of the NPM.

It is debatable whether NPMs need to know from the outset which crimes the respective detainees are accused or convicted of, and there are indeed arguments for and against including this information into the list of detainees. On the one hand it is true that (alleged) perpetrators of certain crimes, such as sexual offences against minors, run a higher risk of being abused in detention, both by staff and fellow detainees. NPMs should be particularly attentive to detainees accused or convicted of these crimes. On the other hand, concentrating too much on the crime a specific detainee is accused or convicted of may create prejudices within the monitors' minds, and during an interview with these persons the focus on the individual might be blurred by prior knowledge of their criminal history.

In this connection, but also relating more generally to access to information kept on detainees within their individual files or medical files, a comment is necessary on **data protection**. Data protection of natural persons, including persons in detention, is a fundamental right. In many cases, NPMs will have the statutory right to access all information pertaining to detainees, but time and again prison authorities or prison health care staff evoke data protection concerns in order to refuse access to this information. Sometimes, prison monitors are told that they are required to obtain individual written consent by the detainees concerned in order to access their data, which greatly impacts on the work of the monitoring body and does not allow for random or overall checks of medical or other files. Such obstacles must be met with a clear message that the primary mandate of the NPM, namely the **prevention of torture and other forms of ill-treatment, must not be subordinated to data protection rules** with the effect to seriously frustrate the effectiveness of the preventive work. ! Itgoes without saying that in turn, the NPM has the responsibility to protect the data it gathered, including by encrypting their IT systems and other measures.

3.2. Registers and journals

While it is true that electronic databases and registers more and more replace the old-fashioned ledgers and hand-written journals, a number of hardcopy registers can still be found in many detention facilities. NPMs should encourage prisons to keep hardcopy registers, as they offer valuable insights and a clear overview for visiting delegations. Alternatively, digital records should be printable in a comprehensive format.

Most NPMs will know which journals and registers they can expect to find in a detention facility. However, it is worth asking the management at the beginning of the visit not only for those registers they are obliged to maintain, but also for any other existing hardcopy journal, as individual detention facilities might differ in practice and keep additional records. Once the monitors have an overview of which registers are kept in a specific detention facility, they can make note of it for their next visit, and quickly discard of those registers that are not of interest for them.

The informative value of registers cannot be overemphasised. On the one hand, the manner in which they are filled in (complete/incomplete; slovenly/neatly etc.) offers valuable clues to the **diligence of work performance** of the staff responsible for maintaining these registers and their preparedness of following up certain incidents. Moreover, registers provide **statistical information** (*e.g. number of days spent in solitary confinement as a disciplinary punishment, number of violent incidents etc*.) that monitors should collect and compare, with a view to formulating recommendations based on this analysis. Finally, registers are a **primary means for identifying detainees** a monitoring delegation should speak to. From the consultation of the most pertinent registers – *e.g. the disciplinary punishment register, the register on special incidents, the register on the use of force/means of restraint, the medical register on traumatic lesions obtained in the detention facility, the complaints logbook, the register on disciplinary punishments of staff members etc*.[7] – the monitoring team can deduce the identities of

7. The exact titles of the mentioned registers may vary in practice; however, their content should more or less coincide with what is listed.

detainees who are at higher risk of ill-treatment by staff or fellow detainees, or who have other grievances or information that might be relevant for the visiting delegation.

Examples of relevant registers

- Disciplinary punishment register
- Register on special incidents
- Register on the use of force/means of restraint
- Medical register on traumatic lesions obtained in detention or observed at arrival
- Complaints logbook
- Register of disciplinary punishment of staff

If no journals or registers containing the mentioned issues exist *(e.g. disciplinary punishments, special incidents, use of force, traumatic lesions etc.),* the monitoring body will have to try to find this information in a structured form in the database. It is certainly not considered good practice for monitors to have to review a large number or all individual files of detainees in order to gain a systematic overview of the occurrence of certain incidents or complaints. In such cases, the NPM could recommend to the authorities that the data is kept in a structured format in the future.

3.3. Individual files

Detainees' individual files usually contain a massive amount of information. The question remains, however, if all this information is really relevant for the fulfilment of the tasks of a monitoring mechanism. Indeed, monitors can spend hours and hours reading individual files, which at times contain stories of bizarre or particularly cruel crimes, tales of tragic lives, and other information that makes an interesting read. By reading files, a monitoring team can appear very busy, while staying in the comfort zone of an office or meeting room in the administrative part of a detention facility; at the same time, the output of such an exercise is oftentimes extremely meagre, and at best the focus remains on individual shortcomings detected while reading files, rather than gaining a more systemic perspective.

What is more, and as already indicated above, knowing "too much" about certain detainees can blur the monitors' objectivity when speaking to individual detainees.

Nevertheless, some of the information contained in individual files should certainly also not be completely disregarded. In particular, they can be of **great value as a means of cross-examining information** that has been gained through other sources. As a very general guideline, examining individual files stands at the end of a process of information gathering. *For example, the monitoring delegation could start identifying persons who have recently undergone solitary confinement as a disciplinary punishment by going through the respective register or list obtained from the prison database.* In a next step, they should speak to a number of thus identified persons in order to find out whether they have experienced any kind of problem regarding the procedural aspects of the disciplinary process, or relating tGehe actual implementation of the disciplinary punishment. In a final step, any allegations of procedural flows or violations of rights of detainees should be verified by examining the individual files of the detainee concerned.

General registers/ lists - identification of detainees → Interviews with identified detainees → Individual files

Naturally, not all allegations can thus be verified; for instance, if a detainee claims not to have been served the form pertaining to their punishment, and at the same time it is common practice of detainees to refuse signing the respective form, it will be close to impossible for the monitors to determine with certainty whether the detainee was served the form and refused to sign it, or if the form was never handed over by staff. In these cases, the members of the monitoring delegation will have to decide whether the allegations appeared credible, and whether other safeguards are in place to mitigate the risk of violations of rights *(e.g. if a higher-ranking staff member has signed the form, testifying that the detainee in question has refused to sign).*

It is also possible, albeit very time consuming, to retrieve systematic information from individual files. This method should only be applied whenever there is no general register on certain pieces of information that the NPM considers relevant. However, in this case either the entirety of all individual files, or a large proportion must be checked in order to reach any meaningful findings. Random checks of a small number

of files might, as mentioned, reveal individual shortcomings, but they are usually hardly relevant in a more comprehensive assessment of the system.

3.4. Medical files

As noted above at 3.1-3.3, any information on detainees contained in files and registers is highly sensitive, and this is even more the case for medical information. In principle, it is a positive sign if prison health care staff are reticent to share medical information with an NPM due to medical confidentiality and should not *per se* be seen as a lack of cooperation. However, in order to fulfil the core mandate of an NPM, it is unavoidable to gain access also to medical files of detainees, as these can, *e.g. contain records of injuries observed at admission or during the period of detention.* Further, a lack of adequate health care for detainees is often considered to constitute inhuman or degrading treatment, and NPMs need access to information about medical diagnoses of and the treatment afforded to detainees.

Ideally, the NPM has by law an omnibus authorisation to access all information held by the detention facility on detainees, including medical data. In other case, an understanding needs to be sought with the authorities that grant the NPM access to medical files. It is at times easier to gain access if a member of the visiting delegation has a medical qualification. The inclusion of a doctor or nurse in an NPM visiting delegation also has the advantage that these persons are more likely to make sense of detailed medical notes on a given detainee.

Having said that, there is a range of medical information that also non-medical members of a delegation can verify. In particular, the diligence with which admission examinations are conducted and whether any injuries observed were documented in line with the Istanbul Protocol[8] should be assessed. The same is true for injuries detainees might have sustained during detention and which could be indicative of inter-detainee violence or excessive use of force by staff. All this information should in principle be accessible in a structured overview manner, *e.g. in the format of a register on traumatic lesions.*

Other general information held by prison healthcare services that should be of interest to an NPM include vaccination and screening programmes, substance use disorder treatment programmes including access to harm reduction measures, suicide prevention measures, etc.

The perusal of individual medical files largely follows the logic outlined above regarding detainees' individual files. If there are indications or complaints that certain detainees who might be suffering from a somatic or mental health disorder or a disability are not afforded the medical treatment their condition requires, a more in-depth analysis of their individual medical files might become necessary. Likewise, indications of injuries found in more general registers should be cross-checked against individual medical files. Again, all this is best undertaken by a member of the delegation with a medical background.

Healthcare services in detention facilities often retain registers or other information on deaths in the facility, which should be examined by the NPM with a view to extrapolating information on problematic issues *(e.g. violent deaths as an indicator of insufficiently managed inter-detainee violence; deaths from infectious diseases as an indicator of shortcomings in the detection and treatment of such diseases or the general sanitary conditions).* Furthermore, deaths in detention should always be followed up by an official procedure to determine the cause of death and an internal procedure establishing possible responsibility and lessons learned. The NPM should verify whether all these steps have been taken in the death cases registered.

3.5. Interviews with detainees

3.5.1. General observations

It is difficult to quantify the **importance of interviews** with detainees, but as a rule of thumb, visiting delegations should spend more than half of their overall visit time in a detention facility speaking with detainees, who are the primary source of information on most aspects of prison life. This does not mean that everything detainees tell the monitoring delegation has to be accepted at face value; with careful cross-examination of the information gathered through interviews the monitors will, however, be able to gain a comprehensive and objective picture of the prison routine as well as the most pressing problems prevailing in any facility.

8. Istanbul Protocol, Revised Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2022.

Interviewing detainees in a manner that is both respectful and efficient is an art that requires great skills. All members of the NPM should have undergone initial professional **training in interviewing techniques**, and from time-to-time refresher courses for all members should be held. More experienced members should take new members along to sit in on interviews, so they can learn from them best practices and become confident when speaking with detainees themselves.

There are a number of issues to consider when it comes to interviewing detainees, from the choice of interview partners and the place of conducting an interview, to the chronology of an interview and the information that the interviewer seeks. In the following, short chapters are dedicated to providing guidance on these issues.

3.5.2. How to select interview partners

The selection of interview partners among detainees depends to a great extent on the information the NPM would like to gather. In any case, it is preferable before choosing the interview partners to have a **strategic idea about the expected outcome** of the visit, which should contain a set goal regarding the information sought. When visiting a detention facility for the first time, it is worth speaking to a larger range of detainees belonging to different groups; however, during following visits, the NPM could possibly have a more thematic approach, or focus on specific issues they found problematic during the first visit.

*For example, a **thematic visit** could focus on the challenges of foreign detainees in the prison system*. In this case, the monitors should certainly speak with all or a great number of the foreign detainees present in diverse detention facilities – this might necessitate bringing one or more interpreters (see above, Chapter 2, "How to prepare a visit"). The information on nationality should be available either on the list of detainees provided to the visiting delegation, or the general database.

There are other examples of **detainees who exhibit certain specificities** and who may face specific challenges in detention, which are worth studying. These could include, but are not limited to, pre-trial detainees, convicted persons serving life imprisonment or long-term sentences, first-time offenders, persons in high security settings, young adults, elderly detainees, persons suffering from a disability or an illness, including mental illnesses and/or substance use disorders, persons prone to suicide or self-harm, etc.

Moreover, monitors should, in the course of each visit, strive to identify **vulnerable persons or groups of detainees**, who are at a greater risk of becoming victims of ill-treatment, such as particularly "troublesome" detainees (they can be identified by examining certain registers, such as the disciplinary punishment register); as well as detainees who are more vulnerable to inter-detainee violence, such as juveniles or young adults, LGBTI+ persons, former police officers or sex offenders, and more generally persons on protection from other detainees.

If monitors discover credible allegations of ill-treatment or other forms of violence, they should not only follow up on the specific case by examining other available evidence (*e.g. medical files, CCTV etc*.), but also try to speak to detainees who share a similar profile to the person making the allegations. They could also try to ask the affected detainee whether they know of others who have undergone similar treatment, and then speak to those **persons who were pointed out by the detainee**. A variation of this scenario can occur when a detainee indicates that they have not been personally ill-treated, but that others might have been subjected to violence. In such cases, the delegation should in a subtle manner identify those persons and engage with them, in principle without disclosing that they have received prior information from others.

During visits, the delegation members might at times be **approached by detainees** who would like to speak with them; or staff members point out detainees who have expressed the wish to talk to the NPM members. In such cases, a balance has to be struck: these persons might have genuine concerns that are of interest to the monitors, and detainees should not get the feeling that the NPM is callous. At the same time, these interviews might take a lot of precious time and be of little relevance to the mandate of the NPM or the focus of the visit. They might distract the monitors (sometimes even wantonly) from the real problematic issues in a detention facility. Members of the delegation who are thus approached by a detainee should decide whether to interrupt their planned visit procedure, or rather inform the detainee that they will return for an interview once they have finished talking to the target group of the visit (in the example above, the foreign detainee population). However, if they have promised to return for a follow-up conversation at a later stage, the monitors must honour that commitment, or else risk that the detainees in question get frustrated and lose trust and respect for the NPM.

To summarise, in larger facilities where it is not possible to speak with all or a considerable proportion of detainees during a visit, it is preferable to make a strategic choice of interview partners rather than to select them at random.

The strategy could be to gather information on a specific topic *(e.g. the correctness of disciplinary punishment procedures – interviews with all persons who underwent such punishment in a specified period of time)*, or focusing on the challenges faced by a specific group, such as life-sentenced detainees. A number of particularly vulnerable detainees should always be included on the list of persons to be interviewed.

! Under no circumstances should the prison staff be made to choose interview partners for the monitoring delegation.

The information sought through interviews also determines whether detainees should be talked to individually, or whether a group interview can be conducted. Generally speaking, **individual interviews** are to be preferred, as the privacy of the setting will help create greater confidence between the interview partners, and detainees will be enabled to speak about issues they would rather not like to discuss in front of their fellow detainees. Moreover, in group interviews, mostly one or two more outspoken detainees take the floor, and others might feel intimidated and not in a position to tell their version of the problem. The interviewers may thus get the feeling that they were told about a certain issue by a larger number of detainees, while in reality the majority of the persons present during the interview had different experiences but simply did not dare to contradict the narrative of the informal leader. In particular, discussions about possible ill-treatment or inter-detainee violence should be held in a private setting in individual interviews.

Having said that, **group interviews** can also have some benefits, and a visiting delegation can save resources and efficiently gather information from a larger number of detainees at the same time. Issues to discuss during group interviews might entail details on the regime of detainees *(e.g. outdoor exercise, work, education etc.)* or access to the outside world (phone calls, visits etc.). The interviewer should, however, ensure that all detainees present are given the floor, and not only listen to the strongest, most outspoken amongst them. Furthermore, group interviews can give valuable clues to internal hierarchies and domination within certain groups *(e.g. within one cell or dormitory)*. The interviewer can first conduct an interview with the whole group, determine whether any of the detainees present appear to be repressed by others, and then ask these persons for a private interview in order to determine whether they suffer from inter-detainee violence or other problems.

Lastly, some detainees might feel safer in the **presence of a specific other detainee,** and the interviewer should in principle accommodate the wish of the detainee to be accompanied by somebody else. It should be made clear, though, that the accompanying person must not interrupt the interview and speak on behalf of the interviewee. Another constellation sometimes occurs during interviews with foreign detainees, if the interview partners do not speak a common language, and the visiting delegation has not brought an interpreter for the language the detainee in question speaks. Offers from other detainees to act as interpreters can be taken up, as long as the interviewer has the impression that this is done in good faith and the impromptu interpreter does not start controlling the content of the interview.

3.5.3. Where to conduct interviews

The choice of the place where an interview is conducted can have a major influence on the interview itself. Since the primary objective of the monitors should be to gain detainees' confidence and make them open up on partly difficult subjects, the **interviewee should be consulted when choosing a place for an interview** in order to establish whether they feel comfortable and safe to speak in the chosen place.

The easiest manner of conducting interviews is to go directly to a detainee's single cell; in case more than one detainee is held in the cell, the matter already becomes more complex (see below). At the cell door, the members of the monitoring delegation should ask the detainee(s) whether they are permitted to come into the cell to talk to them. It is not good practice to let prison guards carry out this first contact with detainees on their behalf, and the monitoring delegation should make sure that the guards who are responsible for locking and unlocking the cells are clear about their role before opening a cell door.

! It is of utmost importance that the members of the monitoring delegation introduce themselves and their mandate at the point of entrance into a cell. Prison staff should only unlock the door, make sure with a quick glance into the cell that there is no apparent security risk and everybody is decent, and then let the monitors enter and speak to the detainees. During interviews, whether in groups or individually, **staff members should never be present**. If a monitor feels unsafe to speak to a specific detainee, other security measures can be considered (see below).

As mentioned, an interview with one person in their **single cell** is in many respects the most efficient manner to gather information. However, in many cases, detainees will be held in **multi-occupancy cells**, which compromises the confidentiality of an interview. There are different ways of dealing with such a situation:

The monitor could either decide to hold a group interview, after introducing themselves to all the occupants of one cell (see above, Chapter 3.5.2. "How to select interview partners", on the advantages and disadvantages of group interviews). However, if there is one specific person the monitors would like to interview, arrangements can be made for the person to be brought to an office or other appropriate location, where the interview can be conducted privately. **Once the introduction has been made and the detainee has given their consent, it should be the monitors, not the guards, who escort the detainee from their cell to the designated location for the interview.** !

Conversely, the monitors could ask staff to keep the other detainees outside their cell, and remain with one person in the cell. This latter option, however, is often rather awkward, as staff have to guard a number of detainees outside their cell for sometimes prolonged periods. Additionally, those who are temporarily evicted might feel offended for having to leave their personal space.

In case the monitors choose to speak to single detainees in private **outside their cells**, various options exist, such as staff offices (without staff presence, of course), medical offices, lawyers' visit rooms, or any other communal space *(e.g. courtyard, workshop etc.)* that is sufficiently private at the time of the interview. In any case, the interview partner should be asked whether they feel confident to speak to the monitors in the chosen location. In particular, the monitors should be aware that usually most of the communal areas are covered by CCTV cameras; if possible, it should be avoided to conduct an interview right in front of such a camera.

Finally, as a compromise solution that is usually efficient and private enough, the monitors can explain to all detainees present within a cell that they wish to speak with persons individually, and then find a place **within the cell** where they have a little privacy, such as a corner or the far end of a cell. This will probably entail sitting together with the interview partner in very crammed conditions, such as on the lower part of a bunk bed, but in many cases this solution is preferred by detainees, as they can remain in a familiar environment without having to exit their cell or evict the others from the cell and thereby draw attention to the fact that they speak with the monitors. If the monitors feel that other detainees are listening in during an interview, or even interrupt the interview by providing their own views, they can politely ask these other detainees to move to another part of the cell and concern themselves with something else.

In general, **the topic the monitoring delegation wishes to discuss with detainees should also determine the place for interviews**. If the focus is on general issues, such as food, conditions, regime, access to the outside world, group interviews or individual interviews in multi-occupancy cells are a possibility. However, the more sensitive the topic, the more attention should be paid to the choice of place for an interview. *For example, if the monitoring delegation wishes to interview detainees who are particularly prone to become victims of inter-detainee violence, or even has indications that one or more detainees have indeed been victim of such violence, maximum privacy has to be ensured during the interview and talks in multi-occupancy cells where others are potentially listening in, are not an option.*

Places where the conversation is often interrupted *(e.g. offices where staff have to enter regularly)* should be avoided. In general, **interruptions** by whomever (including other members of the visiting delegation) are not conducive to a trustful atmosphere between interview partners.

Finally, **prison routine** should also as far as possible be taken into account when choosing a place for an interview. *For example, monitors should avoid using the medical offices or outdoor exercise yard for prolonged individual interviews if this means that a larger number of detainees are thus prevented from being seen by healthcare staff or exercising outdoors.*

3.5.4. Security related considerations

Closely connected with the question of deciding on the right place for an interview is the issue of personal safety of the interviewer(s). Experienced monitors will in most cases not feel uncomfortable entering prison cells or talking with detainees in private. At this point, it is important to briefly address a few security considerations.

First, the members of a visiting delegation have to decide whether they want to work individually, or in groups of two or more. Particularly when it comes to interviewing detainees, there are a number of advantages in **working in pairs of two persons**: one of these advantages is that being in the company of another monitor can generally be considered as more secure; another benefit is that one person can fully concentrate on the interview, while the other one takes notes and describes the material conditions in the cell.

Despite this and other advantages, monitoring delegations at times decide that they split up and individual members of the group go into cells for interviews, in order to save precious time. In this case, too, a few **precautionary measures** can be taken to enhance security of the delegation members. For one, the monitor

should strive to stay closer to the door than the detainee(s). In case the member of the visiting delegation feels slightly insecure, the detainee can be asked to sit down on a bed or chair, while the monitor remains standing. And while guards and other prison staff should never be able to listen in to an interview, they can be requested to remain outside the door in case of need.

Monitoring delegations should not take lightly advice by staff that a specific detainee is **"dangerous"**. On the other hand, it should be clear that it is the delegation's responsibility to look after their own safety, and they should not all too easily give up their plans to talk to a specific person, just because they were labelled "dangerous" – after all, the "dangerous" and "difficult" detainees are those who are often most at risk of ill-treatment, and staff could have ulterior motives to scare a delegation away from talking with these detainees. Moreover, detainees mostly sense that visiting delegations want to talk to them in order to help improve their situation and will therefore treat them less aggressively than staff. In those exceptional situations when the delegation wishes to talk to a person who is considered to pose a very high risk, additional security measures could be considered, such as asking staff to visually supervise the interview *(e.g. through the glass or via CCTV);* still, staff should not be put in a position to overhear the content of the interview.

! Whatever the circumstances, interviews through bars, cell door hatches, or with a handcuffed or otherwise restrained interview partner are not considered good practice and should be absolutely avoided.

3.5.5. How to conduct interviews

Depending on the detainee in question, certain issues have to be kept in mind when conducting an interview. As mentioned in the chapter on women in detention below, **interviews with women** should preferably be conducted by a woman, or at least in the presence of a female monitor. Situations where one or more male monitors are speaking to a woman on her own should be avoided. Moreover, **interviewing children and young persons** requires special skills, and the ability to rapidly assess the young detainee's level of development. Monitors should be aware of the fact that children can react to an unknown adult in a shy and withdrawn manner, overly confident, or by trying hard to appear compliant with what they think the monitor wants to hear from them.

Further, persons with **mental health disorders**, including such who suffer from post-traumatic stress after violent events, are overrepresented in detention facilities, and monitors should not expect to get a straight, sensible answer to every question they ask. In particular, many detainees will have a distorted sense of time, and interviewers should not interpret too much into confused or obviously false time specifications. *For example, if it is apparent from the list of detainees that an interview partner has been in the detention facility for a bit more than one year, but they claim that they have been there for many years, this does not necessarily mean that the detainee is wilfully lying.*

! As was mentioned on different occasions before, **good monitors/interviewers have to be open-minded, patient, not prejudiced vis-à-vis detainees, not afraid to talk to them, and able to feel a certain amount of empathy for their situation; they should be genuinely interested in what the detainees have to tell them. Interviewers should be respectful and avoid an interrogative style or judgmental comments. They should not show disbelief or scepticism but take any remark a detainee makes seriously.** At a later point, when all other facts have been checked, a monitor can decide whether they lend credence to what a detainee has told them.

An interview should always be commenced with a (short) **introduction** of the person(s) conducting the interview, the mandate of the NPM, and the purpose of the visit. It is not essential to go into details about the mandate, but sometimes detainees have already at this point questions about the mandate, the purpose of the visit, or the reason why they were chosen for the interview, which should be duly answered in order to let the detainee decide whether they wish to talk to the delegation. While it is not necessary to bend somebody's arm in order to get an interview, the aim is to speak to persons, and monitors should not give up all too easily if a detainee tells them that they are not interested in talking to them. In particular in cases when the delegation has identified one or more very specific interview partners *(e.g. persons who have reportedly been ill-treated or victims of inter-detainee violence*), it might be necessary to be a little more persuasive in order to secure an interview. It might help to inform detainees that the genuine aim of the NPM is to improve the overall situation in detention facilities in the country, and that their assistance is needed in order to achieve this aim.

After the detainee has given consent to being interviewed and the appropriate place for the interview has been found, the interview should be conducted in a **systematic** manner. However, sticking too closely to a pre-established checklist for the interview might create an artificial atmosphere, and important information might be lost. A chronology of events should be established (*"When did you arrive at this detention facility?*

Where have you been before? How long have you been under this regime? When have you been put into solitary confinement?" etc.), as this makes it easier to follow the interview partner's train of thought and establish the facts.

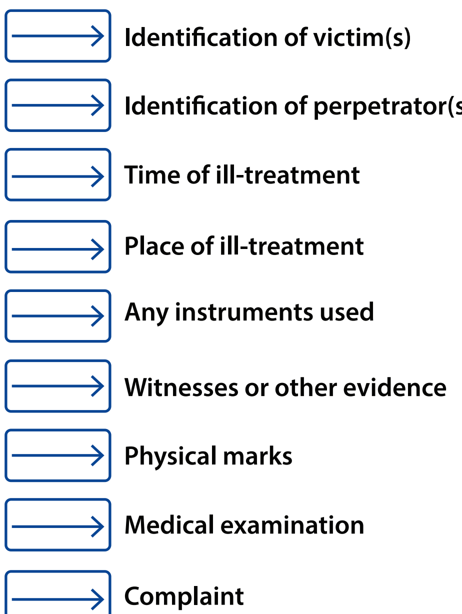
The interviewer should **avoid leading questions** that suggest a particular answer, **or closed questions** (that can be answered by a mere yes or no); rather, the detainee should be given the opportunity to speak about problems encountered during their time in the detention facility in an open manner. Questions such as *"Tell me about the atmosphere between the guards and detainees", "What is it like to share a cell with the other detainees", "What is your daily routine", "How would you describe the food", etc.* could be used to obtain personal accounts about the treatment, inter-detainee violence, regime, food and so on. Depending on these accounts, more concrete follow-up questions could be asked, *e.g. if the detainee replies that most of the guards are alright, but that there are a few "black sheep" amongst them – an obvious follow-up question would be, "And what do these 'black sheep' do?".*

It is important for an interviewer to **stay in control of the interview**, ask precise questions, and not let the detainee stray too far from the subject. *If, for example, the detainee wishes to talk or complain about a matter that is outside the competence of the NPM (e.g. the length of his/her sentence etc.), the monitors should not be afraid to say so.* In these situations, it is often helpful to at least point out the competent body to which the detainee can direct their complaint, before reverting to the subject the monitor would like to hear about.

The interviewer should also avoid asking personal questions that might cause the interview partner **mental grief, unnecessary stress or even re-traumatisation**, if these questions have no relevance for the task of assessing the situation prevailing in the detention facility. In most cases, the crime the person in question has been accused or convicted of plays little role in the evaluation of this detainee's situation within detention; and dwelling on it during the conversation might cause the interview partner unnecessary stress or distract from the actually important questions during a monitoring visit.

When **allegations of ill-treatment or inter-detainee violence** emerge during an interview, the monitor has to make sure they receive all the necessary details in order to follow up. First, it has to be established without a doubt that the treatment that is alleged happened to the interview partner personally and is not something they saw or heard about. At times, a detainee would claim that "we are beaten up all the time", or along similar lines. The interviewer has to establish whether this has actually happened to the interview partner, or whether they have personally witnessed such treatment on others (in this case, the identity of those other potential victims has to be asked for), or if this is a general rumour the interview partner is simply repeating.

Necessary information in cases of alleged ill-treatment/violence:



In case the **person who is being interviewed reports about ill-treatment** (or, *mutatis mutandis*, inter-detainee violence) they were personally subjected to, the interviewer should try to establish the details: **When** has this incident taken place? If the interview partner reports that they have been ill-treated more than once, the approximate (or, if possible, exact) time of every incident should be established. **Who** ill-treated? If possible, the alleged victim should provide names of perpetrators, or describe them as well as they can. **Where** did the ill-treatment take place? It might be that the person has been ill-treated in another detention facility, or when with the police. Details on the place where the alleged ill-treatment has taken place can be important for tracing other evidence, such as CCTV footage or witness accounts. **How** was the person ill-treated? Which instruments were used for the ill-treatment? Maybe the detainee alleges that they were slapped, punched and/or kicked, but in other cases batons, pepper spray, electric devices etc. could have been allegedly used. In the latter case, the detainee should be asked to describe the instruments in detail. Have there been any **witnesses** to the ill-treatment, or is there any other corroborative **evidence** the detainee can point to? Do they still bear any **physical marks** from the violence? Have they been **seen by a doctor** or medic after the alleged ill-treatment? Have they made a **complaint** to anybody about the violence? If not, why have they refrained from making a complaint?

There is no set maximum or minimum **time limit** for an interview, and it can happen that an interview ends after only a few minutes, because the detainee does not want to talk to the delegation, or due to language

barriers, or for other reasons. Further, the length of an interview differs in accordance with the information sought by the interviewer: if the objective of a visit is a very focused one, a few thematic questions can be posed within a shorter time than if the whole range of issues pertaining to prison life has to be discussed.

As a rule of thumb, a general interview lasts some twenty to thirty minutes; however, if in the course of the interview concrete allegations of ill-treatment emerge, more detailed questioning is necessary in order to gather all the relevant information, and the interview could last much longer. Interruptions of an interview *(e.g. to check the accuracy of a statement)* should be avoided; however, it is possible that the monitors have to go back to a detainee in order to clarify certain information after they have checked the files, or to give the detainee feedback on specific requests.

Some professional monitors feel that **audio-taping interviews** or using a laptop helps them in better catching the details of what was said. However, there are more disadvantages to such an approach than advantages. Detainees could easily form the impression that they are in a situation resembling a police interrogation, and might feel intimidated; recording their statements is not likely to promote a confidential and trusting atmosphere and detainees will probably be less open in sharing information with the interviewer. Therefore, it is more advisable to simply take a **writing pad and pen** to the interview and note down the most pertinent parts of the conversation.

Once the interviewer has exhausted their list of questions, the interviewed detainee should be given an opportunity to add anything they deem relevant. *For example, the interviewer could acknowledge that they have asked many specific questions and invite the detainee to add anything else that causes them grief or problems in prison.*

The professional **wrapping up** of an interview and decision on the **next steps** become particularly important in case the detainee has made allegations of ill-treatment by staff, or violence from side of other detainees. It should be clearly established whether the detainee wishes to lodge a formal complaint about the incident(s), and it should be clarified if the NPM is officially entitled to receive such a complaint and forward it to the competent authorities, or if the detainee will have to take their own steps to contact these authorities. It should also be clarified whether the NPM has the option to treat such allegations confidentially, or whether they will have to report to certain other authorities. Nevertheless, the alleged victim should understand that all steps are being taken to prevent negative consequences or reprisals from staff or other detainees, and that the monitors will handle the information received with great caution.

3.5.6. Follow-up to interviews

Whether a detainee experienced alleged ill-treatment or whether they have complained about not having received a letter, monitors should always stick to their word if they promise to follow up an issue. As mentioned at other occasions, the follow-up to allegations of ill-treatment or inter-detainee violence has to be particularly diligent, and preferably the NPM should have Standard Operating Procedures or guidelines at their disposal outlining the necessary steps that have to be taken if a person reports of violence against them. As a minimum, these guidelines should detail necessary actions, such as ordering a medical or psychological examination of the detainee, further investigative steps the monitors have to undertake to corroborate the allegations *(e.g. securing CCTV footage, taking photocopies of medical reports, talking to witnesses etc.),* the reporting obligations to the management, other bodies within the responsible Ministry, and/or the prosecutor's office, and necessary victim protection measures, such as a transfer of the alleged victim to another cell or unit or even another detention facility, and steps to suspend or transfer alleged perpetrators.

3.6. Talks with the prison management

At the beginning of every visit, **initial talks** with the prison director and/or their representatives should be held, in order to introduce the delegation, to outline the planned procedure of the visit, to receive initial information, and to clarify certain practicalities. The length of these initial talks depends on whether the NPM is on a first-time visit, or if they have already been to the detention facility and know the general layout and routine; if a long time has elapsed since the last visit; if the visit if of a general nature, or if the monitors are on a more focused, thematic or follow-up visit.

It is generally a sign of respect if all members of a delegation are present and introduce themselves during the first meeting with the management. Nevertheless, it is not necessary that the entire delegation sit through a prolonged initial conversation if certain members have, in accordance with their pre-established visit plan, specific tasks to do. The head of delegation can in these cases excuse the members who will proceed to their work, while staying with the management for further talks.

In the initial meeting, some **general information on the detention facility** should be sought; again, the detail of this information is dependent on whether the NPM has been to the facility before and already has knowledge about the prison population, its division into certain categories, the daily routine, and the layout of the detention facility. Furthermore, the NPM could also have established certain information, such as the number of detainees, from the database before the visit.

At the outset of the visit, the management should be requested to provide up-to-date lists of detainees (see above, Chapter 3.1), the necessary journals and registers (see above, Chapter 3.2), staffing lists, internal regulations, and any other information the delegation will need for its work.

The delegation also has the opportunity during the initial talks to ask for any **extraordinary incidents** since their last visit or within a specific period of time, such as riots, deaths including suicides, mass hunger strikes or major cases of self-harm, escapes, allegations of ill-treatment, more serious cases of inter-detainee violence or any other incident that is deemed out of the ordinary. Furthermore, the management can be asked if they have encountered any problems or difficulties in running the detention facility.

Last but not least, the delegation should clarify the **practicalities** of the planned visit with the management in the initial talks. For instance, they might request an office or meeting room where they can work on registers and files, or the assistance of a staff member when in need of specific documents or information. One or more members of staff should also be appointed to support the delegation so they can freely move around the premises and enter cells if they wish to speak to detainees. In some countries, NPM members will have keys or other means of entry at their disposal to facilitate their work.

It might be necessary to speak with the director or other members of the management at a later point **in the course of the visit**. In order to avoid that they have to constantly interrupt their work or permanently be on call for single members of the delegation, the head of delegation should agree with the director or their representatives on certain times *(e.g. every evening before finishing a day's work)* during which the issues at stake can be discussed in a collective manner.

At the **end of each visit**, a debriefing of the management should take place, in the course of which the delegation can acquaint the director and their representatives with their initial findings and any recommendation or request that can be best dealt with locally (see below, Chapter 4 "How to write a visit report").

3.7. Interviews with staff

All too often, monitors overlook the **importance of staff** for the smooth and human rights compliant operation of a detention facility. Monitoring delegations tend to focus on talks with the higher management of a facility, as well as on interviews with detainees, while ordinary staff members, both security and civilian and health care staff, are at best seen as facilitators for the visit. However, staff members can hold a plenitude of important information, and their job satisfaction is a major contributor to the overall atmosphere in a detention facility. Typical topics that can and should be discussed with staff relate to their recruitment procedures, training and possible counselling they receive for being mentally and physically prepared to meet the challenges of their difficult job, their attitudes vis-à-vis detainees, and problems they are facing at work.

Monitoring bodies should always obtain basic information about the **staffing complement** of a detention facility, including number of posts, number of vacancies, statistics on staff absenteeism, sick-leave and overtime, proportion of male and female staff, inclusion of civilian staff, such as educators, social workers and psychologists, number and qualifications of health care staff, typical shifts during weekdays, weekends, nighttime, etc. It would go too far to propose an exact ratio of guards or civilian staff per number of detainees at this point, as this number necessarily varies according to the profile of the detainees and the security level of the detention facility, amongst other criteria. However, monitors should keep in mind that staffing levels have a direct impact on all facets of prison life, such as the regime, medical care, security etc. Moreover, lengthy shifts might negatively affect the ability of staff to deal with detainees in a professional manner.

Interviews with staff members should follow the same **principles** as interviews with detainees, *i.e. the interviewer should find an appropriate place for the interview, which should be conducted in private; consent for the interview should be sought, and the interviewer should be open-minded and respectful when speaking to staff.* They should be genuinely interested in finding out about difficulties the staff are facing in their daily work. The choice of interview partners largely depends on what the monitors wish to find out. Staff representatives could be good resource persons, but also ordinary members of the security or civilian and medical personnel might hold valuable information.

Interviews with staff should be conducted with a view to receiving direct information on issues that concern them personally, rather than second-hand information on detainees. It is not good practice to discuss with staff the situation of detainees while these detainees are present.

3.8. Questionnaires

A few precepts regarding the informative value of questionnaires have to be kept in mind when using them in order to receive general information from detainees. Surely, questionnaires appear to have the **advantage** of reaching a large proportion or the entire prison population of a given facility, or even the whole prison system in the country. Anybody who feels aggrieved could in principle return the questionnaire, and the anonymity of the procedure should make it easier for detainees to say whatever they think, without fear of repression.

However, the use of questionnaires is not so straight forward, and NPMs **should not solely rely** on this mode of information gathering. To begin with, filling in questionnaires presupposes that all detainees can read and write, and are able to understand the language. Moreover, most questionnaires either contain closed questions (that can be answered only with "yes", "no" or something in between, such as "maybe" or "don't know"), or questions that can be answered with qualifications from "very good" to "terrible". Rarely, persons make use of lines provided for giving additional comments in writing. Hence, a whole lot of information is already lost in the simplicity of the pre-defined answers.

While there is no guarantee that a detainee does not lie during an interview, an experienced interviewer will at least be in a position to assess the credibility of statements made in the course of an interview. This option does not exist when evaluating the information gained through questionnaires. Generally, the anonymity of questionnaires makes it almost impossible to follow up certain claims, whether by trying to verify the information gathered, or by setting in motion certain protective or restorative measures.

Finally, the oftentimes low return rate of questionnaires indicates that detainees are not too fond of this method of providing information, that they do not see the added value for themselves, or that they do not trust the anonymity of questionnaires or feel unsafe to fill them in.

To sum up, questionnaires for detainees might have **some value** for the evaluation of very general questions pertaining to prison life. They should be limited in scope and concentrate on **one or two thematic issues**, such as access to the telephone or quality of food rather than on the whole range of problems that can occur within a detention facility. If they are too long and detailed, there is a risk that detainees will feel put off.

Certain matters cannot be reasonably evaluated by using questionnaires; these include in particular inter-detainee violence and ill-treatment by staff. NPM members will have to speak individually to detainees, gain their trust, and hope to find out about violence. As mentioned, it is not only important to have this face-to-face encounter with detainees in order to assess their credibility and get important details about the who/where/when etc., but also for setting in motion vital follow-up measures after an allegation of ill-treatment or inter-detainee violence has emerged during an interview.

Finally, in case NPMs wish to make use of questionnaires to gather detainees' opinion on a specific subject, they should also take responsibility for **creating adequate conditions** to enable a large proportion of detainees to fill in the questionnaire. Simple measures such as ensuring that all detainees have writing utensils at their disposal, might be necessary; conditions for the anonymous, private filling in of the questionnaire should be given; and members of the NPM should hand out the questionnaire personally to detainees, informing them that their opinion is of importance to the mechanism. Additionally, it is crucial that the questionnaire is provided in a language the detainees understand.

3.9. Personal observations of material conditions

The examination of material living conditions in a detention facility is one of the core tasks of a preventive monitoring body, and its members should be well prepared for making this assessment. This means that they might need to take certain **technical equipment** to the cells, in order to measure their size *(e.g. an electronic measuring device)*, or a thermometer in order to take the temperature in particularly cold or hot times of the year. Moreover, taking a camera into the detention facility in order to capture certain aspects of the material conditions, *e.g. water leaks etc.,* could prove beneficial for illustrating the delegation's findings at a later point with the authorities, as well as for helping the delegation to remember certain issues when drafting their report. This possibility, however, depends on the national regulations and not all NPMs have the right to bring a camera and take photos in all facilities. When taking photos, it has to be ensured that either no person

appears on the photo, or that they have given their consent to being photographed; this rule applies to both detainees and staff.

Often, it is however sufficient to take oneself as a measuring rod, and to ask oneself if one would be able to live under the given conditions. Simple tests such as trying to read with the light available without straining one's eyes can offer valuable clues to the adequacy of the lighting situation in a cell. In the absence of a measuring device, monitors can estimate the available space in a cell by using the length of a bed, which is normally between 1.9 and 2 metres long, as a reference.

Details on how to assess material conditions are provided in Chapter 5.4, below; suffice it to say here that monitors should not be satisfied with seeing just one or two cells in a given detention facility, or only the areas that are shown to them by the staff. During a first visit to a facility, or during a full periodic visit, the delegation could start with a tour of the entire facility, including cells on all floors, special cells such as segregation cells, common areas including courtyards, workshops, visiting facilities, the kitchen, laundry and medical facilities and so on.

3.10. CCTV footage

A more recent source of information for monitors is CCTV footage. The use of CCTV cameras is a somewhat double-edged sword, as **excessive resort** to this form of surveillance within a detention facility can also lead to severe infringements of the right to privacy of detainees *(e.g. if cameras are installed in ordinary cells and dormitories),* feelings of humiliation *(e.g. if cameras cover toilet or shower areas, or if women's living quarters are routinely surveyed by male staff in front of the CCTV monitors),* and a generally more distant relationship and loss of personal contacts between detainees and staff, with the latter gaining a false sense of control of what is happening within the detention facility by means of CCTV surveillance.

On the other hand, CCTV footage can give valuable clues for monitors, in particular in cases when they have to verify allegations of ill-treatment or inter-detainee violence that took place in areas covered by cameras. Monitors should therefore insist on being shown the footage covering the place and time indicated by a detainee during an interview and take measures to secure this evidence for further investigations. A precondition for this is, obviously, that the video material is **stored for a reasonable length of time.**

Having said that, staff (as well as most detainees) usually know about the existence of cameras in certain places, and those who are minded to ill-treating detainees will probably refrain from doing so in plain view of a CCTV camera. Therefore, monitors should also not read too much into the absence of CCTV material showing exact details of abuse. However, sometimes it is sufficient to establish that a detainee who claims that they have been ill-treated in an area that was not covered by CCTV (*e.g. a staff office*) has been led to and from this area.

3.11. Internal regulations

It goes without saying that NPMs should have firm knowledge about the existing laws and bylaws, as well as ministerial orders etc. pertaining to the functioning of the prison system. It might be the case, however, that facility-specific internal regulations, internally used protocols *(e.g. on the use of restraint measures etc.)* or house rules exist, which further specify the law. At times, these internal regulations might also be in contradiction with the existing legal framework. The NPM should request the management and higher-ranking staff to be provided with all written protocols, the house rules and other facility-specific documents (*including for instance the price lists of products that detainees can obtain in the canteen*) with a view to analysing their compatibility with existing laws, and European and international laws and standards.

Furthermore, the monitors should also ascertain in individual interviews with detainees that they are aware of the house rules or other regulations determining their rights and obligations and have been given a copy of or can otherwise gain access to these rules in a language they understand.

4. How to write a visit report and follow-up[9]

An important part of the methodology for any NPM is the drafting of the visit report, outlining both the objective findings gained during the visit, and the resulting recommendations. European NPMs have developed their own style in writing visit reports, which reflects both their professionalism and their commitment to steadily improve the way detention facilities are organised. For this reason, the following chapter will be kept rather short and should only serve as a reminder of a few basic principles when writing a visit report. The discussion of other forms of reports, such as thematic or annual general reports, is deliberately excluded.

The issuing and **publication** of an annual report is the minimum requirement under OPCAT. However, many NPMs publish individual visit reports on their websites, which allows for greater visibility and generally more effective follow-up as these reports can be taken up by civil society or others.

It goes without saying that a visit report should contain the most important **objective findings** that were gathered during a visit*, e.g. a description of material conditions, statistical data on the number of detainees engaged in organised activities and so on*. The more important part, though, is the **analysis and comparison** of these findings with the applicable standards, as well as the **recommendations** that derive from the analysis.

Regarding the **standards** that should be used for the analysis, the NPM will certainly first and foremost look to existing national legal norms (laws and bylaws, ministerial orders, internal regulations, etc.). However, in order to live up to their role of human rights body and driver of change, **observed practices and conditions in detention facilities as well as existing national legal norms should be analysed with a view to assessing their compatibility with international human rights norms and standards as developed by European and international bodies.**

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The European Commission Recommendation, which in a concise manner provides for the most important standards for conditions of detention, is a good starting point for such an analysis. Its provisions can be further specified by taking into consideration standards developed by the CPT, rules contained in the revised European Prison Rules[10] and/or the UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), specific rules pertaining to special groups of detainees, such as the Bangkok Rules for the Treatment of Women Prisoners, the Beijing Rules for Juveniles and so on. Further, judgments by the Court or the European Court of Human Rights, as well as the European Court of Justice on prisoners' rights can serve as a basis for the reports' analytical parts. In addition, good practices observed in certain detention facilities should be highlighted for duplication in other facilities. The NPM could also look beyond their own country for good practices as applied in other countries.

As a rule, every negative finding and every outcome of an analysis indicating that certain practices, conditions or provisions are not in line with the required standards should be followed by a recommendation. Different situations call for different forms of recommendations. The manner in which the recommendation is phrased should reflect the **seriousness of a problem** detected. Recommendations can be classified and given a ranking according to the detected problem. For instance, findings of illegal actions or where the lives or physical integrity of detainees are at risk should be phrased reflecting the urgency in order to trigger immediate action. In this respect, many NPMs have developed a system of "immediate action" notifications, which should be used when a clear human rights violation has been observed that the authorities should put an end to without delay.

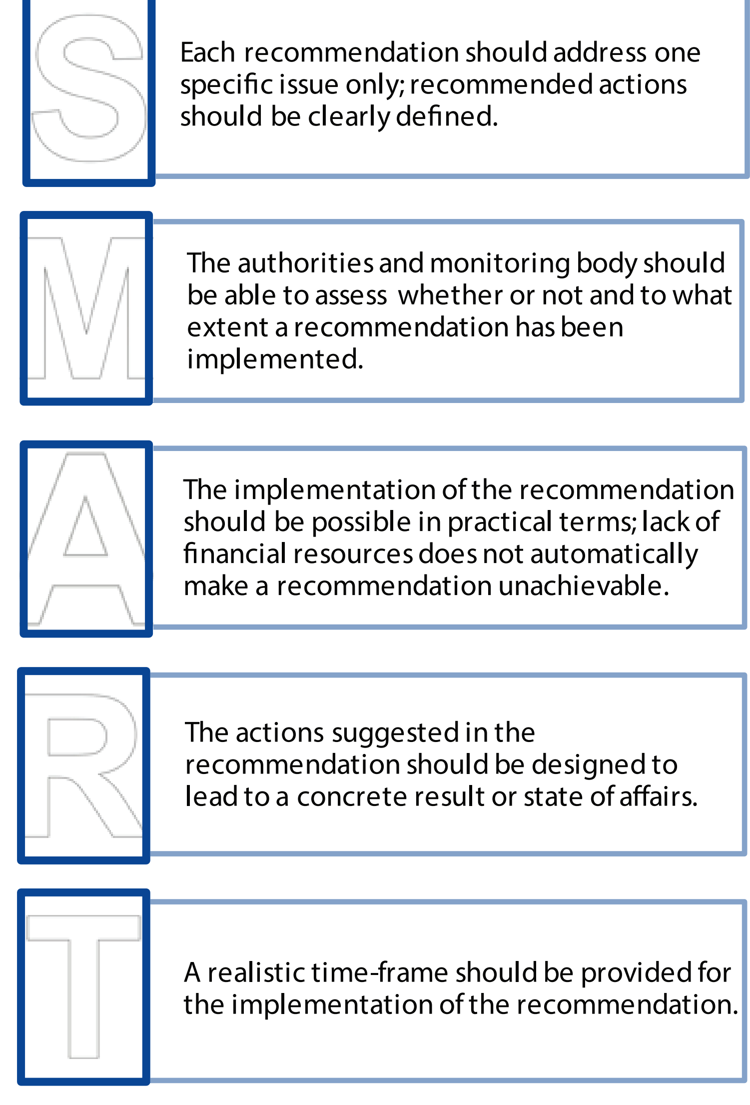
Recommendations could have a **short-term** aim, or be formulated in a **long-term** perspective, *e.g. when it comes to findings that could only be rectified by more extensive reforms*. Reports could contain both types of recommendations, but it has to be clear whether the NPM aims at immediate change or a comprehensive overhaul of a larger aspect of the penitentiary system.

The Association for the Prevention of Torture (APT), a Geneva-based NGO, has adapted the mnemonic acronym **"SMART"**, which is generally used as a management tool, for the formulation of **effective recommendations** by detention monitoring bodies.[11]

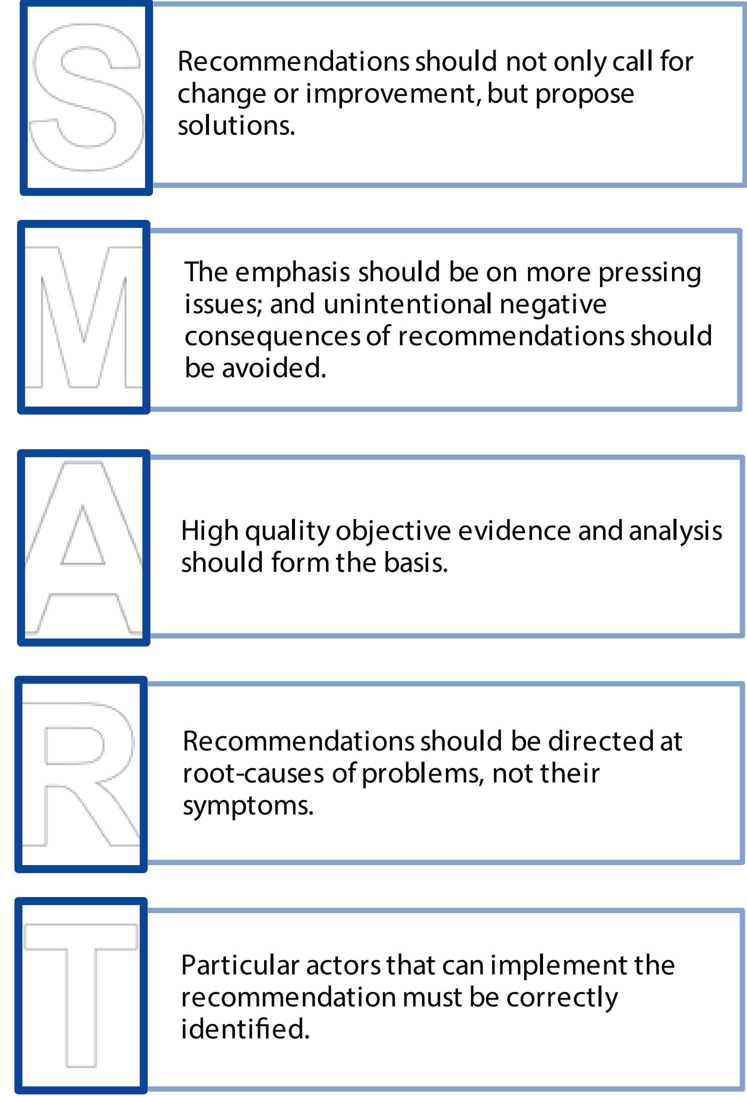
9. For further information, see the Council of Europe "Guidelines for National Preventive Mechanisms (NPM) reporting" produced by John Wadham (2025)
10. See also: Guidance document on the European Prison Rules
11. Association for the Prevention of Torture (APT), Briefing No 1, "Making Effective Recommendations", November 2008.

SMART recommendations

Specific, **M**easurable, **A**chievable, **R**esults-oriented, **T**ime-bound



Solution-suggestive, **M**indful of prioritisation, sequencing and risks, **A**rgued, **R**oot-cause responsive, **T**argeted



Recommendations can also be classified in accordance with **the authority they are addressed to**. For instance, in case the NPM has detected a shortcoming that can or should be rectified immediately, a recommendation that leads to an immediate improvement could be made **directly to the detention facility's management** at the end of the visit. Nevertheless, a written note on such direct and local recommendations should be made also in the visit report (with an indication of the response by the authorities), in order to document all findings and recommendations, and to facilitate follow-up.

In many cases, the recommendations will be addressed to individual detention facilities, **the overall prison authorities and/or the Ministry within which the prison authorities** are located, or specific sub-units thereof. However, at times the NPM will come to the conclusion that certain findings warrant a response by **other authorities**, outside the Ministry's responsibility. *For instance, restrictions placed on pre-trial detainees regarding their access to the outside world are often primarily in the responsibility of the prosecutors and courts responsible for the criminal proceedings against these detainees.* Nevertheless, these restrictions can seriously infringe detainees' human rights, and the NPM might conclude that – in individual cases or in general – such restrictions are used excessively. Similarly, with regard to health care of detainees, it might be necessary to address findings and recommendations to the Ministry of Health and propose closer cooperation with the prison system. Ways and means should exist to enter into a dialogue with these public actors beyond the prison authorities, in order to convey to them the challenges observed during visits to detention facilities, and to collaborate towards a positive solution.

Regarding specifically the outreach to judges, prosecutors and defence lawyers, the European Commission Recommendation provides for an interesting idea in its paragraph 81: Member states are encouraged to organise regular visits to detention facilities for judges, prosecutors and defence lawyers as part of their **judicial training**. NPMs could use this opportunity to get involved and organise joint visits with these professional groups in order to directly point out their concerns.

NPMs across Europe have already greatly invested in devising systems and tools for **follow-up** to their reports and recommendations. In most countries, the authorities are provided with the possibility (and obligation) to respond in writing to findings and give an indication as to the state of implementation of the NPM's recommendation. This form of dialogue can be complemented by personal meetings and discussions with relevant authorities, as well as broader roundtable events to exchange views on findings and recommendations and define a way forward.

NPMs' repeated visits to detention facilities should always contain an element of follow-up to previous findings and recommendations, but they can also explicitly declare certain visits **"follow-up visits"** to give their previous reports more visibility and prominence. Finally, NPMs are not alone in their endeavours to push for implementation of their recommendations. They can collaborate with stakeholders from civil society, including NGOs and academia, to advance their concerns; reach out to parliamentarians or parliamentary committees with relevant draft legislation; offer training and exchanges of views to the judiciary; engage with international bodies, such as the United Nations Treaty Bodies *(e.g. Committee Against Torture, Committee on the Rights of the Child, Committee on the Rights of Persons with Disabilities)* and draft alternative reports addressed to those as well as to the Universal Periodic Review; engage the SPT and the CPT to assist in highlighting certain persistent matters; and finally involve the media if this is deemed strategically the best way forward.

Regarding follow-up tools, the use of databases, spreadsheets or matrixes for an overview of implemented – or not, or only partially implemented – recommendations is a common good practice by NPMs observed across Europe. In keeping with their national legislation pertaining to confidentiality, such overviews are at times published on the NPMs' websites, providing an excellent way to visualise the authorities' willingness to implement recommendations and the NPMs' effective impact.

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[12] 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 predicaments. 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.*"[13]

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

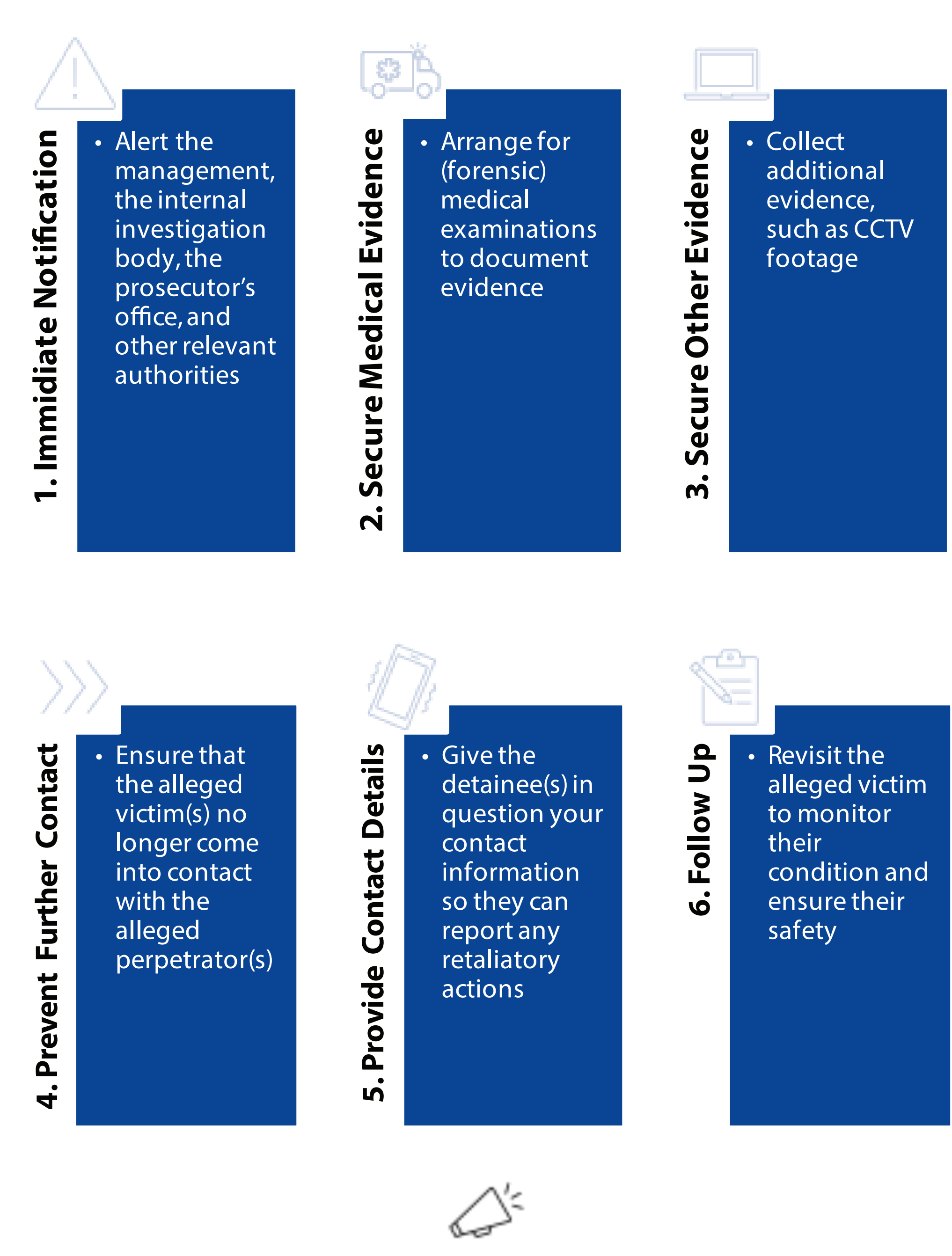
Relevant international laws and standards:

- 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?[14]

- *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.[15] If the NPM becomes aware of a major special intervention, this could possibly trigger an

15. 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 6m² in single occupancy cells and 4m² 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 3m² surface area per detainee. Where the personal space available to a detainee is below 3m², 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 3m² 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 3m² 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 3m² 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 4m² per person in multi-occupancy cells and 6m² 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 10m² for two occupants, 14m² for three and 18m² 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 3m² (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,16 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?[17]

- *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 revers 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 Recommendatio?

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,[18] 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

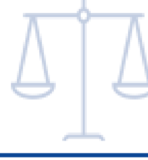
The European Commission Recommendation does not explicitly foresee any provisions on disciplinary procedures and sanctions for adult detainees. However, a wealth of other international and European standards exists, and both the revised European Prison Rules and the Mandela Rules provide for detailed 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, an 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.[19] 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 and 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.*

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.*

7. Women

7.1. Considerations before your visit to women in detention

In recent years, a re-thinking of imprisonment of women has taken place in a few European countries. Numbers of female detainees have risen disproportionately over the last decade, and the failures of traditional criminal justice in the form of mere punitive deprivation of liberty have become even more visible concerning women. **NPMs should be at the forefront of any reforms of the system for women in conflict with the law**. While imprisonment of women will remain a reality for many years to come and hence require regular monitoring by NPMs, especially in this matter NPMs could take a leading role in recommending different forms of dealing with female delinquencies that lead to better outcomes for the women concerned as well as for society as a whole.

In penitentiary systems, women can either be detained in a special facility that exclusively accommodates female detainees - sentenced and on remand -, or as a minority group in detention facilities that mainly hold men. In both cases, the vast majority of the questions to ask and the issues to monitor in the general prison population, i.e. on treatment, material conditions, regime, contact with the outside world, disciplinary punishment etc., remain relevant (see Chapter 5 "The general prison population" and Chapter 6 "Pre-trial detainees").

However, certain additional issues *(e.g. pregnancy, childbirth and care for mothers with children in prison),* or specific variations of general issues *(e.g. gender-based violence as a form or ill-treatment, higher prevalence of trauma-induced mental health including substance use disorders)* arise for women in prison that warrant the explicit attention of the monitors. Moreover, being detained or imprisoned might entail a particular stigma in the case of women, which will add to their distress. Additionally, many women who are admitted to prison are mothers and/or primary carers for other family members, and the separation from their children and their families can have a severely negative impact on their mental wellbeing.

The **composition of the team visiting women in prison** is of particular importance, keeping in mind that women who have been victims of sexual violence (before they enter the criminal justice system, or during encounters with law enforcement agencies) are overrepresented in prison. Moreover, women might not be at ease to discuss certain sensitive topics with men, such as gynaecological care they receive in prison or whether they are provided with sanitary pads for their monthly needs.

Therefore, it is imperative that the visiting delegation includes women monitors, who can lead the discussions with women. It is not an absolute rule that only women should speak to women, and if a male interview partner shows sincerity, trustworthiness and empathy, many women will also tell him about sensitive issues they have encountered. Nevertheless, a male interviewer should always be accompanied by a female colleague, and retreat if the woman or women in question indicate that they feel ill at ease to discuss anything in his presence. Male members of the delegation should never enter cells of female detainees on their own, but only together with a female colleague, and only if they have explicit agreement from all the women present in the cell to his entering the room.

7.2. Allocation of women detainees

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

Relevant international laws and standards:

- Rule 17.1 of the revised European Prison Rules 2020
- Rule 3 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the "Bangkok Rules")
- CPT Factsheet "Women in prison"

Women should be detained, as far as possible, in separate **institutions designed for this purpose, in an environment suited to their needs**. At the same time, women detainees should be allocated, to the extent possible, to prisons close to their home or place of social rehabilitation, taking account of their caretaking responsibilities, as well as the individual woman's preference and the availability of appropriate programmes and services. However, the challenges involved in making separate provision for the relatively small numbers of women in prison often result in their being held at a limited number of locations (on occasion, in remote places far from their homes and families, including dependent children), in premises which were originally designed for male detainees, or in smaller units of male prisons.

Furthermore, the numbers of female detainees have in many European countries exponentially increased over the last decades and women's prisons as well as units reserved for them nowadays are faced with similar - if not worse - problems of overcrowding as male detention facilities.

Questions to ask and ways to find out

Preliminary assessment:

Are the national laws and policies in line with paragraph 37 of European Commission Recommendation?

- *Do these policies endorse the creation/maintenance of dedicated institutions/units for women?*
- *Is there a policy/Standard Operational Procedure on the allocation of women by institutions/units?*
- *Are women's special roles in the family explicitly taken into consideration when placing them?*

How many women's prisons and/or female units within male prisons are there in the country? Where are they located and are they easy to reach?

- *Map all women's detention facilities and assess whether they are easily reachable for family members, including by public transport.*

Are women's prisons/units within male prisons specifically designed or adapted for the purpose?

- *Discuss with the management and staff the regulatory, structural, procedural and other peculiarities for the facility/unit.*

Are women's detention facilities overcrowded?

- *Discuss with the management and staff and check lists of female detainees of the recent past to verify whether and for how long overcrowding of women's units persisted.*
- *Check the documents and measure a variety of cells in order to establish personal living space per female detainee.*
- *Discuss with the management which measures they take to ensure sufficient capacity and tackle overcrowding in women's units, if so.*
- *Talk to women requesting or recently transferred, management and staff about transfer practices.*

7.3. Separation from male detainees

[…] Women should be held separately from men. […]

Paragraph 38 of the Commission Recommendation

Relevant international laws and standards:

- Rule 18.8 of the revised European Prison Rules 2020
- Rule 11 (a) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)
- CPT Standards "Women deprived of their liberty"; CPT Factsheet "Women in prison"; CPT Standards on Transgender Prisoners

Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women, the **whole of the premises allocated to women shall be entirely separate** (for the possibility of joint activities, see below at Chapter 7.5). In this context, it is also important to recall that the CPT has made clear its view that, as a matter of principle, transgender persons should be accommodated in the prison section corresponding to the gender with which they identify (see below, Chapter 12).

Hence, the first matter prison monitors need to ascertain when visiting women in a prison that is primarily accommodating male detainees is whether the female detainees present are truly separated, i.e. whether they have their own units and cells, and are separated during out-of-cell time, such as during outdoor exercise, work and other activities, as well as when using the sanitary facilities. Monitors should equally find out under which circumstances women are transported from and to prisons, and between different establishments in order to confirm that also during transport men and women are not mixed.

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 women in male prisons separated from men?

- *Visit female units within male prisons and observe the accommodation arrangements, including the sanitary facilities women 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 women and check workshops, outdoor exercise yards, rooms for activities and transportation vehicles.*
- *Verify that in particular courtyards used by women are not overlooked by parts of the male prison and that male detainees are not in a position to verbally harass women during outdoor exercise.*
- *Speak with women who are engaged in work, e.g. as house workers, or who have recently arrived, about the practical implementation of separation from men during work or transport.*

Relevant international laws and standards:

- Rule 34.2 and 81.3 of the revised European Prison Rules 2020
- Rule 81 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)
- Rules 7, 25, 29, 31, 33, 34 and 35 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the "Bangkok Rules")
- CPT Factsheet "Women in prison"

7.4. Staffing and prevention of sexual violence and/or exploitation

It is crucial that any prison accommodation unit holding women has female custodial staff in **sufficient numbers at all times**. Furthermore, women prisoners often require less security staff, and more social, psychological and other civilian staff.

Staff who are to work with women should be given **specific training** for their specialised work. Capacity-building for staff employed in women's prisons should enable them to address the special social reintegration requirements of women detainees and manage safe and rehabilitative facilities. All staff assigned to work with women detainees should receive training relating to the gender-specific needs and human rights of women detainees. Basic training should be provided for prison staff working in women's prisons on the main issues relating to women's health, in addition to first aid and basic medicine. Where children are allowed to stay with their mothers in prison, awareness-raising on child development and basic training on the health care of children should also be provided to prison staff, in order for them to respond appropriately in situations of need and emergencies. Capacity-building programmes on HIV should be included as part of the regular training curricula of prison staff. In addition to HIV/AIDS prevention, treatment, care and support, issues such as gender and human rights, with a particular focus on their link to HIV, stigma and discrimination, should also be part of the curriculum. Prison staff should be trained to detect mental health-care needs and risk of self-harm and suicide among women detainees and to offer assistance by providing support and referring such cases to specialists.

Capacity-building measures for women staff should equally include access to senior positions with key responsibility for the development of policies and strategies relating to the treatment and care of women detainees. In a detention facility for both men and women, the part of the prison set aside for women should be **under the authority of a responsible woman** staff member who should have the custody of the keys of that entire part of the prison. No male staff member shall enter the part of the prison set aside for women unless accompanied by a woman staff member. Women detainees shall be attended and supervised only by women staff members. This does not, however, preclude male staff members, particularly medical staff, psychologists and teachers, from carrying out their professional duties in prisons or parts of prisons set aside for women, although it would also be preferable if these positions could be held by women.

Clear policies and regulations on the conduct of prison staff aimed at providing maximum protection for women detainees from any gender-based physical or verbal violence, abuse and sexual harassment should be developed and implemented. Particular efforts should be made to **protect women detainees from physical, mental or sexual abuse and give access to specialised services** for women who have experienced physical, mental or sexual abuse, including being informed of their right to seek recourse from judicial authorities, legal assistance, psychological support or counselling, and appropriate medical advice.

Utmost vigilance is required with regard to **inappropriate behaviour and sexual relationships between staff and women in prison**. Any allegations in this respect should be taken very seriously. Even if at the face of it the relationships might seem consensual or even encouraged by a woman detainee, the power imbalance between staff and detainees makes such relationships unacceptable.

If cases of sexual abuse or other forms of violence before or during detention come to light, the woman concerned should be informed of her right to seek recourse from judicial authorities, of the procedures and steps involved. If the woman agrees to take legal action, the case should be immediately referred to the competent authority for investigation. Prison authorities should help such women to access legal assistance. Whether or not the woman chooses to take legal action, prison authorities shall endeavour to ensure that

she has immediate access to specialised psychological support or counselling. Specific measures should be in place to prevent any form of retaliation against those making such reports or taking legal action.

Questions to ask and ways to find out

What is the ratio between female and male (security) staff? Is it guaranteed that there is always a sufficient number of women on duty, including for necessary body searches?

- *Check the official staffing level and work roster of staff.*
- *Verify on the staffing lists and rosters that women detainees are attended to by a sufficient number of civilian staff, including psychologists, social workers and educational staff.*

Are staff members specifically trained for their specialised work?

- *Check the relevant training documentation (i.e. initial and in-service training curricula; orders for training deployment).*
- *Speak with management and staff in order to find out if they have received special training (including frequency, length, spectrum of topics, categories of staff involved).*

Is it guaranteed that male staff cannot enter women's cells or sanitary facilities?

- *Discuss this question with management and staff; check the Standard Operational Procedures.*
- *Interview women regarding their experiences in this respect.*

Is the part of the prison set aside for women under the authority of a responsible woman staff member?

- *Discuss this question with management; check the organigram of the institution.*

Have there been/are there complaints about sexual harassment or violence by staff? What were the management's reactions to such complaints?

- *Discuss with the management if they are aware of any such complaints and verify that they have undertaken the necessary steps when such allegations came to light.*
- *Check the (existence of) relevant policies and operational procedures to prevent and react to gender-based physical or verbal violence, abuse and sexual harassment. Pay attention to categories of support services in place (legal assistance, psychological support or counselling, appropriate medical advice, protection from reprisals).*
- *Interview a number of different women in individual interviews about their experiences regarding sexual harassment or sexual violence from staff members; ask if they are aware of prisoners receiving favours or privileges in return for sexual services; ask about the management reaction to such cases.* ***NB:*** *This kind of interview is probably one of the most difficult to lead, and only very experienced interviewers should endeavour to find out about issues of sexual abuse within a given facility.*

Are whistle-blower protection mechanisms in place to encourage staff to denounce any form of sexual violence or corruption involving sexual abuse?

- *Discuss with the management whether staff is sensitised and aware of avenues to denounce abuse by colleagues.*
- *Speak with a number of different staff members in individual interviews and ask if they would (if only in theory) feel safe to denounce any kind of abusive practices of colleagues. Ask whom they would turn to.*

7.5. Adapted but not gender-stereotyped regime

"Member States should take into account women's and girls' specific physical, vocational, social and psychological needs […] when making decisions that affect any aspect of their detention."

Paragraph 64 of the Commission Recommendation

Relevant international laws and standards:

- Rule 25.4, 26.4, 34.1 and 34.3 of the revised European Prison Rules 2020
- Rule 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)
- Rules 2, 26, 27 and 42 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the "Bangkok Rules")
- CPT Standards "Women deprived of their liberty"; CPT Factsheet "Women in prison"

Women deprived of their liberty should enjoy access to meaningful activities (work, training, education, sport etc.) on an equal footing with their male counterparts. There is a risk that the specific needs of women will be disregarded, especially as they are a minority category of detainees.

Adequate attention shall be paid to the **admission procedures** for women, due to their particular vulnerability at this time. Newly arrived women detainees shall be provided with facilities to contact their relatives; access to legal advice; information about prison rules and regulations, the prison regime and where to seek help when in need in a language that they understand; and, in the case of foreign nationals, access to consular representatives as well. Prior to or on admission, women with caretaking responsibilities for children shall be permitted to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interests of the children.

Specific **gender-sensitive policies** should be developed and **positive measures** shall be taken to meet the distinctive needs of women detainees. The authorities should pay particular attention to the requirements of women, such as their physical, vocational, social and psychological needs, as well as caregiving responsibilities, when making decisions that affect any aspect of their detention.

Monitoring mechanisms often encounter women detainees being offered activities which have been deemed "appropriate" for them (such as sewing or handicrafts), whilst male detainees are offered training of a far more vocational nature. Such a **discriminatory approach** can only serve to reinforce outmoded stereotypes of the social role of women. Moreover, in extreme circumstances, denying women equal access to regime activities could be qualified as degrading treatment. There should be no discrimination on the basis of gender in the type of work, vocational training and education provided.

While the strict separation of male and female detainees was outlined as a principle above, under certain circumstances consideration might be given to offering regime activities for men and women together, particularly if such joint activities would improve an otherwise impoverished regime for women. Preconditions for such joint activities are that those involved explicitly consent to such arrangements and that the persons are carefully selected and adequately supervised during the activities.

The lack of capacity or of appropriate specialised facilities for women, the requirement to separate detention categories (remand/sentenced; short/long sentences), or the fact that an establishment holds only one woman, may result in a woman being accommodated for extended periods in a detention unit subject

to an unduly restrictive regime, or she may *de facto* be subjected to a regime akin to solitary confinement. In such cases, the authorities should seek to transfer the woman to appropriate accommodation; if such transfer is not possible or not feasible because it would substantially increase the distance to her family, the authorities should make the necessary efforts to provide the woman with purposeful out-of-cell activities and appropriate human contact.

The regime of the detention facility should be flexible enough to respond to the needs of pregnant women, nursing mothers and women with children. Childcare facilities or arrangements shall be provided in detention facilities in order to enable women detainees to participate in regime activities. Particular efforts should be made to provide appropriate services for women detainees who have psychosocial support needs, especially those who have been subjected to physical, mental or sexual abuse.

Women detainees' **contact with their families**, including their children, and their children's guardians and legal representatives should be encouraged and facilitated by all reasonable means. Where possible, measures should be taken to counterbalance disadvantages faced by women detained in institutions located far from their homes. Where conjugal visits are allowed, women detainees should be able to exercise this right on an equal basis with men.

Questions to ask and ways to find out

Preliminary assessment:

Are the national laws and policies in line with paragraph 64 of European Commission Recommendation?

Does the admission procedure permit to address the specific needs and vulnerabilities of newly arrived women?

- *Speak to the managers and staff to find out about the admission procedure, steps and the responses to the identified needs of newly arrived women.*
- *Hold interviews with newly arrived women about their admission experiences.*

Is the daily regime designed to address specific physical, vocational, social and psychological needs of women?

- *Speak to the managers and staff about the daily regime, the individual and group activities on offer and if these are covering a broad range of needs. Pay attention to distinct categories of needs, including for psychological support and if the offer is comparable with the offer in community.*
- *Get the number of women detainees who are engaged in various purposeful activities.*
- *Hold interviews with women detainees about their experiences and how the offer responds to their needs and preferences.*

In comparison to the general male prison population, do women detainees get the same amount of out-of-cell time? Is their regime comparable with that of male detainees in the same facility in terms of purposeful activities?

- *Discuss with educators and other staff involved in regime activities whether women receive a comparable offer of activities as the majority male prison population.*
- *Compare attendance lists of workshops and daily programmes for men and women in the same facility.*
- *Speak to pregnant women, nursing mothers and women with children to find out if their regime is adapted to their specific situation.*

In general, is the regime poorer for women than for men? Is it gender-neutral, or do women get knitting classes and similar activities only?

- *Speak to the educators to find out about the activities (education, work, recreation) for women on offer.*
- *Speak to women who are not engaged in any organised activities and inquire why they cannot or do not wish to take part in these.*

At the time of the visit, are women 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 female inmates of the recent past to verify whether and for how long women were held alone.*
- *Discuss with the management which measures they take in case a woman has to be held on her own for prolonged periods to counteract the negative effects of solitary confinement.*
- *Hold an interview with women 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.*

In case of long distances between the facility and the detainees' families, are any compensatory measures in place, *e.g. accumulation of visit times*, more frequent access to telephone, video-conference facilities? Do families of female detainees who live far away receive support to pay for transport?

- *Discuss with the management whether they are taking compensatory measures in case of long distances, and whether families who face problems due to long distance travels can apply for support.*
- *Check the facilities for video-conferences etc.*
- *Speak to women detainees to find out if they are aware of compensatory measures and how to apply for them or for support for their families.*

Do female detainees have the right to conjugal visits, and how is this right implemented in practice?

- *Check the facilities for conjugal visits.*
- *Verify with the management and staff whether there are measures in place to prevent abusive or harmful visits by partners.*
- *Speak to women detainees to find out if they are aware of their rights regarding (conjugal) visits, and if they are facing any practical problems.*

7.6. Hygiene

"Member States should furthermore ensure that basic sanitary products, including hygienic towels, are provided to detainees and that warm and running water is available in cells.

Member States should take into account women's and girls' specific […] sanitary requirements, when making decisions that affect any aspect of their detention."

Paragraphs 41 and 64 of the Commission Recommendation

Relevant international laws and standards:

- Rule 19.7 of the revised European Prison Rules 2020
- Rule 5 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the "Bangkok Rules")
- CPT Standards "Women deprived of their liberty"; CPT Factsheet "Women in prison"

Special provision should be made for the sanitary needs of women. The accommodation of women prisoners should have facilities and adequate quantities of materials required to meet women's specific hygiene needs, including sanitary towels provided free of charge and a regular supply of warm water to be made available for the personal care of children and women, in particular women involved in housework and those who are pregnant, breastfeeding or menstruating.

Questions to ask and ways to find out

Preliminary assessment:

Are the national laws and policies in line with paragraph 41 of European Commission Recommendation?

Do women get sanitary pads and basic hygiene items for free?

- *Discuss with the management if (indigent) women get sanitary pads and basic hygiene items with sufficient frequency/when needed and for free.*
- *Check stock.*

Is warm and running water available in cells?

- *Check the availability of warm and running water in a few cells.*
- *Ask the management if there are any challenges concerning this.*

7.7. Health care and psychological support

"Member States should take into account women's and girls' specific […] psychological needs, as well as […] healthcare requirements, when making decisions that affect any aspect of their detention."

Paragraph 64 of the Commission Recommendation

Relevant international laws and standards:

- Rules 6, 8, 10, 12, 13, 14, 15, 16, 17 and 18 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the "Bangkok Rules")
- CPT Standards "Women deprived of their liberty"; CPT Factsheet "Women in prison"

Gender-specific health-care services at least equivalent to those available in the community should be provided to women detainees. The principle of **equivalence of care** requires that health care is provided by medical practitioners and nurses who have specific training in women's health issues, including in gynaecology.

The health screening (**medical screening on entry**) of women prisoners should include comprehensive screening to determine primary health-care needs. Any screening should, in line with general medical ethics, rely on the voluntary consent by the woman concerned, after being comprehensively informed.

They should include screening for:

a. Sexually transmitted diseases or blood borne diseases; and, depending on risk factors, women detainees may also be offered testing for HIV, with pre and post test counselling

b. Mental health care needs, including post traumatic stress disorder and risk of suicide and self harm

c. The reproductive health history of the woman prisoner, including current or recent pregnancies, childbirth and any related reproductive health issues

d. Substance use disorders

e. Sexual abuse and other forms of violence that may have been suffered prior to admission

Women detainees should receive education and information about preventive health-care measures, including on HIV, sexually transmitted diseases and other blood-borne diseases, as well as gender-specific health conditions.

Preventive health-care measures of particular relevance to women, such as Papanicolaou (Pap) tests and screening for breast and gynaecological cancer, should be offered to women detainees on an equal basis with women in the community.

The right of women detainees to medical confidentiality, including specifically the right not to share information and not to undergo screening in relation to their reproductive health history, should be respected at all times.

If a woman detainee requests that she be examined or treated by a woman physician or nurse, a woman physician or nurse should be made available, to the extent possible, except for situations requiring urgent medical intervention. If a male medical practitioner undertakes the examination contrary to the wishes of the woman detainee, a female medical staff member should be present during the examination.

Adequate supplies of medication specifically required by women should be available in prison, allowing women who have begun a course of treatment before being incarcerated to continue it in prison. The contraceptive pill, for whatever reason it has been prescribed, should not be withheld from women wishing to take it. Where the abortion pill and/or other forms of abortion at later stages of a pregnancy are available to women in the outside community, they should be available under the same conditions to women in prison.

Individualised, gender-sensitive, trauma-informed and comprehensive **mental health care** and rehabilitation programmes should be made available for women detainees with mental health-care needs in prison. Prison staff should be made aware of times when women may feel particular distress, so as to be sensitive to their situation and ensure that the women are provided with appropriate support.

In developing **responses to HIV/AIDS**, programmes and services should be responsive to the specific needs of women, including prevention of mother-to-child transmission. In this context, prison authorities should encourage and support the development of initiatives on HIV prevention, treatment and care, such as peer-based education.

Prison health services should provide or facilitate specialised treatment **programmes designed for women suffering from substance use disorders**, taking into account prior victimisation, the special needs of pregnant women and women with children, as well as their diverse cultural backgrounds.

Developing and implementing strategies, in consultation with mental health-care and social welfare services, to prevent **suicide and self-harm** among women prisoners and providing appropriate, gender-specific and specialised support to those at risk should be part of a comprehensive policy of mental health care in women's detention facilities. Where such detainees are not eligible for transfer to a psychiatric hospital, a multifaceted approach should be adopted, involving clinical psychologists in the design of individual programmes, including psycho-social support, counselling and treatment.

Questions to ask and ways to find out

Preliminary assessment:

Are the national laws and policies in line with paragraph 64 of European Commission Recommendation?

Is the medical screening on entry comprehensive?

- *Talk with the medical staff to explain if the initial screening permits to determine primary and additional health-care needs of (newly arrived) women detainees.*
- *Interview newly arrived women detainees about their initial screening experiences, including on receiving information about preventive health-care measures.*

Is a female doctor available? Is a gynaecologist coming on a regular basis? Do women have access to other health care specialists?

- *Talk with the medical staff and inspect attendance sheets of medical specialists. Discuss the management of the health care services (prison and outsourced providers), spectrum and accessibility of the services (e.g. promptness, escort/transfers to relevant institutions), and supply with medication.*
- *Interview women prisoners to establish whether there are any problems in accessing health care, including specialist care.*

Are specific health care measures and programmes available in the facility?

- *Talk with the medical staff about availability and frequency of preventive tests and screening, prevention of suicide and self-harm programmes and of dedicated programmes for women with mental health-care needs, substance use disorders etc.*
- *Inspect attendance sheets of programmes. Discuss with medical staff the management and delivery of the programmes.*
- *Interview women patients/beneficiaries to establish whether there are any problems in accessing programmes and specialist care.*

Does the facility offer psychological support for women, including who were victims of domestic violence?

- *Discuss with the psychologist whether they pro-actively offer such support, as well as any other psychological support for women.*

7.8. Pregnant women and mothers with children in prison

"Member States should allow detainees to give birth in a hospital outside of the detention facility. […]"

Paragraph 65 of the Commission Recommendation

Relevant international laws and standards:

- Rule 34.4 and 68.7 of the revised European Prison Rules 2020
- Rule 48 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)
- Rule 24 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the "Bangkok Rules")
- CPT Standards "Women deprived of their liberty"; CPT Factsheet "Women in prison"

At the outset it must be noted that particularly for pregnant women and those who have recently given birth, imprisonment should be avoided by all means. In the absence of any alternatives to imprisonment, arrangements should always be made for detainees to give birth outside prison, and transfer to an outside hospital must be arranged in good time. Where, nevertheless, a child is born in a detention facility, the authorities should provide all necessary (medical) support and facilities, including special accommodation.

Instruments of restraint must never be used on women during gynaecological examinations, childbirth or immediately after childbirth.

Questions to ask and ways to find out

Preliminary assessment:

Are the national laws and policies in line with paragraph 65 of European Commission Recommendation?

What special arrangements are in place for pregnant women?

- *Speak to the management to find out how pregnant women are accommodated, and how the management and staff cater to their special needs.*
- *Verify with health care staff and through examination of the relevant registers that pregnant women in detention receive the same regular medical examinations as women in the outside community.*
- *Speak with staff and women concerned to establish whether there are any problems in the practical arrangements.*

How is it guaranteed that women can deliver in a safe and dignified manner?

- *Speak with medical staff to ascertain that pregnant women in detention are brought to hospital in good time for delivery, and that a woman who is giving birth is never restrained (handcuffs, shackles); establish whether medical confidentiality is observed during delivery (i.e. that non-medical staff are not present in the delivery room).*

"[…] Where a child is nevertheless born in the detention facility, Member States should arrange all necessary support and facilities to protect the bond between mother and child and to safeguard their physical and mental well-being, including appropriate pre-natal and post-natal health care.

Member States should allow detainees who have infant children to keep such children with them in the detention facility to the extent that this is compatible with the best interests of the child. Member States should provide special accommodation and take all reasonable child-friendly measures to ensure the health and welfare of affected children throughout the execution of the sentence."

Paragraphs 65 and 66 of the Commission Recommendation

Relevant international laws and standards:

- Rule 36.1, 36.2, 36.3 and 60.6.a of the revised European Prison Rules 2020
- Rules 28 and 29 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)
- Rules 3, 9, 22, 48, 49, 50and 51 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the "Bangkok Rules")
- CPT Standards "Women deprived of their liberty"; CPT Factsheet "Women in prison"
- CM/Rec(2018)5 concerning children with imprisoned parents

Infants may stay in prison with a parent only when it is in the best interest of the infants concerned. They must not be treated as detainees. If a child is born in prison, this fact shall not be mentioned in the birth certificate.

In women's detention facilities, special accommodation for all necessary prenatal and postnatal care and treatment should be available.

If the woman detainee is accompanied by a child, that child should also undergo health screening, preferably by a child health specialist, to determine any treatment and medical needs. Suitable health care, at least equivalent to that in the community, should be provided. Pregnant or breastfeeding women detainees should receive advice on their health and diet under a programme to be drawn up and monitored by a qualified health practitioner. Where babies and young children are held in custodial settings, their treatment should be supervised by specialists in social work and child development. Adequate and timely food, a healthy environment and regular exercise opportunities should be provided free of charge for pregnant women, babies, children and breastfeeding mothers.

Children living with their mothers in prison should be provided with ongoing health-care services and their development shall be monitored by specialists, in collaboration with community health services.

Women detainees whose children are in the facility with them should be provided with the maximum possible opportunities to spend time with their children. Special accommodation should be set aside to protect the welfare of such infants. For as long as the child remains in the facility, the mother should be able to spend an adequate amount of time every day with her child; they should be accommodated in a suitable, non-carceral setting, in terms of space, furnishings and access to cooking and washing facilities. The specific sanitary and hygiene needs of mothers should be adequately met, including access to proper sanitary facilities, and provision of sanitary and hygiene products (*nappies, soap, shampoo, washing powder, and clothing, for example*) as needed, as well as food suitable for infants.

Special provision should be made for a nursery, staffed by qualified persons, where the infants should be placed when the parent is involved in activities where the infant cannot be present.

Arrangements should also be made to ensure that the movement and cognitive skills of babies accommodated in a detention facility develop normally. In particular, they should have adequate play and exercise facilities within the facility and, wherever possible, the opportunity to leave the establishment and experience ordinary life outside its walls.

Solitary confinement, that is the confinement of a prisoner for more than 22 hours a day without meaningful human contact, shall never be imposed on pregnant women, breastfeeding mothers or parents with infants in detention.

Questions to ask and ways to find out

Preliminary assessment:

Are the national laws and policies in line with paragraphs 65 and 66 of European Commission Recommendation?

Is the decision whether a child can stay with their mother in prison based on an individual assessment, taking primarily the best interest of the child into account? What is the role of the staff and the management in this decision?

- *Speak with the management, social workers, psychologists and other staff involved in the decision about their role in the assessment procedure.*
- *Check case files to establish whether the relevant procedures have been adhered to.*
- *Speak with women who were not permitted to keep their children with them in prison.*

Is the accommodation suitable for babies and young children, in terms of cleanliness, security etc.?

- *Check the accommodation areas where children live with a view to their cleanliness, bedding for children, security appliances for children, non-carceral appearance etc.*

Do children and mothers have access to health screening, advice and ongoing health-care services? Is a paediatrician coming on a regular basis?

- *Talk with the medical staff and inspect attendance sheets of medical specialists.*
- *Interview women detainees to establish whether there are any problems in accessing health care, including specialist care for children.*

Do pregnant or breastfeeding mothers in detention get a special diet? Are specific food arrangements in place for babies and young children?

- *Speak with the dietician (if present) and cook about any special diets for pregnant or breastfeeding mothers, as well as about food for babies and young children.*
- *Have the menu checked by an expert (dietician).*
- *Check the stock of fresh food products (milk, eggs, fruit etc.), as well as special baby food.*
- *Speak with mothers to find out if there are any shortages of food products or other related problems.*

Do mothers get diapers and other hygiene and sanitary items for their babies and young children for free?

- *Discuss with the management if (indigent) mothers get diapers and other hygiene products for their babies for free.*
- *Check stock.*

Are there special facilities for children of mothers in prison, *e.g. a crèche*? Are staff members specifically trained to care for babies and young children?

- *Check possible special facilities for children and establish whether they are suitably equipped.*
- *Speak with staff in order to find out if they have received special training to deal with babies and young children.*

Is there any form of social service support for mothers of children outside of prison?

- *Discuss with social workers how they provide support for mothers of children outside.*
- *Speak with women about their experiences in this respect.*

What are the practical arrangements for visits? Are there any special facilities to receive children who visit their mothers?

- *Check the visit facilities and establish whether they are child-friendly and speak to management and staff.*
- *Interview women detainees and find out if there are any problems regarding visits.*

7.9. Girls under the age of 18 in adult female prisons

Relevant international laws and standards:

- Rule 35.1 and 35.4 of the revised European Prison Rules 2020
- Rules 36-39 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the "Bangkok Rules")

Where children are detained in a prison, they shall be kept in a part of the prison that is separate from that used by adults unless it is considered that this is against the best interests of the child. Due to the generally very low number of girl children in detention in any country, authorities are often faced with the dilemma to either hold them in conditions akin to solitary confinement in a facility for male children or accommodate them together with adult women. In the former case, all necessary measures must be taken to counteract isolation by, *e.g. extensive one-to-one care by appropriate staff.* In the latter case, an in-depth assessment needs to be carried out as to which women can be considered safe company for the girl(s).

Where, exceptionally, children under the age of 18 years are detained in a facility for adults, the authorities should ensure that, **in addition** to the services available to adult detainees, children have access to the social, psychological and educational services, and recreational programmes that are available to children in the community.

Prison authorities should put in place measures to meet the protection needs of female child detainees. They should have equal access to education and vocational training that are available to male children in detention. Girls should have access to **age- and gender-specific programmes and services**, such as counselling for sexual abuse or violence. They should receive education on women's health care and have regular access to gynaecologists, similar to adult female prisoners. Pregnant female detainees under the age of 18 should receive support and medical care equivalent to that provided for adults. Their health shall be monitored by a medical specialist, taking account of the fact that they may be at greater risk of health complications during pregnancy due to their age.

Questions to ask and ways to find out

? **Is the daily regime of girls supplemented with social, psychological and educational services, and recreational programmes? Do girls have access to age- and gender specific programmes and services?**

- *Speak to the managers and socio-educational staff about the daily regime of girls under the age of 18. Obtain the detailed (individual) programme, if it exists. Identify the individual and group activities on offer and if these are covering a broad range of aspects. Compare the offer with the programs available for male children in detention and programmes in the community.*
- *Hold interviews with girls about their experiences and how the offer responds to their needs and preferences.*

? **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 female detainees 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 an interview 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.*

8. Foreign detainees and detainees belonging to national minorities

8.1. Considerations before your visit to foreign detainees and those belonging to a national minority

The experience of monitoring bodies and available statistics indicate that in Europe, both foreign nationals and members of national minorities are overrepresented in detention facilities, and detention rates including pre-trial detention for foreign nationals are higher than those for citizens. These detainees might face difficulties on account of such factors as differences in language, culture, customs and religion, and lack of family ties and contact with the outside world. Equally, members of national minorities are at times confronted with discrimination and comparatively worse treatment than members of the national majority ethnicity.

Questions to ask and ways to find out

What is the number and proportion of foreign national detainees in detention (sentenced and pre-trial)? Which nationalities are most commonly represented? Are national minorities registered by ethnicity?

- *Gather statistics and actual numbers on foreigners and national minorities in detention, their status, and their origin from the prison database and/or the list of detainees. Make clusters of nationalities/ethnicities and discuss with the staff the particular reasons for any prevalence (e.g. bordering country, migrants flow etc).*
- *Put the numbers in comparison with nationals in detention.*

Are foreign national detainees and members of national minorities subjected to a special placement policy?

- *Speak to the management to find out if the nationality, ethnicity and/or command of a language play a role in the detention placement of foreign detainees.*

Is the length of pre-trial detention of foreign nationals similar to length of pre-trial detention of citizens?

- *Check from the prison database and/or the list of inmates the length of pre-trial detention of foreign nationals and compare with the length of pre-trial detention of citizens.*
- *Make a similar comparison to find out if there are differences between different national ethnicities (e.g. Roma).*

8.2. Prevention of racial/ethnical/religious discrimination

"Member States should ensure that placement in detention does not further aggravate the marginalisation of persons because of their […] racial or ethnic origin or religious beliefs or on the basis of any other ground."

Paragraph 77 of the Commission Recommendation

Relevant international laws and standards:

- Rule 37.1 of the revised European Prison Rules 2020
- Rule 2 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)
- Paragraphs 7, 12, 15.1, 18.2, 19, 20, 21.1, 21.2, 26.1, 27, 28, 30, 32.2 and 39.1 of the Recommendation CM/Rec(2012)12 of the Council of Europe Committee of Ministers to member states concerning foreign prisoners
- CPT Standards "Remand detention"

Cultural and religious diversities of foreign national detainees as well as national minorities should be taken into consideration when assessing their treatment. *For example, they might want to practice a minority religion, or their believes or habits do not permit them to eat the food that the general prison population is given.*

Positive steps shall be taken to avoid discrimination and to address specific problems that foreign detainees or members of national minorities may face. Monitors should be particularly alert to signs of **racial/ethical/religious discrimination** of foreign detainees and members of minorities. Racial discrimination and racially motivated abuse can amount to ill-treatment and should be treated as such.

Questions to ask and ways to find out

Preliminary assessment:

Are the national laws and policies in line with paragraph 77 of European Commission Recommendation?

Are cultural and religious diversities of foreign detainees respected? Do they receive a special diet if necessary?

- *Talk with a number of foreign national detainees to find out if problems exist with regard to practicing their religion; discuss other problematic issues with them that are rooted in the diversities of cultures.*
- *Discuss with the management and the dietician (if present) and/or the cook if foreign national detainees get a diet that is compatible with their culture and/or religious believes.*

Have there been instances of racial/ethical/religious discrimination or racially motivated abuse in the facility? Are measures in place to prevent such practices?

- *Gather statistics on the number of complaints of racial/ethical/religious discrimination or racially motivated abuse in a given facility and/or the whole prison system.*
- *Speak with foreign national detainees and members of national minorities whether they have felt that staff are deliberately discriminating against them because of their racial or ethnic origin or religious beliefs. In particular, try to find out whether they have experienced verbal abuse or insults based on their racial or ethnic origin or religious beliefs.*

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

Paragraph 78 of the Commission Recommendation

Management of the facility shall take all the measures to ensure the staff treat foreign nationals and members of national minorities in a correct manner. Prison staff shall be alert to potential or actual conflicts between individuals and groups within the prison population that may arise due to cultural or religious differences and inter-ethnic tensions.

Questions to ask and ways to find out

Preliminary assessment:

Are the national laws and policies in line with paragraph 78 of European Commission Recommendation?

Have there been instances of violence or other ill-treatment, such as physical, mental or sexual abuse by staff or other detainees against detainees because of their racial or ethnic origin or religious beliefs? Are there measures in place to prevent such incidents?

- *Discuss with the management if they are aware of any complaints and gather statistics on the number of complaints of violence or other ill-treatment, such as physical, mental or sexual abuse by staff or other detainees against persons because of their racial or ethnic origin or religious beliefs. Pay attention to the grounds/reasons of such violence or other ill-treatment. Discuss the general and special preventive (e.g. classification and re-allocation, dynamic security) and reactive (e.g. investigation) measures. Verify that management have undertaken the necessary steps when such allegations came to light.*
- *Speak with complainants about their experiences, ask about the management's and outside agencies' reactions to such cases.*
- *Check if there are requests from foreign nationals for transfer to another cell/unit/facility and the reasons of such requests. Talk to detainees to find out real reasons of requests for transfer.*
- *Check the (the existence of) relevant policies and operational procedures to prevent and react to violence or other ill-treatment against persons because of their racial or ethnic origin or religious beliefs. Pay attention to special protection measures where there is a risk of such violence or ill-treatment.*

8.3. Interpretation and translation of documents

"Member States should ensure that foreign nationals and other detainees with particular linguistic needs deprived of liberty have reasonable access to professional interpretation services and translations of written materials in a language that they understand.

Member States should ensure that information about legal assistance is provided [to foreign nationals in a language that they understand]."

Paragraphs 67 and 69 of the Commission Recommendation

Relevant international laws and standards:

- Rules 59.e and 81.3 of the revised European Prison Rules 2020
- Rule 61 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)
- Paragraphs 8, 21.3 and 21.5 of the Recommendation CM/Rec(2012)12 of the Council of Europe Committee of Ministers to member states concerning foreign prisoners

Many foreign national detainees will be faced with a varying degree of **language barriers**, if they have not learned to speak the language of the country or do not have command of another language that at least some of the staff would speak. This barrier affects foreign national detainees in prison in many ways, from the reception and placement procedure to education and work opportunities in prison, and from human contact with staff

to their ability to make complaints. Many other examples could be given where the language barrier faced by foreign national detainees may lead to less favourable treatment, a poorer regime or less diligent healthcare for them, in comparison to nationals. Prison authorities should make every possible effort to even out these differences in treatment of foreign national detainees, and not allow discrimination in their enjoyment of rights.

Foreign national detainees who so require shall be given appropriate access to interpretation and translation facilities and the possibility to learn a language that will enable them to communicate more effectively.

For monitors the language barrier equally plays a role, and before visiting a prison, the delegation should have clarity whether they will be able to talk to foreign national detainees present in the facility without the help of an **interpreter**. In particular when the delegation decides to have a specific focus on the rights of foreign national detainees in detention, the question of the mode of communication with these persons has to be answered before the visit.

Questions to ask and ways to find out

Preliminary assessment:

Are the national laws and policies in line with paragraphs 67 and 69 of European Commission Recommendation?

How is the language barrier faced by foreign detainees overcome?

- *Find out with the management the percentage of staff members who speak one or more foreign languages that are most commonly spoken by foreign detainees. Identify language skills that are lacking.*
- *Examine the availability of interpreters or other interpretation tools/means in case of necessity. Examine the availability of services of translation of written materials.*
- *Discuss with medical staff how they deal with language barriers whenever they have to examine or provide health care to foreign detainees.*
- *Speak with civilian and security staff if they consider that they receive sufficient language and inter-cultural communication training.*
- *Discuss with educators and other civilian staff whether language courses are offered to detainees.*
- *Determine whether information brochures and other documents, such as the most commonly used forms, exist in a variety of frequently spoken foreign languages.*

Is information on legal assistance and legal aid available to foreign detainees in a language they understand?

- *Verify whether information on practicing lawyers and legal aid is available to foreign nationals in a language they understand. Ask the staff to provide copies of leaflets or other materials they provide to foreign nationals.*
- *Speak to foreign nationals and ask whether they know where to turn to in case they require legal assistance.*

8.4. Contact with the outside world

Foreign detainees are not only at risk of disadvantages due to their lack of language skills. Oftentimes, they also have no friends or family living in the country where they are detained and can therefore not or to a lesser degree benefit from regular **family visits** or parcels sent from the outside. Moreover, **telephone calls** to places abroad are usually costlier than within the country. Monitors should determine whether the prison system or individual facilities take compensatory measures *(e.g. use of video-conference systems)* to make up for foreign national detainees' lack of contact with the outside world.

Questions to ask and ways to find out

Do foreign national detainees regularly benefit from contact with the outside world?

- *Talk with a number of detainees to find out if problems exist with regard to their right to receive visits and parcels, or to make phone and video calls.*
- *Discuss with the management if they have taken compensatory measures.*

"Member States should ensure that foreign nationals are informed, without undue delay, of their right to request contact, and be allowed reasonable facilities to communicate, with the diplomatic or consular service of their country of nationality."

Paragraph 68 of the Commission Recommendation

Relevant international laws and standards:

- Rules 37.2-37.5 of the revised European Prison Rules 2020
- Rule 62 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)
- Paragraphs 15.1, 15.2, 22.1-22.11 and 25 of the CM/Rec(2012)12 concerning foreign prisoners

Foreign national detainees may or may not wish to contact the diplomatic or consular service of their country of nationality. *Such contacts may facilitate access to legal assistance, to translation and interpretation services and maintaining contacts with family.*

Questions to ask and ways to find out

Preliminary assessment:

Are the national laws and policies in line with paragraph 68 of European Commission Recommendation?

Are foreign national detainees informed and do they have the possibility to contact their embassy or consular representation?

- *Talk with a number of detainees to find out if problems exist with regard to the possibility to contact, if they wish so, their embassy or consular representation.*
- *Find out if their respective embassy or consular representation is in (regular) contact with those detainees.*
- *Discuss with the management if they have taken compensatory measures in the case the embassy or consular representation is located in another country.*

8.5. Possibility of transfers

"Member States should ensure that foreign nationals are informed of the possibility to request that the execution of their sentence or pre-trial supervision measures be transferred to their country of nationality or permanent residence, such as under Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments imposing custodial sentences or measures involving deprivation of liberty[20]

20. Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ L 327, 5 December 2008, p. 27)

and Framework Decision 2009/829/JHA on the application of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention[21]."

Paragraph 70 of the Commission Recommendation

Relevant international laws and standards:

- Rule 37.7 of the revised European Prison Rules 2020
- Paragraphs 10, 15.3 and 31.8 of the Recommendation CM/Rec(2012)12 of the Council of Europe Committee of Ministers to member states concerning foreign prisoners

Transfer to the country of nationality or permanent residence of foreign nationals for the execution of a sentence or a pre-trial supervision measure can contribute to detention closer to their homes or other places suitable for the purpose of their social rehabilitation. At the same time, this instrument might contribute to a moderate reduction of prison overcrowding of certain facilities.

Questions to ask and ways to find out

Preliminary assessment:

Are the national laws and policies in line with paragraph 70 of European Commission Recommendation?

Are foreign nationals informed about and do they have the possibility to be transferred to their country of nationality or permanent residence?

- *Discuss with the management if there are challenges concerning transfers of foreign nationals to their country of nationality or permanent residence.*
- *Verify whether information on transfer procedures is available to foreign nationals in a language they understand, in an accessible format.*
- *Speak to foreign nationals and ask whether they know the procedure and where to turn to in case they wish to be transferred. Inquire if they benefit of any support and advice, including from their respective embassy or consular representation.*
- *Check a few pending requests (including advice received during proceedings, length of proceedings) and discuss with applicants. If there were refusals, speak to such applicants (including on the reasons for refusal).*

21. Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between member states of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention (OJ L 294, 11 November 2009 p. 20)

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 expressions[22].

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.*

10. Detainees with disabilities or serious medical conditions

10.1. Considerations before your visit to persons with disabilities or serious medical conditions

Over the last decades, the Court has found various European States in a considerable number of cases to be in violation of Article 3 of the ECHR (prohibition of torture and inhuman or degrading treatment) when assessing whether imprisoned persons have been provided with adequate healthcare by the authorities. These cases refer to persons with a somatic illness, a disability, and in particular detainees suffering from a mental illness. In many EU member states, the humane detention and care for persons with mental health disorders have in fact become one of the most urgent issues of the respective penitentiary systems.

The problems faced by mentally ill persons in detention are complex and manifold and it would go beyond the scope of this guide to deal with every aspect of care. Therefore, only the most pressing issues NPMs could encounter during visits are dealt with below. It should, however, always be kept in mind that according to international and European standards, prisons can never be adequate facilities for the care of severely ill persons, and that **persons who are suffering from a mental illness and whose state of mental health is incompatible with detention in a prison should be detained in an establishment specially designed for the purpose**. Anything else is likely to amount to inhuman or degrading treatment. **!**

As outlined above, NPM members who are not medical professionals might not have the entire range of possibilities to assess the quality of healthcare provided to detainees. It is therefore advisable to **include a person with medical expertise in a visiting delegation**. In particular if an NPM decides to have a special focus on these matters it is - not least for credibility reasons - essential to take a doctor, psychiatrist, nurse or other healthcare expert along on the visit, either as an externally hired expert or as a member of the NPM.

In the course of any regular visit to a detention facility, the members of a delegation could come across persons who complain about a lack of health care during interviews, or who are apparently very ill. As a first step, the NPM should look into all the steps that the detention facility has already undertaken to have the person in question seen by a medical expert. If it is found that no, or only inadequate action, has been taken with regard to this person, a standard procedure should be in place to set in motion measures such as arranging a medical examination by an expert; or having severely ill persons transferred to an appropriate health care facility; or to alert the responsible authority to persons who complain about or visibly suffer from insufficient/inadequate healthcare. In other words, **visiting delegations who do not comprise a member or expert with medical training are not exonerated from preventing inhuman or degrading treatment of individual detainees suffering from a serious medical condition, including mental health condition**. **!**

In addition, a visiting delegation could encounter detainees with **disabilities** while inspecting a particular detention facility. Again, the overall assessment whether the health care service of that facility is in the position to adequately cater for the needs of these persons should preferably be done by experts with the necessary medical background. Nevertheless, the NPM should still examine whether the necessary conditions are in place to allow these persons to take part in prison life without risks to their safety or discrimination.

10.2. Health care for persons with disabilities or serious medical conditions

"Member States should ensure that persons with disabilities or other persons with serious medical conditions receive appropriate care comparable to that provided by the national public health system which meets their specific needs. In particular, Member States should ensure that persons who are diagnosed with mental health related medical conditions receive specialised professional care, where needed in specialised institutions or dedicated sections of the detention facility under medical supervision, and that continuity of healthcare is provided for detainees in preparation of release, where necessary.

Member States should take special care to meet the needs of and ensure accessibility for detainees with disabilities or serious medical conditions with regards to material detention conditions and detention regimes. This should [include] the provision of appropriate activities for such detainees."

Paragraphs 75 and 76 of the Commission Recommendation

Relevant international laws and standards:

- UN Convention on the Rights of Persons with Disabilities
- 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 12.1, 40.4, 42.3 (b), 43.1, 43.3, 47.1, 47.2, 53A (b), 60.6.b and 81.3 of the revised European Prison Rules 2020
- Rules 5 (2), 45, 46 (3), 55 (2), 109 and 110 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 75 and 76 of European Commission Recommendation?

Is equivalence of care guaranteed for detainees with serious medical conditions, including mental illnesses?

- *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 least equivalent. (**NB:** Due to the comparatively higher incidence of mental health disorders among prisoners, equivalence of care actually requires a greater staff complement than for the general population.)*
- *Visit the infirmary, health bay, and any special units for ill or mentally ill detainees and assess whether the conditions therein resemble health care facilities on the outside.*
- *Establish whether all medication necessary for the treatment of ill detainees is readily available in the facility.*
- *A medical expert of the delegation should examine the individual medical files of detainees found to be suffering from a serious medical condition and determine whether continued detention in the facility is appropriate or whether the they need to be transferred to a hospital or similar.*
- *Discuss with health care staff under which circumstances transfers to hospitals can be carried out.*

Are other necessary care measures in place?

- *Establish with health care staff present and by talking to detainees whether there is a need among detainees for additional care measures, such as psychological interventions, substance use, alcohol or rape counselling, occupational therapy, physiotherapy, dietary, podiatry etc.*
- *Get the numbers of staff for these kinds of care measures, e.g. number of clinical psychologists or visiting counsellors.*
- *Establish if all persons in need of any additional care measures are seen by a specialist within a reasonable time by, e.g. checking waiting lists.*

- *Check the availability and appropriateness of facilities and rooms for additional care interventions (e.g. group therapy rooms, facilities for occupational therapy etc.)*
- *Speak with medical and civilian staff about any obstacles they face in providing care measures and occupational therapies to detainees.*

10.3. Accommodation, segregation and regime of persons with disabilities or serious medical conditions

Questions to ask and ways to find out

? Are segregation measures for persons suffering from serious medical conditions, including mental illnesses, appropriate?

- *Visit any segregation cell or unit used for medical reasons, e.g. for persons prone to self-harm or at risk of suicide and establish whether the material conditions in these cells are adequate in terms of lighting, ventilation, temperature, personal space, personal safety concerns, cleanliness and that a bed or plinth with a mattress is available to each detainee.*
- *Establish whether persons held in these cells have regular and dignified access to sanitary facilities.*
- *Establish whether there are legal time limits for holding persons in medical segregation, and whether they are being adhered to by checking the relevant files and registers.*
- *Check registers or files to find out whether health care staff is regularly seeing persons in medical segregation and whether there are means to alert health care staff from within such cells.*
- *Verify whether persons in medical segregation have meaningful human contact with others or if they are* de facto *held in solitary confinement.*
- *Verify whether detainees in such segregation have access to the outdoors and can remain in contact with their families, and that any restrictions on outdoor exercise and contact with the outside world are necessary and proportionate.*

? Are persons with disabilities held in the detention facility? Are they separated from other detainees? Are their living conditions adapted to their individual needs?

- *Get an overview of the number of persons who are acknowledged by the prison management to have disabilities.*
- *Find out with the management if such persons are separated from the main prison population.*
- *Visit the cells where persons with disabilities are held and establish whether the material conditions are adequately adapted (e.g. more spacious cells and sanitary facilities for wheelchair bound detainees).*
- *Speak to detainees with disabilities about their situation in detention, and in particular how they perceive their personal security.3*

? Are persons with disabilities enabled to participate in prison life?

- *Speak with staff to find out which measures are taken to allow detainees with disabilities to take part in the daily regime activities, outdoor exercise etc.*
- *Establish with civilian staff whether any specially adapted activities are being organised for them.*
- *Speak with detainees with a disability about their participation in regime activities.*

"[…] Member States should also allow detainees to correspond freely […] by letter and, as often as possible, by telephone or other forms of communication including alternative means of communication for persons with disabilities."

Paragraph 54 the Commission Recommendation

Questions to ask and ways to find out

Are alternative means of communication available for persons with disabilities?

- *Speak with (civilian) staff to find out whether the detention facility offers alternative means of communication if necessary, and whether persons with disabilities are assisted in their communication with the outside world.*
- *Speak with detainees with a disability about their experiences in this regard.*

11. Detainees in high security settings

11.1. Considerations before your visit to detainees in high security settings

High security settings for detainees who are deemed to be particularly dangerous, involved in further crime while in prison, or posing a high risk of escape can be found either in **specific units of ordinary closed prisons, or in the form of special high security prisons**. They are characterised by a stricter regime including restrictions of contact with the outside world, enhanced perimeter security and additional security measures, such as frequent searches or CCTV monitoring of cells, and regular use of solitary confinement. At times, the material conditions in high security facilities or units are comparatively poorer than the conditions in other ordinary prisons. Usually, detainees in high security settings are not there voluntarily, and perceive their placement as an additional punishment.

Furthermore, in many countries, various security regimes are in place to manage pre-trial detainees, with the specific regime determined by a combination of factors including the severity of the charges, assessed risk levels, and the policies of the detention facility.

11.2. Safeguards

Relevant international laws and standards:

- Article 3 ECHR (cf. *Ramirez Sanchez v. France*, Appl. No. 59450/00, the Court's Grand Chamber judgment of 4 July 2006, paras. 138-139)
- Rule 37 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)
- Rules 18.10, 53.2-53.9 and 53.A of the revised European Prison Rules 2020
- CPT Standards "Remand detention", "Solitary confinement of prisoners", "Developments concerning CPT standards in respect of imprisonment"

It must be acknowledged that for a small number of detainees, placement in a high security facility is the only option for ensuring the safety and security of the prison system, and in particular the personal safety of other detainees and staff. At the same time, such placements **are inevitably connected with further restrictions of rights** that go beyond the restrictions of ordinary detention.

Prison monitors should therefore pay increased attention to the **placement_procedures** and **safeguards** against arbitrariness or punitive use of placement in detention in a high security facility, as well as to keeping the **restrictions** that come with such a regime to the necessary minimum; in particular, situations of **solitary confinement** need to be thoroughly scrutinised, given the potentially very harmful effects of prolonged isolation. Both the Court and the CPT have held that substantive reasons must be given when a protracted period of solitary confinement is extended. The decision should thus make it possible to establish that the authorities have carried out a reassessment that takes into account any changes in the prisoner's circumstances, situation or behaviour. The statement of reasons will need to be increasingly detailed and compelling the more time goes by.

In some counties, prison authorities have a limited role in placement of pre-trial detainees in a high security facility/unit, that being decided by the judicial authorities. Correspondingly, monitors will have limited possibilities to assess the individual decisions of placement of pre-trial detainees in a high security facility. Nevertheless, the monitors can, in this case, identify the "profile" of such pre-trial detainees and if the judicial authorities rely on individual assessment or, in a more automatic way, on "crime committed/accusation". If shortcomings such as indiscriminate or excessive placement of pre-trial detainees in such settings or lack of proper justifications are detected by the monitoring body, avenues of dialogue with the legislative and judiciary powers should be sought to discuss the matter.

Questions to ask and ways to find out

? How many persons in total are held in detention in high security settings? How long are they held on average, and what is the shortest and longest stay in detention in high security? What are the trends?

- *Collect statistical data on the total number of detainees in high security settings and establish the reasons for such placement (e.g. pre-trial detainees based on the crime they are accused of, particular dangerousness etc.)*
- *Establish the numbers of high security detainees for each facility that can hold this category of detainees.*
- *Establish the average length of stay in detention in high security settings, as well as the shortest and the longest periods detainees have spent in high security.*
- *Compare data over time to establish trends and forecasts.*

? Who has taken the decision to put detainees in high security settings and on which basis? Was the procedure done in accordance with the law?

- *Determine the number of decisions that were taken in a specific period of time by the prison authorities, and the number of court-ordered placements in (pre-trial) detention in high security facilities/units.*
- *Examine individual files to find out if an individual risk assessment has been conducted by the prison authorities, and if applicable and feasible, by the judicial authorities, for pre-trial detainees placed in high security settings.*
- *Examine individual files of detainees who were placed in high security settings with a view to establishing whether the decision-taking process was conducted in line with legal procedures and international standards (e.g. whether an interdisciplinary team with knowledge of the detainee has assessed the case, whether the detainee in question was heard etc.).*

? Are safeguards in place against arbitrary or punitive decisions?

- *Speak with detainees in high security settings whether they are informed of their rights, such as the right to lodge an appeal against placement decisions, and whether they have availed themselves of these rights.*
- *Find out with detainees how far they are involved in reviews of their placement.*
- *Check individual files whether the relevant authorities regularly review placement decisions, and whether any extension is individually argued with detailed and compelling reasons for the extension.*

11.3. Restrictions on regime or contact with the outside world

"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. 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 in the context of special security regimes and measures, including solitary confinement, are necessary and proportionate.

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."

Paragraphs 46 and 57 of the Commission Recommendation

Relevant international laws and standards:

- Rule 43 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)
- Rules 24.2, 51.1 and 53.A of the revised European Prison Rules 2020
- CPT Standards "Remand detention", "Solitary confinement of prisoners", "Developments concerning CPT standards in respect of imprisonment"

Detainees who present a particularly high security risk should, within the confines of their detention units, enjoy a relatively relaxed regime by way of compensation for their severe custodial situation. Special efforts should be made to develop a good internal atmosphere within high-security units. The aim should be to build positive relations between staff and detainees. This is in the interests not only of the humane treatment of the unit's occupants but also of the maintenance of effective control and security and of staff safety.

The existence of a satisfactory programme of activities is just as important - if not more so - in a high security unit than on normal location. It can do much to counter the deleterious effects upon a detainee's personality of living in the bubble-like atmosphere of such a unit.

Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact.

Questions to ask and ways to find out

Preliminary assessment:

Are the national laws and policies in line with paragraphs 46 and 57 of European Commission Recommendation?

Are conditions of detention comparable with the conditions for ordinary detainees?

- *Visit cells, courtyards and other common areas of high security units and prisons with a view to establishing whether they offer conditions comparable with ordinary detention units or facilities.*

Are further restrictions of the regime, contact with the outside world etc. and additional security measures in the diverse high security settings and of individual detainees in accordance with the law?

- *Compare general restrictions on the regime, detainees' contact with the outside world, contact among detainees, etc. as well as additional security measures (handcuffing when outside the cell, regular searches etc.) applied in diverse high security settings, with a view to their uniformity and legality, including their compatibility with international human rights norms and standards.*
- *Discuss with the prison management whether additional restrictions and/or security measures are applied vis-à-vis individual high security detainees.*
- *Examine the individual files of these persons with a view to establishing that an individual risk assessment has been carried out that forms the basis for additional restrictions and/or security measures.*

11.4. Solitary confinement

"[...] To prevent a violation of the prohibition of torture and inhuman or degrading treatment or punishment, Member States should ensure that any exceptions [...] in the context of special security regimes and measures, including solitary confinement, are necessary and proportionate."

Paragraph 46 of the Commission Recommendation

Relevant international laws and standards:

- Rules 43 and 45 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)
- Rule 60.6 of the revised European Prison Rules 2020
- CPT Standards "Remand detention", "Solitary confinement of prisoners", "Developments concerning CPT standards in respect of imprisonment"

(See also above, at Chapter 5.11).

Questions to ask and ways to find out

Preliminary assessment:

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

How many detainees in high security settings are held in solitary confinement, and for which periods of time?

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

Have the cases of solitary confinement in individual cases been necessary and proportionate? Are decisions to isolate a pre-trial detainee regularly reviewed? Have detainees who are put in solitary confinement been heard? Is a right to appeal such a decision possible?

- *Interview detainees who are currently isolated and 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 of proportionality, lawfulness, accountability, necessity, non-discrimination to determine whether the use of solitary confinement was legitimate.*

Are a regime of activities and additional measures in place to alleviate the negative effects of prolonged solitary confinement of detainees?

- *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 detainees in solitary confinement.*
- *Discuss with the management and staff whether they have made efforts to identify selected detainees with whom persons who are in solitary confinement could safely associate.*

11.5. Measures for reintegration

Relevant international laws and standards:

- CPT standards, "Solitary confinement of prisoners", "Developments concerning CPT standards in respect of imprisonment"

It is in the interest of the penitentiary system to keep only a very limited number of detainees in high security facilities, and the aim should be to enable persons in high security to be re-integrated into the mainstream prison population as soon as possible.

Questions to ask and ways to find out

Are measures in place to facilitate the re-integration of high security detainees into the mainstream prison population?

- *Check individual files of high security detainees whether they contain any measures for re-integration into the ordinary prison regime.*
- *Speak with detainees in high security settings if they are aware of the conditions they have to fulfil in order to be re-integrated into the ordinary prison regime.*
- *Speak with staff responsible for the regime and other civilian staff about measures and interventions on offer to help high security detainees overcome obstacles that keep them from re-integration.*

12. LGBTI+ persons

12.1. Considerations before your visit to LGBTI+ detainees

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

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

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

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

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

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

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

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

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

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

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

12.2. Prevention of discrimination and violence against LGBTI+ persons

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

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

Paragraphs 77 and 78 of the Commission Recommendation

Relevant international laws and standards:

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

Questions to ask and ways to find out

Preliminary assessment:

Are the national laws and policies in line with paragraphs 77 and 78 of European Commission Recommendation?

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

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

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

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

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

Are LGBTI+ detainees treated with respect for their dignity?

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

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

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

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

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

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

13. Special situations in detention facilities

13.1. Radicalisation

In the last two decades, the focus on radicalisation of detainees in prison has gained momentum, and EU member states have increasingly responded with diverse measures to challenges posed in this respect. While it is in everybody's interest that detention facilities do not become breeding grounds for extremist violence, some of the measures have led to tensions with the human rights of detainees. Therefore, NPMs are called upon to assess this complex topic in the course of their work. They can be assisted in this task by guidance developed by international organisations.[24]

The European Commission Recommendation dedicates five paragraphs to specific measures addressing radicalisation in prisons. These recommendations include an initial risk assessment followed by further regular assessments, placement, staff awareness and rehabilitation measures of detainees suspected or convicted of terrorist or violent extremist offences. It is certainly important to raise awareness of issues of radicalisation and extremist violence in prison, as such classifications generally result in the implementation of harsh security measures. However, in many ways the principles and rules applying to these detainees apply equally for others in situations of risk and vulnerability. In other words, a thorough **individual risks- and needs assessment should be the norm for every newly arrived detainee**, as outlined in Chapter 5.2.

The European Commission Recommendation does not prescribe specific placement measures for detainees suspected or convicted of terrorist and violent extremist offences. Rather, it leaves it to member states to decide whether they should be accommodated in "separate terrorist wings" or be dispersed among the general prison population (paragraph 83). In the first case, the rules outlined above for high security prisoners apply *mutatis mutandis*. In the latter case, NPMs should ascertain that vulnerable detainees are sufficiently protected against any form of pressure or violence. The principles, questions and ways to find out explained in the chapter on inter-prisoner violence (Chapter 5.3) can be applied also here.

"Member States should ensure that further risk assessments are carried out on a regular basis by the prison administration (at the beginning of detention, during detention and prior to release of detainees suspected or convicted of terrorist and violent extremist offences)."

Paragraph 84 of the Commission Recommendation

The Commission Recommendation stipulates explicitly regular further assessments of any risks (and needs) for detainees suspected or convicted of terrorist and other violent extremist offences. NPMs should therefore verify that the administration of a detention facility has a consistent and preferably multi-disciplinary procedure in place to carry out such assessments. An NPM could also take an interest in the question of who has access to the thus collected data.

Generally, the application of a dynamic security approach within detention facilities would greatly facilitate regular re-assessments of any risks posed by specific detainees. Reference is made to Chapter 5.11.

"Member States are encouraged to provide general awareness training to all staff, and training to specialised staff, to recognise signs of radicalisation at an early stage. Member States should also consider providing an appropriate number of well-trained prison chaplains representing a variety of religions."

Paragraph 85 of the Commission Recommendation

It is also no coincidence that both the European Prison Rules and the Mandela Rules dedicate a whole chapter each to prison staff (Part V of the Revised European Prison Rules, "Management and staff"; Chapter "Institutional

24. OSCE/ODIHR and Penal Reform International, Protecting Human Rights in Prisons while Preventing Radicalization Leading to Terrorism or Violence - A Guide for Detention Monitors, 2021.

personnel" of the Nelson Mandela Rules), in which detailed directives on the selection and training, including specialised training, of prison staff are provided. In this regard, the European Commission Recommendation focuses again mainly on staff dealing with radicalisation, but this should not keep NPMs from a wider assessment of staff-related questions in their prison systems, in line with the international and European standards mentioned above. The same is true for the general observance of religious rights of detainees (see Rules 29.1-29.3 of the Revised European Prison Rules Nelson Mandela Rules), aside from in the context of measures to address radicalisation.

13.2. Deaths in detention facilities

Deaths in a detention facility or of detainees who were transferred before their death to hospital are in any event an exceptional occurrence that should always trigger a **formal investigation**, as regulated by law. Such an inquiry should be undertaken regardless of the cause of death, including in cases of natural death caused by old age or terminal illness, accidents, suicides and violent deaths.

It is not suggested here that NPMs should play an active role in the investigation of deaths of detainees; nevertheless, they should feel responsible for verifying that the prison staff and management have taken all necessary steps after a detainee has died in a detention facility or hospital after transfer from a detention facility to document and report the death, and to preserve evidence. Moreover, NPMs should collect statistical information on cases of deaths, which can, *inter alia*, give valuable hints at the prevalence of inter-detainee violence in a given detention facility, the efficiency of preventive practices against inter-detainee violence, the prevention of substance use related deaths, or the efficiency and correct application of existing suicide prevention measures. Lessons learned from avoidable deaths in detention facilities should be discussed with the management.

Questions to ask and ways to find out

? How many detainees have died in the detention facility or after having been transferred to hospital? What were the causes of death as established by the official inquiry?

- *Request from the management an overview of all persons who died within a specific period, including those detainees who were brought to hospital before they died. This list should provide the names, dates of birth and death, and the cause of death as established by an autopsy and/or official inquiry.*
- *Compare with numbers and information from other detention facilities.*
- *If necessary, follow up on issues that from these lists appear to point at a more systemic problem within a facility, or the penitentiary system as a whole, e.g. suicide prevention screening or inter-detainee violence.*

? Have the prison authorities implemented all mandatory steps after a detainee died?

- *Check the individual files of deceased persons as well as general registers with a view to ascertaining that the prison management and staff have properly recorded the cases, reported them to the relevant authorities, secured evidence (e.g. by sealing a cell or preserving CCTV footage), and informed the family members of the deceased.*
- *Discuss with staff if they are aware of the existing regulations and protocols in case a person dies in detention.*

? Have lessons been learned from avoidable deaths?

- *Discuss with the management whether an analysis of cases of deaths have been conducted within the facility, irrespective of an external inquiry and/or disciplinary or criminal procedures against staff, with a view to learning for the future from previous mistakes.*
- *Discuss with senior management of the prison system how learning in relation to preventable deaths is shared between prisons.*

13.3. Corruption in detention facilities

Corruptive practices in detention facilities is a vast topic and it would go too far to describe in detail all angles of the problem. However, NPMs should be very attentive to signs of corruption in detention; wider spread corruptive practices can pose serious risks to security within a detention facility and can in the long term even lead to detainees effectively running the facility. The most common forms of corruption in detention facilities are the **trade with any type of right, service or benefit** that detainees should usually be granted for free or when they meet certain criteria (such as transfers to outside medical experts or hospitals, home leaves, cells with better material conditions, a less strict regime, additional visits, better food, more time in the exercise yard or gym, etc.;) or the sale by staff of different items of **contraband**.

Finding out about corruption is not an easy task. Other than with complaints about ill-treatment or the material conditions, both the public officials and the detainees involved in corruption somehow gain from these dealings and are therefore less inclined to talk about it. A few detainees will, however, talk freely about corruptive practices and even tell monitors the price list for different items of contraband and services. In addition, there are other indicators for the prevalence of corruption within a facility, which monitors should pay attention to. These reach from obvious signs of unjustified preferential treatment of certain detainees *(e.g. cells with better conditions),* to the prevalence of contraband, such as illegal substances, mobile phones or even weapons, found in a given facility, the security and search arrangements in place for staff members, and the number of disciplinary proceedings against staff members for corruptive practices. *For example, a visiting delegation could observe whether staff members are searched in a similar manner as visitors and other persons entering the facility.*

Questions to ask and ways to find out

? How prevalent is corruption in the detention facility? Which measures are in place to prevent, deter and punish corruption by staff?

- *Talk with a number of detainees in private about the ways they receive certain benefits, privileges or services foreseen by law, such as a transfer to medical services outside of detention, additional visits, and so on. Ask if they have knowledge about contraband being sold in the facility.*
- *Determine whether some cells have better material conditions than others (e.g. more space, better light and/or ventilation), and discuss with staff the reasons for placing certain individuals in these cells rather than in others.*
- *Get a list of privileges granted to detainees, such as additional phone calls or visits etc., from the management and check the individual files of the individuals in order to determine on which basis these privileges were handed out.*
- *Get a list of confiscated items in the detention facility in a specified period of time and try to find out with the management how these items entered the facility.*
- *Observe the searching procedures in place for staff members entering the detention facility and determine whether these are as diligently done as for other persons.*
- *Get a list of disciplinary procedures against staff for corruptive practices. Determine with the management if whistle-blower protection measures are in place.*

13.4. Dealing with self-harm, suicide attempts and hunger strike

Diverse forms of self-injury, such as cutting or burning arms, legs, or other parts of the body, or swallowing diverse objects, are not at all uncommon in detention facilities, and in fact a phenomenon that can be observed in detention facilities around the world. The apparent motivation for such behaviour can be manifold, from an attempt to gain relief from mental pressure, getting attention from others, protesting against a sentence, the material conditions or the regime, to trying to put pressure on the management to achieve a transfer to another facility or other actions, or a combination of any of the above. However, such actions – i.e. deliberately hurting oneself, mutilating one's body and/or putting one's health at risk - oftentimes point at more profound mental problems that come with fear of being imprisoned, a loss of control over one's life, feeling alone, or worrying about something outside of detention, such as family or work. Therefore, self-harm should not primarily be seen as manipulative or disruptive behaviour or a mere expression of discontent, and disciplinarily punishing a person who has self-harmed can lead to further serious negative consequences.

The management of detainees who resort to self-harm or hunger strike should be directed at de-escalation, medical care, including psychiatric care if necessary, and psychological support. In all cases, the root causes of such extreme behaviour should be analysed by the relevant staff members, with a view to an individual, but also a more systematic solution of the problem.

Self-harming is usually done without suicidal intent; nevertheless, serious self-harming can sometimes accidentally lead to death *(e.g. inadvertently cutting an artery)*. On the other hand, studies have shown that a considerable proportion of persons who self-harmed in detention had at the same time suicidal tendencies. In any case, **suicide attempts** should always be taken very seriously by the prison management and trigger a range of medical and psychological interventions.

Although **hunger strike** can also have deeper psychological motives, it is more commonly a form of protest against certain conditions or restrictions. Nevertheless, the members of an NPM delegation should not disregard the occurrence of hunger strikes in the detention facilities they visit, as they can signal wider-ranging rights violations against which the detainees protest.

Visiting delegations who do not include a medical member and/or a psychologist are not in a good position to analyse in depth preventive measures, such as suicide screening at admission, the underlying reasons for individual cases of self-harming behaviour, and subsequent responses by medical and other prison staff; the NPM will probably choose to leave these assessments to qualified health care experts. As a minimum, the monitors should, however, verify that all cases of self-harm, suicide attempts and hunger strike are **properly documented**, that **protocols** on how to deal with the diverse forms of self-harm and hunger strike are in place and known to the prison staff, and that they are applied in practice. More broadly, the NPM should seek to be involved in the development of such protocols as well as wider reaching policies to decrease the number of self-injuries, suicide attempts and hunger strikes in detention.

Questions to ask and ways to find out

? How prevalent are cases of self-harm, suicide attempts and hunger strike in the detention facility visited? Are there any current cases? Are they properly documented?

- *Get the statistics from the management on all documented cases of self-harm, suicide attempts and hunger strike in a specific period of time. Compare with the statistics of other detention facilities.*
- *Ask the management and staff whether there are any current or recent cases of self-harm, suicide attempts or hunger strike.*
- *Check the documentation of such cases in the respective registers and files, with a view to their completeness.*

? Are protocols on how to deal with suicide attempts, self-harm and hunger strike in place, known to the staff, and applied in practice?

- *Ascertain with the management that they have the applicable protocols at their disposal.*
- *Discuss with different members of staff (security, medical, psychological etc.) their awareness and understanding of the existing protocols.*
- *Interview individual detainees who have recently self-harmed or who are currently or have recently been on hunger strike about the staff members' response to their actions (e.g. have they been regularly visited by a doctor etc.).* **!** ***You should not attempt to speak with a person who has recently tried to commit suicide without the presence of a mental health care expert.***
- *Ask persons who are currently or have recently been on hunger strike for the underlying reasons for their actions. On the other hand,* **!** ***without a mental health care expert present during the interview, it is not advisable to go into details of the underlying reasons for self-harm.***
- *Check the documentation of such cases in the respective registers and files, with a view to ascertaining that the steps foreseen in the diverse protocols on handling self-harm or hunger strike have been implemented.*

A related issue occurs when in the course of an interview, the detainee in question relates to the interviewer that he or she is seriously **considering suicide.** The members of the monitoring team should be appropriately sensitised and trained, and a policy should be in place that outlines the actions a delegation member who becomes thus aware of suicidal thoughts should undertake. Certainly, monitors should not just shrug the issue off and forget about it. Rather, they should tell the detainee in question that they have to report such statements to the relevant health care staff members or psychologists, and the management. If they get the impression that the detainee might be serious, they should follow up by requesting the responsible prison staff to put the person under enhanced supervision and provide him or her with appropriate support.

II. Monitoring Minimum Standards for Procedural Rights of Persons Subject to Pre-Trial Detention

The role of NPMs in monitoring procedural rights

In addition to a list of minimum standards for material detention conditions, the European Commission Recommendation also contains a separate chapter in which the minimum standards are laid down for procedural rights of suspects and accused persons subject to pre-trial detention. As outlined in the Terminology section of this guide, this includes persons who have been convicted but await final sentencing in pre-trial detention.

The question of whether the monitoring of procedural rights falls within the scope of NPMs – which is primarily rooted in obligations deriving from Article 5 ECHR – can be answered with clarity when the non-implementation of these rights directly results in a violation of the minimum standards governing material conditions of detention or treatment, which then become a matter covered by Article 3 ECHR. In such cases, it becomes evident that NPMs, which are mandated to prevent torture and ill-treatment, are advised to monitor procedural rights to the extent that their neglect impacts the material conditions and overall treatment of individuals in detention. Therefore, where a failure to uphold procedural safeguards compromises the protection against inhuman or degrading conditions, overseeing and reporting on such procedural shortcomings clearly falls within the mandate of NPMs.

During visits to detention facilities, NPMs may be confronted with situations that could be considered to amount to inhuman or degrading treatment contrary to Article 3 ECHR, or to contribute to such treatment. Not infrequently, this could be ascribed to shortcomings in the implementation of procedural safeguards by the relevant authorities and policy choice.[25] Examples include overcrowded detention facilities, lack of access to legal aid or an interpreter, long periods of solitary confinement for remand detainees, excessive detention periods, and lack of alternatives to pre-trial detention. Neglecting procedural safeguards in the pre-trial phase can have serious negative effects that can lead to or heighten the risk of ill-treatment. The preventive mandate of NPMs, related to Article 3 ECHR justifies that NPMs, when visiting detention facilities, pay special attention to the negative effects that the non-implementation of procedural rights may have on the pre-trial detainees and their detention circumstances.

The mandate of NPMs is broader than simply carrying out visits to places where pre-trial detainees are deprived of their liberty. NPMs also have an important advisory function that includes providing recommendations to State authorities, aimed at improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture, cruel, inhuman or degrading treatment or punishment (Art. 19b OPCAT). This encompasses not only the identification of shortcomings within the detention facilities for pre-trial (and/or sentenced) detainees, but also the identification of any systemic weaknesses or legislative gaps with respect to the procedural rights of pre-trial detainees. Article 19c strengthens this broad preventive approach by empowering NPMs to review existing and proposed legislation. This includes reviewing respect for the minimum standards of protection of the procedural rights of people deprived of their liberty, as laid down in the Commission Recommendation.

NPMs may consider whether, and to what extent, procedural rights in the pre-trial stages are incorporated into and upheld by domestic law. This could include providing recommendations to State authorities through opinions, proposals, and reports; submitting legislative proposals; reviewing regulations related to detention practices, interrogation methods, and personnel involved in the custody and treatment of detainees; as well

25. However, excessive use of pre-trial detention is certainly not the only reason for overcrowding and resulting poor conditions of detention, which can equally be attributed to increases in lengths of prison sentences, lack of or non-implementation of alternative measures at the end of sentences, cumulation of short sentences and similar policies.

as contributing to or submitting independent reports to human rights mechanisms and following up on their recommendations.[26]

Furthermore, the SPT's guidelines on NPMs not only speak of an advisory function regarding legislation, but also in respect of policies.[27] NPMs may therefore consider whether certain policies, such as "tough on crime" policies that aim at intensified use of pre-trial detention, are compatible with the spirit of the Commission Recommendation. NPMs are well placed to track and monitor developments and trends in criminal justice policy in relation to the protection of procedural rights over time. Regressive policy changes in relation to the protection of procedural rights are likely to quickly manifest as poorer and more crowded conditions in pre-trial facilities. This will be evident to NPMs monitoring pre-trial facilities on a regular basis.

NPMs may review judicial files, statistics, and other available online data to ensure that pre-trial detention cases and trends align with international standards. However, this should not interfere with the judicial process or judicial review functions, as these fall primarily under the responsibility of judicial oversight. While NPMs may face limitations in fully monitoring procedural rights - particularly those related to Article 5 of the European Convention on Human Rights - by analysing broader data sources, they can still assess the overall protection of these rights within the criminal justice system without conducting case-by-case analyses, which are typically outside their mandate.

For the sake of this part of the guide, it is important to acknowledge that structures, resources, and compositions of NPMs vary greatly across Council of Europe and EU member states. Possible indicators for a decision whether an NPM should get engaged with the topic of procedural safeguards are a higher national average of pre-trial detainees than the EU average, observed overcrowding in pre-trial detention facilities, but also disproportionately higher numbers of foreign detainees in pre-trial detention or harmful use of remand against members of vulnerable groups. The following information should be viewed as a source of inspiration for potential activities, rather than as a prescriptive list of obligations.

26. See OHCHR, Preventing Torture: The Role of National Preventive Mechanisms – A Practical Guide, 2018.

27. See Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Guidelines on national preventive mechanisms, CAT/OP/12/5 of 9 December 2010, para. 28.

1. How to gather information on procedural safeguards for pre-trial detention

1.1. Preliminary Assessment

Generally, the search for relevant sources and information may begin with a preliminary assessment of whether the national laws and policies, as well as sentencing practices in general, are in line with the procedural safeguards as laid down in Articles 14-33 of the European Commission Recommendation. It is recommended to carry out this assessment prior to monitoring remand facilities and other places where pre-trial detainees are staying. Problem areas that emerge from this assessment can provide starting points for further research during the visits.

There are a variety of sources from which an NPM can draw. Much of this information is available online.

a) **National sources**: Legislation (particularly the Code of Criminal Procedure) and binding case law (in common law countries), handbooks and commentaries, reports of National Prison Inspectorates, Bar Associations, academic research institutes, Probation Services, National Human Rights Institutes, Ombudsman institutions, and civil society organisations.

b) **International sources**. Important in this context are the reports or studies of authoritative organisations such as: **CPT, SPT, FRA** (European Union Agency for Fundamental Rights), and credible non-governmental organisations.[28] The studies of these bodies often contain, in addition to **a comparative overview**, separate **national reports** with detailed information on procedural rights and their application in practice.[29]

Case law of the **European Court of Human Rights** and related information on the execution of its judgments (including submissions to the Committee of Ministers of governments and civil society organisations) may shed light on important trends and policy intentions.

1.2. Statistics

NPMs monitoring activities should also include collecting statistical data about pre-trial detention and alternative measures to it. This empirical data can help to form a general and comprehensive picture about the scope and extent of the use of (pre-trial) detention in a particular country. It also can help to identify and understand the trends of developments of the practice. Furthermore, such data makes it possible to compare the practice in a given country with those of other European member states and to draw inferences and conclusions.

In collecting empirical data on pre-trial detention, NPMs may consider placing special emphasis on the following topics:

a. The overall prison population in the given country

b. The share of pre-trial detainees among the prison population

c. Rate of pre-trial prisoners per 100,000 inhabitants

d. General length of pre-trial detention

e. Share of women, children and foreign nationals among the pre-trial detainees

f. General application of alternative measures in comparison to pre-trial detention

g. Percentage of persons in pre-trial detention who are on low-scale bail

28. For instance, "Fair Trials" or the "Institute for Crime and Justice Policy Research".

29. The same applies to the following publications: **A.M. van Kalmthout et al.,** *Pre-trial Detention in the European Union (2009),* **W. Hammerschick et al.** (Detour Project), *Towards Pre-Trial Detention as Ultima Ratio (2018),* and **Chr. Morgenstern**, *European Perspectives on Pre-Trial Detention (2023).*

Statistical data can be collected either by referring to data published by international sources online, or by collecting data from national sources. Common national sources are: **Justice Departments, Prison Service, Probation Service, National Institutes for Statistics.**

Comparative data on prison populations is collated by **the International Centre for Prison Studies (ICPS)**, which regularly publishes the **World Prison Brief,** containing prison statistics of 223 countries and territories.

Furthermore, the Council of Europe Annual Penal Statistics (SPACE) provides annual data on imprisonment and penal institutions (SPACE 1), and information on non-custodial sanctions and measures (SPACE II) in the Council of Europe member states.

Also, the database of the Statistical Office of the European Union (EUROSTAT), contains relevant statistical information on prisons, prison population and prison trends in the member states of the European Union.

When collecting statistical information, it is essential to recognise the complexities involved, not only in identifying the relevant data but also in accurately interpreting it. Different countries may employ varying methodologies for data collection, which can influence the consistency of the information gathered. For instance, there may be discrepancies in how prison services or national statistical offices collect and classify data. Additionally, international sources often apply different approaches and definitions. Terms such as *pre-trial detention, preventive* or *remand detention* may be defined differently across sources, with some including juveniles or irregular migrants in the prison population, while others do not.

Furthermore, data is often recorded at different times, adding another layer of variability. Some sources provide "stock statistics," indicating the number of prisoners on a specific date, while others offer "flow numbers," reflecting the total number of individuals detained throughout the year.

These variations highlight the importance of careful analysis when working with statistical data. Rather than viewing these challenges as obstacles, they present opportunities for deeper engagement with the data. By understanding the nuances in data collection and interpretation, we can derive more meaningful insights and make informed comparisons across different datasets.

Monitoring pre-trial detention: key aspects for NPMs

1. Importance of statistical data collection

- Helps form a comprehensive picture of pre-trial detention practices
- Identifies trends and developments in detention policies
- Enables comparisons with other European countries

2. Key data points to consider

- **Overall prison population** in the country
- **Share of pre-trial detainees** among prisoners
- **Pre-trial detention rate** per 100,000 inhabitants
- **Average length** of pre-trial detention
- **Demographics**: Women, children, and foreign nationals in pre-trial detention
- **Use of alternative measures** compared to detention
- **Percentage on low-scale bail**

3. Sources of statistical data

- **International sources:**
  - World Prison Brief (ICPS) – data on 223 countries
  - Council of Europe SPACE I & II – imprisonment & non-custodial sanctions
  - EUROSTAT – EU-wide prison statistics
- **National sources:**
  - Justice Departments
  - Prison and Probation Services
  - National Statistical Institutes

4. Challenges in data collection & interpretation

- **Methodological Differences:** Different countries define pre-trial detention differently
- **Variations in Data Timing:** Some sources use "stock statistics" (specific date), others use "flow numbers" (yearly total)
- **Terminology Differences:** Some datasets include juveniles and irregular migrants, others do not

5. Why it matters

- A deeper understanding of data nuances allows for **better policy recommendations** and **more informed decision-making**

1.3. Gathering information during the visits

1.3.1. Interviews with detainees as source of information

Another primary source of information are pre-trial detainees themselves. Based on the principle that

pre-trial detainees are held separately from convicted detainees, pre-trial detainees are often accommodated in special pre-trial detention facilities. Nevertheless, pre-trial detainees can also stay in other institutions, such as separate units of ordinary prisons or law enforcement establishments; or be accommodated together with sentenced detainees (see above at Part I, Chapter 6). It has been observed by the CPT that, when pre-trial detainees are accommodated in law enforcement establishments, they often reside well beyond the statutory time limit of police custody, pending their transfer to a remand prison, or after their return from a remand centre for the purpose of investigative actions. Under certain circumstances (mental illness, investigation purposes) pre-trial detention can also be implemented in a psychiatric hospital. It is important to realise that the place where pre-trial detainees stay in practice does not affect their entitlement to procedural safeguards. As long as they have not been irrevocably convicted, the detainee remains a pre-trial detainee who retains the status of an accused, non-convicted person for whom all procedural safeguards remain in full force.

Interviews with these detainees may provide some information on how the procedural safeguards are applied in an individual case. However, cross-checking this - fragmentary - information with court files may be difficult. This means that, in some jurisdictions, the monitoring activities of NPMs may be limited to:

- **Assessing globally whether and how procedural safeguards are implemented in national law and practice;**
- **Tracking and commenting upon negative impacts on pre-trial conditions of any regressive policy changes in the protection of procedural rights; and**
- **Speaking with pre-trial detainees to inquire about their concrete experiences of the application of procedural safeguards in their case.**

1.3.2. Other sources of information

In addition to information that can be provided by detainees themselves, there are other sources of information that can be consulted during or after the visit to the institution. These include in particular:

a) **Prison database, registers and journals,**
b) **Individual prison files,**
c) **Prison and judicial statistics,**
d) **Interviews with management and staff members,**
e) **Interviews with detainees' lawyers and with the Bar Association/Council and any specialist committees that it maintains *(e.g. criminal law committees, human rights committees),***
f) **Detainees' case files, provided that NPM has access to these files**
g) **Case law databases and overviews**

The section **Questions to ask and find out**, listed below for the various procedural safeguards, provides a non-exhaustive list of points of interest that could be raised when making the preliminary assessment, during the interviews with detainees and when consulting other relevant sources of information.

It is essential to acknowledge that, although a diverse array of information sources is available to evaluate trends and practices concerning pre-trial detention in a particular member state, it is advisable to approach these sources systematically. A comprehensive examination of the various available data will ensure that different information sources are employed as tools for verification of the observed national tendencies. By adopting a holistic perspective, one can enhance the accuracy and reliability of the assessments, thereby fostering a more nuanced understanding of how pre-trial detention is implemented and monitored within the member state in question. Such an approach not only strengthens the validity of the findings but also supports the formulation of informed recommendations for potential improvements in the relevant legal and institutional frameworks.

2. Pre-trial detention as a measure of last resort and alternatives to detention

"Member States should impose pre-trial detention only where strictly necessary and as a measure of last resort, taking due account of the specific circumstances of each individual case. To this end, Member States should apply alternative measures where possible.

Member States should adopt a presumption in favour of release. Member states should require the competent national authorities to bear the burden of proof for demonstrating the necessity of imposing pre-trial detention.

To avoid inappropriate use of pre-trial detention, Member States should make available the widest possible range of alternative measures, such as the alternative measures mentioned in Council Framework Decision 2009/829/JHA (23) on the application of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.

Such measures could include: (a) undertakings to appear before a judicial authority as and when required, not to interfere with the course of justice and not to engage in particular conduct, including that involved in a profession or particular employment; (b) requirements to report on a daily or periodic basis to a judicial authority, the police or other authority; (c) requirements to accept supervision by an agency appointed by the judicial authority; (d) requirements to submit to electronic monitoring; (e) requirements to reside at a specified address, with or without conditions as to the hours to be spent there; (f) requirements not to leave or enter specified places or districts without authorisation; (g) requirements not to meet specified persons without authorisation; (h) requirements to surrender passports or other identification papers; and (i) requirements to provide or secure financial or other forms of guarantees as to conduct pending trial..

Member States should furthermore require that, where a financial surety is fixed as a condition for release, the amount is proportionate to the suspect's or accused person's means."

Paragraphs 14 to 18 of the Commission Recommendation

Relevant international laws and standards:

- Article 5(1) ECHR
- Article 5(3) ECHR
- Article 6(2) ECHR
- Articles 2 to 4 and 8 to 9 of Recommendation Rec(2006)13 of the Council of Europe Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse
- United Nations Standard Minimum Rules for non-Custodial Measures (Tokyo Rules)
- Council of Europe Committee of Ministers Recommendation CM/Rec (2017) 3 on the European Rules on Community Sanctions and Measures
- Rule 111(2) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)
- CPT Standards "Remand detention"

Because of its severe and often irreversible negative effects, international law requires that pre-trial detention should be the exception rather than the rule. It should only be used as a measure of last resort (*ultima ratio*), should be imposed for the shortest time possible and should be based on a case-by-case evaluation by the competent authority of the risks of committing a new crime, of absconding, or of tampering with evidence or witnesses or otherwise with the course of justice.

The *ultima ratio* principle requires a State to establish the widest possible range of alternative measures and to ensure that these can actually be employed where requires by the circumstances of a particular case. According to the case law of the Court under Article 5 (3) of the Convention, the authorities, when deciding whether a person should be released or detained, are obliged to consider alternative measures of ensuring their appearance at trial.

Article 17 of the Commission Recommendation provides a range of non-custodial measures that can be applied to avoid the use or prolongation of pre-trial detention. This - non-exhaustive - list is identical to the alternative measures, mentioned in Rule 2 of Recommendation 2006/13 on the Use of Remand in Custody of the Council of Europe. Other important sources are the United Nations Standard Minimum Rules for non-custodial measures and Recommendation CM/Rec (2017)3 on the European Rules on Community Sanctions and Measures.

One has to keep in mind that in many countries not all available alternatives are specified by law. At times, the investigating judge or the court have the discretionary power to conditionally suspend pre-trial detention, to decide not to issue a remand warrant, to bail or conditionally release a suspect. It is up to the deciding authority to attach the most appropriate conditions for that specific case to the decision. Such conditions are not always explicitly listed in the law. In practice, they are similar to the conditions that can be attached to a conditional or suspended sentence, or to a conditional waiver or - in some countries - to a bail decision. In some countries, bail entails more than just the obligation to deposit an amount of money as a guarantee.

Many of these alternatives are currently available in EU member states. However, looking at the practical meaning of these alternatives, one has to conclude that, generally speaking, these alternatives are not frequently used in practice, particularly for more serious crimes. In many reports and comparative studies this is identified as a significant contributor to overincarceration and overcrowding, which according to the Court under certain circumstances can be considered as a violation of Article 3 but also of Article 5 of the European Convention on Human Rights.

3. Reasonable suspicion and grounds for pre-trial detention

"Member States should impose pre-trial detention only on the basis of a reasonable suspicion, established through a careful case-by-case assessment, that the suspect has committed the offence in question, and should limit the legal grounds for pre-trial detention to: (a) risk of absconding; (b) risk of re-offending; (c) risk of the suspect or accused person interfering with the course of justice; or (d) risk of a threat to public order.

Member States should ensure that the determination of any risk is based on the individual circumstances of the case, but that particular consideration be given to: (a) the nature and seriousness of the alleged offence; (b) the penalty likely to be incurred in the event of conviction; (c) the age, health, character, previous convictions and personal and social circumstances of the suspect, and in particular their community ties; and (d) the conduct of the suspect, especially how they have fulfilled any obligations that may have been imposed on them in the course of previous criminal proceedings. […]

Member States are encouraged to impose pre-trial detention only for offences that carry a minimum custodial sentence of 1 year."

Paragraphs 19, 20 and 21 of the Commission Recommendation

Relevant international laws and standards:

- Article 5 (1) (c) ECHR
- Articles 6 to 7 (a-d) of Recommendation Rec(2006)13 of the Council of Europe Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse

Article 5 of the European Convention on Human Rights concerns the right to liberty and security of a person. The underlying aim of this article is to ensure that no one shall be deprived of his liberty in an arbitrary fashion, that every arrest or detention is lawful, both procedurally and substantially, and that it has been carried out for one of the six reasons specified in subparagraphs (1) (a)-(f). With regard to the topic of pre-trial detention the reasons are specified in lit. (c) that states:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law (…)

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so."

Paragraphs 19 to 21 of the Commission Recommendation correspond with Rule 7 (a-d) of Recommendation Rec (2006)13 of the Committee of Ministers on the use of remand in custody. The conditions mentioned in both Recommendations reflect the extensive case law of the Court, especially regarding the meaning of "reasonable suspicion", which according to the Court depends upon all the circumstances of the case.

The way in which the above rules contained in both recommendations are applied in daily judicial practice differs from member state to member state. Monitoring this practice on a case-by-case basis may be limited by the mandate of NPMs. Nonetheless, some NPMs may have access to additional sources of information, from the police, courts, prosecutors and prison service that could provide a useful picture of the situation at the level of the criminal justice system as a whole.

What **NPMs can check** - besides a global assessment of the existing legislation - is to what extent the member states have followed up the provision in Paragraph 21 of the Commission Recommendation to exclude pre-trial detention in case of offences that carry a custodial sentence of less than one year.

4. Reasoning of pre-trial detention decisions

"Member States should ensure that every decision by a judicial authority to impose pre-trial detention, to prolong such pre-trial detention, or to impose alternative measures is duly reasoned and justified and refers to the specific circumstances of the suspect or accused person justifying their detention. The person affected should be provided with a copy of the decision, which should also include reasons why alternatives to pre-trial detention are not considered appropriate."

Paragraph 22 of the Commission Recommendation

Relevant international laws and standards:

- Article 6 ECHR
- Articles 7 to 9 and 21 of Recommendation Rec(2006)13 of the Council of Europe Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse

Paragraph 22 of the Commission Recommendation has to be read in connection with the previous paragraphs 19 to 21 and with Articles 7 to 9, 17 and 21 of the Council of Europe Recommendation Rec. (2006) 13 on the use of remand in custody. Article 8 of the latter Recommendation requires the application of objective criteria by the judicial authorities responsible for determining whether suspected offenders shall be remanded in custody or whether such remand shall be extended (Article 8 (1)). The presumption of innocence requires that the burden of proof lies on the prosecution or investigating judge (Article 8 (2)).

When assessing the individual circumstances of the case, particular consideration shall be given to a) the nature and seriousness of the alleged offence; b) the penalty likely to be incurred in the event of conviction; c) the age, health, character, antecedents, and personal and social circumstances of the person concerned, and in particular his or her community ties and d) the conduct of the person concerned, especially how he or she has fulfilled any obligations that may have been imposed on him or her in the course of previous criminal proceedings(art. 9.1 (a-d).

Finally, Article 21 contains a provision comparable to Art. 22 of Rec. (EU) 2023/681 that prescribes that every ruling to remand someone in custody, to continue such remand or to impose alternative measures shall be reasoned and that the person affected shall be provided with a copy of the reasons.

The way in which the above rules from both recommendations are applied in daily judicial practice differs from member state to member state. Monitoring this practice requires a case-by-case analysis, which may fall beyond the scope of the mandate of NPMs.

NPMs may be able to examine the content of individual remand decisions during their monitoring visits to pre-trial detention facilities. Copies of these are often kept on the individual prison files of pre-trial detainees. NPMs may also be able to check during their interviews with remand prisoners whether or not they have been provided with a copy of the remand decision and to find out whether the content of this document reflects the requirements of art. 22 and of the relevant articles of Rec.2006)13.

5. Periodic review of pre-trial detention

"Member States should ensure that the continued validity of the grounds on which a suspect or accused person is held in pre-trial detention is periodically reviewed by a judicial authority. As soon as the grounds for detaining the person cease to exist, Member States should ensure that the suspect or accused person is released without undue delay.

Member States should permit the periodic review of pre-trial detention decisions to be initiated upon request by the defendant or, ex officio, by a judicial authority.

Member States should, in principle, limit the interval between reviews to a maximum of 1 month, except in cases where the suspect or accused person has the right to submit, at any time, an application for release and to receive a decision on this application without undue delay."

Paragraph 23, 24 and 25 of the Commission Recommendation

Relevant international laws and standards:

- Article 5 (4) ECHR
- Articles 17 to 21 of Recommendation Rec(2006)13 of the Council of Europe Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse

Paragraphs 23 to 25 of the Commission Recommendation as well as Articles 17 to 21 of the cited Council of Europe Recommendation are based on the principle of Article 5 (4) ECHR that states that "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful". These proceedings also include the right to have the loss of liberty periodically reviewed at reasonable intervals, on the basis that the initial grounds for detention may no longer exist. The longer pre-trial-detention lasts, the more weight the right to liberty gains.

This reasoning is in line with the well-established case law of the Court. This objective can be reached by different means, namely periodic review on the initiative of the investigating authority or prosecutor, or on the initiative of the detained person or his/her defence lawyer.

All European jurisdictions have certain legal provisions that fulfil the objective of the review(s). However, how this objective is realised in practice differ a lot as to **how** *(e.g. review ex officio),* **when** (from the initial deprivation of liberty or from the initial imposition of pre-trial detention), **how often** (identical or different intervals) and by **whom** ((investigating) judge, court, public prosecutor or upon request by the defendant).

Differences can also be observed with respect to restrictions that can be imposed on the minimum time after which a person may put forward a second or following application for release or transformation of the remand in custody. In some countries, the pre-trial detainee has no further right of appeal/cassation against the first-instance court decision on the appeal, while other countries provide also other remedies to challenge (prolonged) pre-trial detention.

A preliminary assessment can **provide NPMs with a general idea** about how the review requirements are enshrined in domestic procedural legislation. When visiting pre-trial establishments, it should also be possible for NPMs to gain an overview of whether or not remand prisoners are leaving the establishment for review hearings on a periodicity that corresponds to the requirements of domestic procedural legislation. However, in-depth monitoring of the way in which the above rules from both recommendations are applied in daily judicial practice would require a thorough case-by-case analysis, which is likely to fall beyond the mandate and capacity of NPMs. When NPMs speak with pre-trial detainees, it should be possible to gain some insights into how the rules on (periodic) review, requests and appeals are applied in practice.

6. Hearing of the suspect or accused person

"Member States should ensure that a suspect or accused person is heard in person or through a legal representative by way of an adversarial oral hearing before the competent judicial authority making a decision on pre-trial detention. Member States should ensure that decisions on pre-trial detention are made without undue delay.

Member States should uphold the suspect or accused person's right to a trial within a reasonable time. In particular, Member States should ensure that cases in which pre-trial detention has been imposed are treated as a matter of urgency and with due diligence."

Paragraphs 26 and 27 of the Commission Recommendation

Relevant international laws and standards:

- Article 5(3) ECHR
- Article 14 (1-2), 25 and 28 of Recommendation Rec(2006)13 of the Council of Europe Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse
- Rule 119(1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)

The basis of paragraphs 26 and 27 of the Commission Recommendation is Article 5 (3) ECHR that states: "Everyone arrested or detained in accordance with the provision of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial".

What has to be understood by the term "reasonable time" in the second limb of Article 5 (3) cannot be assessed in the abstract. According to the case law of the Court, what constitutes a reasonable period for a detainee to remain in pre-trial detention must be assessed on the facts of each case and according to its specific features. This case-by-case approach may fall beyond the NPM's mandate, however there might be exceptions. *If, for example, an NPM were to encounter an example of an individual held on remand for an excessively long period in very poor conditions, this might well raise issues under Article 3 as well as Article 5 (3) of the Convention.*

NPMs can speak with detainees and ask whether or not the requirements of Paragraph 26 of the Commission Recommendation have been complied with in the pre-trial proceedings. This provision underlines the right of the detainee to be heard in person - or where necessary by means of some form of representation - in the procedure to assess the legality of the deprivation of liberty. This is particularly the case when the personal presence of a detainee can be regarded as a means of ensuring the principle of "equality of arms", which, according to the Court's case law, is one of the most important guarantees of a juridical procedure. An oral hearing is in any case required when a deprivation of liberty of considerable duration is involved and the personality of the person concerned is important for the decision to be taken.

The requirement of adversarial oral hearing can also be met when the legal representative takes the place of the suspected or accused person. Under certain conditions, Article 28 of Recommendation Rec(2006)13 of the Council of Europe Committee of Ministers to member states on the use of remand in custody permits that the hearing may take place through the use of appropriate video-links.

7. Effective remedies and the right to appeal

"Member States should guarantee that suspects or accused persons who are deprived of their liberty have recourse to proceedings before a court, which is competent to review the lawfulness of their detention and, where appropriate, to order their release.

Member States should grant suspects or accused persons subject to a decision on pre-trial detention the right of appeal against such a decision and inform them of this right when the decision is made."

Paragraphs 28 and 29 of the Commission Recommendation

Relevant international laws and standards:

- Article 5 (4) ECHR
- Articles 25 to 26 of Recommendation Rec(2006)13 of the Council of Europe Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse
- Directive (EU) 2016/1919 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings
- Rule 98 (1-2) of the revised European Prison Rules 2020
- Rule 119(2) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)

As mentioned above at Chapter 5 "Periodic review of pre-trial detention", all EU member states have to comply with Article 5 (4) of the Convention in offering suspects or accused persons some recourse to proceedings before a court, which is competent to review the lawfulness of their detention and, where appropriate, to order their release.

In most countries, detainees can appeal against the first decision on remand in custody and further appeals are also possible. However, comparative studies reveal that the way in which Paragraphs 28 and 29 of the Commission Recommendation are applied in daily judicial practice differs from member state to member state. And while monitoring this practice on an in-depth case-by-case basis may fall beyond NPMs' mandates, looking into general trends on the use of remedies and appeals constitutes significant interest for further protecting rights of persons deprived of their liberty.

While not directly covered in the Commission Recommendation, it is important to note that the effectiveness of the legal remedies and the right to appeal largely depend on whether detainees can rely on assistance by a lawyer during the pre-trial procedures. Therefore, Paragraphs 28 and 29 have to be read in conjunction with Directive (EU) 2016/1919 on the right to legal assistance, Articles 25 to 27 of Recommendation Rec(2006)13 of the Council of Europe on the use of remand in custody, and Rule 119 (2) of the Mandela Rules. The latter indicates that if an untried prisoner does not have a legal adviser of their own choice, they shall be entitled to have a legal adviser assigned to them by a judicial or other authority in all cases where the interests of justice so require and without payment by the untried prisoner if they do not have sufficient means to pay. Denial of access to a legal adviser shall be subject to independent review without delay.

Also, Article 25(3) of Recommendation Rec(2006)13 of the Council of Europe on the use of remand in custody states that such assistance from a lawyer shall be provided at public expense where the person whose remand in custody is being sought cannot afford it.

Other requirements, mentioned in Article 25(2) of cited Recommendation are that the person whose remand in custody will be sought shall have an adequate opportunity to consult with their lawyer in order to prepare their defence. The person concerned shall be advised of these rights in sufficient time and in a language which they understand. Whether these requirements are complied with can be **checked by an NPM** through a variety of means, including examining the physical conditions in which legal consultations take place, procedures for organising legal visits, the availability of relevant legal texts to prisoners, as well as interviews with the detainees.

8. Length of pre-trial detention

"Member States should ensure that the length of pre-trial detention does not exceed, and is not disproportionate to, the penalty that may be imposed for the offence concerned.

Member States should ensure that the length of pre-trial detention imposed does not conflict with the right of a detained person to be tried within a reasonable time.

Member States should consider as a priority case involving a person subject to pre-trial detention."

Paragraphs 30, 31 and 32 of the Commission Recommendation

Relevant international laws and standards:

- Article 5 (3) ECHR
- Articles 22 to 24(2) of Recommendation Rec(2006)13 of the Council of Europe Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse

The length of pre-trial detention in European countries should be considered in the context of the domestic criminal procedural framework.

According to Article 5 (3) of the Convention, everyone is entitled to a fair and public hearing within a "reasonable time". The Convention itself does not provide for any specific maximum time limit for pre-trial detention. Also, the Court has continuously stated that the concept of "reasonable time" cannot be translated into a fixed number of days, weeks, months or years or into various periods depending on the gravity of the offence. Whether it is reasonable for an accused to remain in detention must be assessed on the facts of each case and according to its specific features. Continued detention therefore can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty.

Comparative research reveals large divergences in the way member states have translated Paragraphs 30 to 32 of the Commission Recommendation in their domestic legislation. Some countries do not have any time limits for pre-trial detention, other have set time limits relating to only the moment that the trial starts or have time limits that include the whole trial stage. In other countries, the total period of remand depends on the gravity of the crime, the complexity of the case, or the penalty that may be imposed. But even in countries that have set fixed time for pre-trial detention, these limits are not absolute, since they all have a provision within their national legislation that enables to prolong the detention after the set time limit has expired.

With respect to the length of pre-trial detention, comparative research demonstrates that notwithstanding the diverse legal provisions in national laws, a big gap can be observed between the law in the books and the law in action. The existence of legal time limits, *for example, does not mean that pre-trial detention is kept short, nor do they provide reliable information about the actual length of pre-trial detention.* Not without reason most of the case law of the Court deals with duration-related issues.

Monitoring how Paragraphs 30 to 32 in the member states are being applied in practice should be **relatively straightforward for NPMs** that regularly visit pre-trial detention facilities as it is usually possible to use administrative records in these prisons to rapidly determine how long people held on remand have been kept in pre-trial detention. More in-depth scrutiny may be required if cases of excessively long remand detention are identified.

9. Deduction of time spent in pre-trial detention from the final sentence

"Member States should deduct any period of pre-trial detention prior to conviction, including where enforced through alternative measures, from the length of any sentence of imprisonment subsequently imposed."

Paragraph 33 of the Commission Recommendation

Relevant international laws and standards:

- Article 33 (1-3) of Recommendation Rec(2006)13 of the Council of Europe Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse

Given the purportedly non-punitive nature of pre-trial/remand detention, Paragraph 33 of the Commission Recommendation as well as Article 33 (1) of Recommendation (2006)13 of the Council of Europe on the use of remand in custody require that the periods of pre-conviction custody should be deducted from the sentence. In Paragraph 33 of the Commission Recommendation, the deduction is restricted to a sentence of imprisonment. This is further elaborated in the Council of Europe Recommendation 2006(13), which requires that the pre-detention period should also be taken into account in case the penalty imposed is a non-custodial one, such as a fine, a suspended sentence or another alternative sanction or measure.

Although all EU member states have provisions in their legislation regarding the deduction of pre-trial detention period from the final sentence, the way in which this deduction can be applied shows major differences in, *for example: the deduction rate, the possibility of deduction from non-custodial sentences, restrictions that exclude deduction, deduction from the time spent in (pre-trial) detention abroad and the deduction of house arrest or other measure, imposed as alternative to pre-trial detention. In some countries, the deduction is not restricted to the period spent in pre-trial detention but also includes the time spent in arrest or police custody.*

10. Special rules for children and other vulnerable groups

Relevant international laws and standards:

- Articles 37 to 40 of the UN Convention on the Right of the Child
- Article 17 of the Council of Europe Recommendation Rec.(2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice
- Articles 10 and 108 of the Council of Europe Recommendation Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions and measures
- Article 17 of the UN Rules for the Protection of Juveniles Deprived of their Liberty
- CPT Standards "Juveniles deprived of their liberty under criminal legislation"

10.1. Children

The Commission Recommendation, like the Council of Europe's general Recommendation on the use of remand in custody (Rec (2006)13), does not contain specific provisions relating to children, except for a mentioning in its "General Principles". In line with comparable standards in other international documents specifically aiming at juvenile offenders, the procedural safeguards of the Commission Recommendation therefore in principle also apply to pre-trial detainees under the age of 18. This does not alter the fact that additional standards have been developed in national law in various countries, which are mainly aiming at minimising the use of pre-trial detention with regard to children. This is reflected, *for example, in the differing age categories that member states apply to determine criminal responsibility (ranging from 8 to 18 years).*

Whether pre-trial detention can be applied and for what period, can be dependent on the age of the child or the gravity of the offence. Other differences with pre-trial detention for adults are that in several countries the period for which a child can be held in pre-trial detention is shorter than the period applicable to adults. As a consequence of the last resort principle, various countries have developed specific grounds for the application of pre-trial detention for children. These grounds are stricter than the grounds that apply to adults and mostly refer to the risk of absconding if the child in question has already escaped, has prepared to escape or has no permanent home address.

Other specific provisions that can be observed in various countries concern the wider range of applicable alternatives, the involvement of parents or guardians and the legal assistance in the pre-trial proceedings.

Relevant international laws and standards:

- Article 10 of Recommendation Rec(2006)13 of the Council of Europe Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse
- Rules 2 and 64 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the "Bangkok Rules")
- Rule 34.4 of the revised European Prison Rules 2020
- CPT Factsheet "Women in Prison"

10.2. Women

The minimum standards for procedural rights, as laid down in the Commission Recommendation, also apply without exception to female pre-trial detainees. The Recommendation, on the other hand, does not contain any additional provisions that specifically apply to the special position of pregnant women, breastfeeding women or women with dependent children.

Further requirements are provided, for example, in Article 10 of the Council of Europe Recommendation on the use of remand in custody that stipulates that: *"Whenever possible remand in custody should be avoided in the case of suspected offenders who have the primary responsibility for the care of infants".*

Also, the UN Bangkok Rules (Rules 2 and 64) and the revised European Prison Rules (Rule 34.4) underline the need to maintain the parent-infant bond and the best interests of the child when it comes to use of pre-trial detention for suspected or accused women. These Rules require that pre-trial detention is avoided as much as possible for these categories of women and alternatives should be applied. If that is not possible, according to the explanatory memorandum on the cited Council of Europe's Recommendation, women should be allowed to bring their infants with them into the remand institution.

European member states deal with these Rules in different ways. In some countries the law allows mothers to keep children up to a certain age with them during pre-trial detention, in other countries pregnant women may request to be kept separate from other women. As a consequence of Article 10 of the cited Council of Europe's Recommendation, other countries forbid or restrict the use of pre-trial detention for pregnant women or single mothers. Also, one can find examples of provisions that pregnant women, women in the post-natal period (up to a certain period) or during the entire period of breast-feeding, depending on the severity of the crime, cannot be detained.

10.3. Foreign nationals

[…] The fact that the suspect is not a national of, or has no other links with, the state where the offence is assumed to have been committed is not in itself sufficient to conclude that there is a risk of flight.

Paragraph 20 of the Commission Recommendation

Relevant international laws and standards:

- Articles 2.2, 10, 25, 26, 29, 32 of Recommendation Rec(2006)13 of the Council of Europe Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse
- Articles 13.1-2, 15.1 to 15.3, 21.1 to 21.5, 24.1 to 25.4 of Recommendation CM/Rec(2012)12 of the Council of Europe Committee of Ministers to member states concerning foreign prisoners

Article 10 of the Council of Europe's Recommendation on the use of remand in custody and Paragraph 20 of the Commission Recommendation both state that the fact that a suspect is not a national of, or has no other links with, the State where the offence is assumed to have been committed is not in itself sufficient to conclude that there is a risk of flight. In spite of these provisions, one can observe that in the majority of the EU member states, foreign nationals are strongly overrepresented within the total prison population as well as among pre-trial detainees compared to their share of the population but also compared to their share of suspects.

The reason of this overrepresentation is mainly on the grounds that foreign detainees may not have a fixed address or even a residence permit. This is seen as a serious indicator for the risk of absconding and/or recidivism, sometimes without merit. Furthermore, foreign nationals without a fixed address will normally be excluded from alternatives to pre-trial detention and be placed into pre-trial detention on a routine basis, even for minor offences.

Article 2.2 of the cited Council of Europe Recommendation requires that whenever practicable, alternative measures shall be applied in the state where a suspected offender is normally resident if this is not the state in which the offence was allegedly committed. In line with this provision, the Council Framework Decision 2009/829/HA of 23 October 2009 on the application, between member states of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention provides the possibility to execute an alternative to pre-trial detention in another member state. However, this possibility is not frequently used and up to now it has hardly contributed to reducing the high percentage of foreign pre-trial detainees among the total prison population in many countries.

For some NPMs it may be difficult to monitor how Paragraph 20 of the Commission Recommendation is applied in practice. That said, **NPMs that regularly monitor pre-trial detention facilities should be able** to rapidly ascertain the numbers of foreign nationals being held in each prison, as well as the legal basis on which they are being held on remand.

In jurisdictions with more advanced computerisation of prisoner information, it may also be **possible to carry out a degree of comparative analysis to disaggregate and compare the numbers of foreign nationals** and the numbers of citizens being held for equivalent offences. In this manner, NPMs could form a view as to whether or not there may be a discriminatory use of pre-trial detention vis-à-vis foreign nationals.

While refraining from performing a judicial review, **NPMs can also try to find out**, when interviewing foreign pre-trial detainees, whether or not the possibility of an alternative measure has been taken into account before the pre-trial decision or during the pre-trial period.

Other questions that can be discussed in these interviews include how far the foreign national was able to enjoy the rights that are included in the list of procedural rights for pre-trial detainees (cf. paragraphs 25, 27, 29, 32 of the cited Council of Europe Recommendation, such as the right to legal aid, interpreter, written information in a understandable language, contact with diplomatic mission, information of family etc.). In the Commission Recommendation, these rights are not considered as belonging to the procedural rights for pre-trial detainees, but as minimum standards that all detainees are entitled to, irrespective of their legal status (Paragraphs 67-70). The same approach can be found in the Council of Europe's Recommendation concerning foreign prisoners (CM/Rec(2012)12), in which these rights are classified as conditions of detention.

Because these rights apply to all foreign prisoners and not specifically foreign detainees in pre-trial detention, information on how these rights are applied in practice can be collected during the interviews with foreign prisoners, as part of the questions dealing with the conditions of imprisonment (see above at Part I, Chapter 8).

An indicative set of question for monitoring the procedural rights of pre-trial detainees could include:

1. Preliminary Assessment

- **Legal and policy framework (Paragraphs 14 to 18):**
  - Are national laws and policies aligned with the principle of using pre-trial detention as a last resort?
  - Are alternatives to pre-trial detention enshrined in criminal procedural law?
  - Are competent authorities legally required to prioritise non-custodial measures?
  - Is financial security (bail) available as an alternative to detention, and are the amounts proportionate to the suspect's means?
- **Reasonable suspicion and grounds for detention (Paragraphs 19 to 21):**
  - Is the requirement of reasonable suspicion clearly defined in domestic law?
  - What are the legal grounds for pre-trial detention in national legislation? (risk of absconding, risk of reoffending, risk of interference with justice, public order threat)
  - Does national law ensure that pre-trial detention is only used for offences with a minimum custodial sentence of 1 year?
- **Reasoning and review of pre-trial decisions (Paragraphs 22 to 25):**
  - Are remand decisions individualised and well-reasoned, as per Paragraph 22?
  - Does national law mandate periodic review of pre-trial detention? What is the frequency and modalities of these reviews?

2. Work with Statistics

- **Population analysis:**
  - What percentage of the total prison population is held in pre-trial detention?
  - Is the use of pre-trial detention disproportionately applied to certain groups *(e.g. foreign nationals)?* Compare the overall rate of foreign nationals within the country's population with the rate of foreign nationals in pre-trial detention.
  - What is the average length of pre-trial detention in the facility or country? How does this compare to the statutory limits?
- **Review frequency:**
  - How often are pre-trial detention decisions reviewed in practice? Is there evidence of compliance with the requirement for regular reviews?
- **Maximum duration:**
  - Are there cases where individuals have been held beyond the maximum duration of pre-trial detention? What justifications, if any, are given?

3. Document review

- **Legal framework and decisions:**
  - Review remand decision documents for compliance with the requirement that they are well-reasoned and based on individual assessments.
  - Examine entry and exit registers to verify the frequency of detainee reviews and court hearings.
- **Records of alternatives to detention:**
  - Analyse records to assess whether alternatives to pre-trial detention have been applied consistently and proportionately.

4. Interviews with detainees

- **Application of alternatives to detention:**
  - Was the possibility of applying alternative measures to pre-trial detention considered in their case?
  - Did they or their lawyer request the application of an alternative measure? If so, what was the outcome?
- **Awareness and treatment during pre-trial detention:**
  - Were they informed of the grounds for their detention and the possibility to appeal the decision?
  - Were they heard in person during the pre-trial detention process?
  - Has their pre-trial detention been reviewed periodically? How frequently?
  - Have they applied for release during their pre-trial detention period? If yes, was the response prompt and well-reasoned?
- **Access to legal assistance (Paragraphs 28 to 29):**
  - Do detainees have access to free legal assistance?
  - Has the legal assistance helped them prepare their defence or appeal?
- **Length and impact of detention:**
  - How long have they been in pre-trial detention? Has this length exceeded the maximum time allowed by law?
  - Were there any delays in their case? Have they been treated as a matter of urgency?
- **Vulnerable categories (women, juveniles, foreign nationals):**
  - For juveniles: Were their parents or guardians involved in the legal process? Have they received specialised treatment?
  - For women: Are there provisions for pregnant or breastfeeding women? Are women with dependent children being treated in accordance with their needs?
  - For foreign nationals: Did they have access to interpretation services and information on alternatives to pre-trial detention in a language they understand?

5. Interviews with prison staff

- **Pre-trial detention procedures:**
  - Are there clear guidelines for prison staff on handling detainees awaiting trial?
  - How often are detainees taken for periodic review hearings?
  - What procedures are in place to ensure detainees are aware of their right to request a review of their pre-trial detention?
- **Conditions and rights of detainees:**
  - What is the process for granting detainees access to legal counsel?
  - How are visits by legal representatives organised? Are they conducted privately?
- **Treatment of vulnerable detainees:**
  - Are there specific protocols for handling vulnerable groups such as women, juveniles, and foreign nationals in pre-trial detention?

6. Monitoring special groups

- **Juveniles:**
  - Are there specific detention regimes for juveniles? Are they receiving appropriate education and support for reintegration?
- **Women and mothers:**
  - Are women's specific needs being addressed, particularly for pregnant women or those with young children? Are special accommodations available?
- **Foreign nationals:**
  - Do foreign nationals have access to interpreters and information in their language about their rights and alternatives to detention?

7. Interviews with lawyers / Bar associations

- **Use of pre-trial detention as a last resort:**
  - In your experience, how often do courts consider alternatives to pre-trial detention before imposing detention?
  - Are judges adequately informed about the range of available non-custodial measures? How frequently are these applied?
  - What are the obstacles preventing the application of non-custodial measures more frequently?
- **Reasoning of detention decisions (Article 22):**
  - Are remand decisions typically well-reasoned and tailored to the individual circumstances of the suspect? Or do they tend to follow standard formulas?
  - How often do you encounter cases where alternative measures were not even considered by the court? What justifications are usually provided for such decisions?
- **Access to legal counsel and procedural rights (Articles 28 to 29):**
  - Do detainees have timely access to legal counsel? Are they informed of their right to a lawyer and appeal in a language they understand?
  - Are meetings between detainees and their lawyers conducted in private? Are there any barriers to confidential communication with clients?
  - How effective is the legal assistance provided in preparing defences, securing releases, or appealing decisions?
- **Periodic review and duration of pre-trial detention (Articles 23 to 25, 30 to 31):**
  - Are periodic reviews of pre-trial detention being conducted regularly? In your view, do these reviews adequately assess whether continued detention is necessary?
  - Have you encountered cases where detainees are held beyond the legal maximum duration of pre-trial detention? What are the typical reasons given for prolonging detention?
- **Special categories of detainees:**
  - For vulnerable groups (women, juveniles, foreign nationals), are there specific legal provisions or practices in place to ensure that their procedural rights are respected?
  - How often do you see foreign nationals or juveniles detained pre-trial, and are there specific barriers they face compared to other detainees?
- **Court decision timeliness:**
  - Are decisions on pre-trial detention made promptly and without undue delays? In urgent cases, do you find courts treat them with sufficient priority?

8. Work with court registries and publicly available case law

- **Analysis of remand decisions (Paragraph 22):**
  - Do remand decisions in case law typically show that alternatives to pre-trial detention were considered? Are these alternatives explicitly mentioned and justified in decisions?
  - How frequently do remand decisions refer to specific individual circumstances of the accused, such as community ties or personal conditions, when justifying detention?
- **Grounds for pre-trial detention (Paragraphs 19 to 21):**
  - Are the legal grounds for pre-trial detention (risk of absconding, reoffending, interference with justice, threat to public order) consistently applied in the case law?
  - Does the case law reflect appropriate use of detention only for offenses with a minimum custodial sentence of one year or more, as recommended?
- **Duration and review of pre-trial detention (Paragraphs 23 to 25, 30 to 31):**
  - What is the average duration of pre-trial detention according to the court registries? How does this compare with statutory time limits?
  - Does the case law indicate that the length of pre-trial detention is proportionate to the possible sentence for the alleged offense?
  - Are there documented cases where the maximum time limit for pre-trial detention has been exceeded? If so, what were the legal justifications provided by the courts?

- **Effectiveness of periodic reviews:**
  - How frequently do court records show periodic reviews of pre-trial detention decisions? Is there evidence that these reviews resulted in the release of detainees when the grounds for detention no longer applied?
  - Are there significant delays between applications for release and the court's decision on those applications?
- **Effective remedies and appeals (Articles 28–29):**
  - Does the case law provide evidence of detainees successfully appealing remand decisions? Are the appeal processes functioning as an effective remedy?
  - What proportion of appeals leads to a modification of pre-trial detention conditions or release?
- **Deduction of time spent in pre-trial detention (Article 33):**
  - Do court decisions reflect that time spent in pre-trial detention is deducted from the final sentence consistently, and does this also apply to alternative sanctions *(e.g. house arrest)?*
  - Are there any discrepancies in the treatment of detainees who spent time in pre-trial detention abroad?
- **Public transparency and access to justice:**
  - Are remand decisions and pre-trial detention-related case law publicly available and easily accessible through court registries?
  - Are there trends in the publicly available case law that reflect the judicial system's approach to handling pre-trial detention?

Annex – Checklists

NB: The following checklists are not exhaustive of all the issues an NPM should verify. Further, they are not meant as a replacement for all the questions NPMs should pose in the course of a visit as outlined in the main part of the Guide.

The general prison population

Categorisation of detainees

	Assessed when / by whom	Sources of findings and remarks for follow-up
A comprehensive initial needs and risk assessment of all detainees has been carried out		
Vulnerable detainees are immediately detected and measures are taken to avoid harm		
Detainees are accommodated in accordance with the outcome of the needs and risks assessment		
The regime of detainees is based on the needs and risk assessment		
Every sentenced prisoner has an individual sentence plan		
Risks and needs assessments are regularly updated		

Reception procedures

	Assessed when / by whom	Sources of findings and remarks for follow-up
Quarantine is not excessively long		
Detainees in quarantine enjoy the legal entitlements regarding outdoor exercise and contact with the outside world		
Material conditions in quarantine are adequate		
A formal induction procedure is in place and detainees are informed about their rights and duties, daily schedules, disciplinary regulations, avenues for complaint etc.		
Newly arrived detainees are provided with written information in a language they understand		

Treatment of detainees and complaints of ill-treatment or inter-detainee violence

	Assessed when / by whom	Sources of findings and remarks for follow-up
No detainee is subjected to physical or mental torture or inhuman or degrading treatment by staff		
No detainee is subjected to disrespectful, insulting and/or discriminatory treatment by staff		

	Assessed when / by whom	Sources of findings and remarks for follow-up
The relationship between all members of staff and detainees is positive		
No detainee is subject to inter-detainee violence		
Sufficient security staff are working at any time in the detention facility as a measure to prevent inter-detainee violence		
Staff are trained to deal with cases of inter-detainee violence		
Staff follow a protocol in cases of inter-detainee violence		
Staff work in a safe environment		
Effective internal and external complaints systems are in place for complaints of ill-treatment or inter-detainee violence		
Detainees are aware of avenues of complaint and trust in them		
Factual conditions are in place to make complaints to internal and external bodies		
The management proactively seeks a dialogue with detainees		
Every complaint about ill-treatment or inter-detainee violence has been documented, reported and investigated		
In the absence of a complaint, other indications of ill-treatment or inter-detainee violence are documented, reported and investigated		
Whistle-blower protection measures are in place		
Internal disciplinary procedures are in place to effectively deal with perpetrators of ill-treatment		
More severe cases of ill-treatment have been dealt with by the criminal justice system		

Special interventions and searches

	Assessed when / by whom	Sources of findings and remarks for follow-up
Special interventions were applied only when strictly necessary and in a proportional manner		
Staff responsible for special interventions are adequately trained and equipped		
Members of special intervention groups can be held accountable for their actions		
Special interventions are properly documented and reported		
Detainees involved in special interventions are routinely presented to a member of the health care staff for examination		
Equipment for special interventions is safely stored and in an adequate state		

	Assessed when / by whom	Sources of findings and remarks for follow-up
Body searches are conducted only when strictly necessary and in a proportional manner, based on clear criteria and guidelines		
The least intrusive form of search is always chosen		
A female member of staff is always present in the facility for searches of female detainees or visitors		
Cell searches are conducted in a manner respectful of personal space and belongings		

Material conditions

	Assessed when / by whom	Sources of findings and remarks for follow-up
The detention facility runs below its official capacity (calculated in line with international standards)		
Detainees are evenly distributed and no section of the detention facility is overcrowded		
Every detainee has an own bed, even during situations of temporary/sectoral overcrowding		
Living space per detainee is adequate in all cells		
All cells are dry and clean		
All cells are well ventilated		
All cells have sufficient access to natural and artificial light		
All cells have functioning call bells		
All cells are equipped with a sufficient number of beds, mattresses, chairs, table(s), and storage room for personal belongings		
All in-cell sanitary facilities are fully partitioned from the rest of the cell		
All cells are of an adequate temperature		
Cells are not infested with vermin or rodents		
Detainees can have regular showers		
All out-of-cell sanitary facilities (showers and toilets) are clean and provide for privacy and security of detainees		
Sufficient hot water is available for all detainees		
Detainees are provided with cleaning products to keep their cells clean		
Detainees can wash their clothes and bed linen or can have them regularly washed		
Indigent detainees receive hygiene products for free		
Communal areas are sufficiently spacious, ventilated, illuminated and clean		

	Assessed when / by whom	Sources of findings and remarks for follow-up
Courtyards are large enough to allow detainees to physically exert themselves		
Courtyards are equipped with means of rest and shelter against inclement weather		
Courtyards are equipped with additional workout equipment		
Staff work places and communal areas are adequate and clean		

Food

	Assessed when / by whom	Sources of findings and remarks for follow-up
Food is sufficient in quantity and quality		
Food is served at appropriate times		
Food is warm and appetising		
The kitchen, storage facilities and food distribution areas are hygienic and in a good state of repair		
Detainees can receive additional food items from outside, and/or buy them in the canteen at normal prices		
Detainees have unrestricted access to drinking water		

Regime

	Assessed when / by whom	Sources of findings and remarks for follow-up
Every detainee can spend *de facto* at least one hour outdoors		
A large proportion of detainees is engaged in organised daily activities, such as work, education or vocational training		
Individual sentence plans with goals and activities are drawn up, regularly updated and implemented in practice		
Sentenced prisoners are involved in the drawing up and updating of their individual sentence plans and are aware of their contents		
Working conditions for detainees meet general work safety standards		
All working detainees either work voluntarily or are remunerated for their work		
Education and vocational training are offered on a wide range of subjects		
Detainees can follow education on offer outside the detention facility and obtain certificates		
A range of sports, cultural and other leisure activities are regularly offered to detainees		

	Assessed when / by whom	Sources of findings and remarks for follow-up
The detention facility has a library equipped with a broad range of reading material		
All cells are equipped with a TV and/or radio		
Detainees can receive reading material from outside		
Detainees are allowed to play games		
A range of therapeutic and rehabilitative programmes is on offer in the detention facility		
Detainees can practice their religion in the detention facility		
Progressive/incentivised regimes are implemented in an equal and transparent manner		

Health care

	Assessed when / by whom	Sources of findings and remarks for follow-up
Equivalence of care / equity of care is guaranteed for all detainees		
Health care staff are independent of the prison administration		
Health care staff have the ultimate say in health-related matters		
Health care staff abide by standards of medical ethics, in particular medical confidentiality		
Detainees benefit from health insurance as persons in the community		
Sufficient medical staff are working in the facility		
Health care services are easily and confidentially accessible		
Staff with training in first aid are always present in the facility		
Necessary medication is available free of cost		
Medication is adequately and safely distributed		
Medical facilities are properly equipped, including with life-saving equipment		
Regular medical checks are conducted and vaccination programmes are offered		
Detainees have access to medical specialists		
A dentist and regularly visits the facility		
Detainees can be transferred to hospital or outside medical care if necessary		
A psychiatrist works at the facility or regularly comes to visit, meeting the needs of mental health care of all detainees		

	Assessed when / by whom	Sources of findings and remarks for follow-up
Substance use disorders are adequately treated		
Dignified palliative and end of life care is available		
Aftercare for released detainees is in place		

Contact with the outside world

	Assessed when / by whom	Sources of findings and remarks for follow-up
Detainees are as far as possible accommodated in facilities close to their homes and families		
Regulations on visits are in line with international standards		
All detainees can benefit from their visit entitlements		
Individual restrictions regarding visits are necessary and proportionate		
The visit facilities are appropriate		
Special visiting facilities and arrangements for family visits are in place		
Security measures vis-à-vis visitors are proportionate		
Detainees can receive visits from civil society, welfare or religious organisations		
Regulations on access to the phone are in line with international standards		
All detainees can benefit from their phone call entitlements		
Individual restrictions regarding phone calls are necessary and proportionate		
A sufficient number of phones exist in the detention facility		
Detainees can buy phone cards and indigent detainees are provided with phone cards for free		
The use of the Internet for phone or video calls is possible		
The facility offers access to the Internet for job applications, training courses or other reasons		

Legal assistance

	Assessed when / by whom	Sources of findings and remarks for follow-up
Detainees are informed about legal assistance and assisted in applying for legal aid		
Detainees can contact their lawyers and receive lawyers' visits in a confidential setting		
Detainees can access documents and laws relevant for their legal proceedings		

Disciplinary procedures and sanctions

	Assessed when / by whom	Sources of findings and remarks for follow-up
Regulations on disciplinary procedures and sanctions are in line with international standards		
Disciplinary sanctions are not excessively applied		
Disciplinary sanctions are uniformly applied		
Some disciplinary proceedings have led to the acquittal of the detainee		
Disciplinary proceedings and sanctions are properly documented		
Detainees know the disciplinary regulations		
Individual sanctions are proportionate to the infringement		
Detainees are informed of the charges in writing		
Oral disciplinary hearings are taking place		
Detainees are informed of the outcome of the procedure		
Detainees are informed of the right to appeal and to legal assistance		
Foreign detainees benefit from an interpreter if necessary		
Solitary confinement as a punishment does never exceed 14 days and cannot be applied consecutively		
Detainees undergoing a sanction of confinement to a cell are offered one hour of outdoor exercise, have access to reading material and can keep contact with their families and lawyers		
Disciplinary punishment cells are clean and of adequate size, equipped with a means of rest, properly ventilated and illuminated and of an appropriate temperature		
Disciplinary punishment cells are free of ligature points and sharp edges		
Disciplinary punishment cells have functioning call bells		
Detainees in disciplinary punishment cells have access to the toilet and are offered food and water		
Medical personnel regularly check persons in solitary confinement		
Other staff members offer appropriate human contact to persons in solitary confinement		

Security measures

	Assessed when / by whom	Sources of findings and remarks for follow-up
The concept of dynamic security is applied in the detention facility		

	Assessed when / by whom	Sources of findings and remarks for follow-up
Special means/force are not used excessively		
All instances of use of special means/force are documented and reported		
The use of special means/force is always necessary and proportionate		
All persons against special means/force were used are examined by a member of the health care staff		
Isolation as a security measure is not excessively applied		
All instances of isolations as a security measure are documented and reported		
The use of isolation as a security measure is always necessary and proportionate		
Detainees are never kept naked or inadequately dressed in isolation		
Health care staff members and other staff members regularly visit detainees in security isolation with a view to ending the measure as soon as possible		
Persons in security isolation receive medical care for any injuries they might have sustained		
The assistance of a psychiatrist is sought if isolation cannot be ended within 24 hours or if the behaviour of the detainee suggests a mental disorder		
Special security cells are clean, of an adequate size, equipped with a means of rest, ventilated and illuminated and of an appropriate temperature		
Special security cells have no ligature points or sharp edges		
Special security cells are equipped with a functioning alarm bell		
Persons held in special security cells have access to the toilet and are offered food and water		
Suicide-proof clothing is available		
Isolation for protection is not used excessively		
All instances of isolation for protection are documented and reported		
The use of protection isolation is always necessary and proportionate		
Decisions to isolate a detainee for protection are regularly reviewed		
Detainees are heard before being put in isolation for their own protection		
Detainees in involuntary protection isolation are aware of their right to appeal the decision		

	Assessed when / by whom	Sources of findings and remarks for follow-up
Staff members are regularly offering human contact to person in protection isolation		
Staff members are making efforts to identify other detainees with whom a person in protection isolation could safely associate		

Complaints and requests

	Assessed when / by whom	Sources of findings and remarks for follow-up
Detainees are informed about the existing internal and external avenues of complaint		
The management is proactive in the collection of complaints		
All complaints to the management are registered and responded to		
All justified complaints to the management are followed up		
All complaints wrongly addressed to the management are forwarded to the competent body		
Detainees have trust in the internal complaints system		

Pre-trial detainees

	Assessed when / by whom	Sources of findings and remarks for follow-up
A thorough medical examination of every newly arrived detainee has taken place within 24 hours after arrival at the detention facility		
The medical entry examination has been conducted in full confidentiality		
Health care staff are aware of their reporting obligations in case they detect signs of police ill-treatment		
All injuries detected on newly arrived detainees and all complaints of police ill-treatment are reported to the relevant authorities		
Pre-trial detainees are as a rule separated from sentenced prisoners		
All pre-trial detainees are afforded the legally foreseen living space per detainee, in line with international standards		
Material conditions in units for pre-trial detainees are of an adequate standard		
Within the limits of court-imposed restrictions, the detention facility does not further limit the regime of pre-trial detainees		
Pre-trial detainees get the same amount of out-of-cell time as sentenced prisoners		

	Assessed when / by whom	Sources of findings and remarks for follow-up
A large proportion of pre-trial detainees are engaged in purposeful activities		
Within the limits of court-imposed restrictions, the detention facility does not further limit contact with the outside world of pre-trial detainees		
Solitary confinement of pre-trial detainees is solely based on court order, necessary and proportionate		
Measures are taken to alleviate the negative effects of solitary confinement on pre-trial detainees		

Women and girls

	Assessed when / by whom	Sources of findings and remarks for follow-up
Women are accommodated in facilities or units specifically designed for them		
Women are held in facilities close to their homes and families		
Admission procedures and initial health examinations are adapted to address the specific needs and vulnerabilities of women		
Women detainees are strictly separated from male detainees		
The ratio between female and male security staff guarantees that there are always sufficient female staff members on duty		
The management reacts promptly and adequately to reports of sexual harassment or abuse		
Whistle-blower protection measures are in place for staff who wish to denounce sexual abuse		
Male staff members do not enter women's cells and sanitary facilities		
Women detainees are afforded the legally foreseen living space per detainee, in line with international standards		
Material conditions in cells for women detainees are adequate		
The detention facility provides sanitary pads and other hygiene products for women		
A female doctor is available		
The detention facility is regularly visited by a gynaecologist and a paediatrician		
The detention facility provides psychological support for women who were victims of domestic violence or other adverse life experiences		

	Assessed when / by whom	Sources of findings and remarks for follow-up
Accommodation areas are suitable for babies and young children		
Child care facilities with trained staff members are in place		
Detained mothers of children outside detention benefit from social service support		
Pregnant and breastfeeding detainees receive a special diet		
Food is adapted to cater for babies and little children		
The detention facility provides diapers and other hygiene products for babies		
Special facilities for family visits and visits with children are in place		
The prison authorities take compensatory measures in case a woman's family lives far from the facility		
Women are entitled to conjugal visits		
Girls are kept separate from adult women and boys, unless this would result in *de-facto* solitary confinement		
Girls who are held together with adult women are always supervised by staff		
Girls held in an adult women's facility have the same access to education and additional services as male children detainees		
If exceptionally women or girls are held in *de-facto* solitary confinement, measures are taken to counteract its negative effects		

Foreign detainees and detainees belonging to national minorities

	Assessed when / by whom	Sources of findings and remarks for follow-up
Foreign detainees are placed in accordance with their specific needs and vulnerabilities		
A proportion of staff members have command of the languages most often spoken by foreign detainees		
If necessary, the detention facility can get the services of an interpreter		
Foreign detainees are offered language courses to overcome the language barrier		
Information brochures and other documents are available in a variety of different languages		
Foreign detainees benefit from regular contact with the outside world		
Cultural and religious diversities of foreign detainees are respected, including with respect to food		

	Assessed when / by whom	Sources of findings and remarks for follow-up
Discrimination based on nationality or ethnic origin does not occur in the detention facility		
Staff of different ethnic origins represented in the country are employed		

Children and young adults in detention

	Assessed when / by whom	Sources of findings and remarks for follow-up
The children's best interest is always a primary consideration in all decisions taken		
Children are accommodated in facilities specially designed for the purpose and suited to their needs		
Children are strictly separated from adult detainees		
Children are accommodated to guarantee their safety, including by division into appropriate age groups		
Children are enabled to keep regular contact with their families		
A wide range of organised activities is in place for children in detention		
All children detainees are engaged in purposeful activities		
The disciplinary punishment system is adapted to children		
Disciplinary punishments are not used excessively against children		
Children are never corporally punished		
Staff members dealing with children have received sufficient training to work with this age group		
Young adults in detention can in principle benefit from a regime comparable to the one for children		
Special arrangements are in place to provide for care of girl children in detention		

Detainees with disabilities or serious medical conditions

	Assessed when / by whom	Sources of findings and remarks for follow-up
Equivalence of care is guaranteed for all detainees		
No person is detained in the facility who is so severely ill that they require transfer to a proper health care facility		
Sufficient staff are employed to meet all health care needs		
Additional care measures and therapies as needed are offered		
Segregation measures for persons with serious medical conditions are appropriate		

	Assessed when / by whom	Sources of findings and remarks for follow-up
Detainees with disabilities are placed in accordance with their specific needs and vulnerabilities		
Material conditions in cells for detainees with disabilities are adapted for their needs		
Detainees with disabilities or serious medical conditions are enabled to take part in prison life		
Detainees with disabilities or serious medical conditions get at least one hour of outdoor exercise		

Detainees in high security settings

	Assessed when / by whom	Sources of findings and remarks for follow-up
High security placements are not excessively used		
A comprehensive individual risk assessment has been carried out for each detainee placed in high security		
Detainees in high security settings are aware of their rights, including the right to appeal their placement		
Placement decisions in high security settings are regularly reviewed		
Each detainee in high security has an individual sentence plan that sets out the conditions for re-integration into the mainstream prison population		
Detainees in high security are aware of the conditions they have to fulfil to be re-integrated into the mainstream prison population		
Measures and programmes are in place to support detainees in high security to re-integrate		
Material conditions in high security settings are of an adequate standard		
Restrictions on the regime, contact with the outside world and additional security measures are uniformly applied in high security settings, in accordance with the law		
Any further restrictions and security measures on individual high security detainees have a legal basis, are necessary and proportionate		
Solitary confinement is not excessively used		
All instances of solitary confinement are documented and reported		
The use of solitary confinement is always necessary and proportionate		
Decisions to put detainees in solitary confinement are regularly reviewed		
Detainees are heard before being put in solitary confinement		

	Assessed when / by whom	Sources of findings and remarks for follow-up
Detainees in solitary confinement are aware of their right to appeal the decision		
Staff members are regularly offering human contact to person in solitary confinement		
Staff members are making efforts to identify other detainees with whom a person in solitary confinement could safely associate		

LGBTI+ persons

	Assessed when / by whom	Sources of findings and remarks for follow-up
LGBTI+ persons in detention have the same (privacy and family) rights as in the outside community		
Transgender persons are in principle - after an individual assessment and a hearing of the person concerned- accommodated in a facility corresponding to the gender they identify with		
Reception and placement procedures are mindful of specific vulnerabilities of LGBTI+ persons		
Protective isolation for LGBTI+ persons is used only as a last resort		
Situations of de facto solitary confinement of LGBTI+ persons are avoided		
LGBTI+ persons are not discriminated, ill-treated or subject to inter-detainee violence		
Staff are adequately trained		
Pro-active measures are in place to tackle homophobia, transphobia or similar		
Specific protocols are in place to guarantee that body searches respect the dignity of transgender persons		
Health care is adapted to the needs of LGBTI+ persons		

Special situations in detention facilities

Radicalisation

	Assessed when / by whom	Sources of findings and remarks for follow-up
The initial risk and needs assessment is mindful of radicalisation issues		
Regular risk and needs assessments are carried out with regard to detainees suspected or convicted of terrorist and violent extremist offences		

	Assessed when / by whom	Sources of findings and remarks for follow-up
Staff are adequately trained to recognise radicalisation at an early stage		
Prison chaplains representing a variety of religions are provided		

Deaths in detention facilities

	Assessed when / by whom	Sources of findings and remarks for follow-up
All deaths in detention facilities or of detainees in hospital have been documented and reported		
All deaths in detention facilities or of detainees in hospital have been subject to an official inquiry		
Family members of deceased detainees have been promptly informed		
Every death is followed by an internal lessons-learned analysis		

Corruption in detention facilities

	Assessed when / by whom	Sources of findings and remarks for follow-up
Measures are in place to prevent, deter and punish corruption by staff		
No detainee has to pay for services and privileges foreseen by law		
Placement in specific cells is solely decided on the basis of legal criteria		
Contraband is rarely found in the facility		
All staff members are as diligently searched as any other person entering the detention facility		
Whistle-blower protection measures are in place for staff members who want to denounce corruption		

Dealing with self-harm, suicide attempts and hunger strike

	Assessed when / by whom	Sources of findings and remarks for follow-up
Self-harm, suicide attempts or hunger strike are a rare occurrence in the detention facility		
Protocols are in place on how to deal with self-harm, suicide attempts and hunger strike		
Staff members are aware of these protocols and apply them in practice		

Relevant international laws and standards:

- Article 8 ECHR
- Rules 23.1-23.6 of the revised European Prison Rules 2020
- Rule 53 and 61 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)

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