

Prison conditions in the Member States: selected European standards and best practices

1. INTRODUCTION

In 2014, prisons across the EU were holding over half a million inmates,¹ including both convicted persons, serving their final sentence, and persons accused of a crime. Living conditions in prisons are regulated by numerous laws and guidelines: from constitutional provisions to national criminal and penitentiary laws and international law principles. Relevant human rights provisions include, in particular, those protecting the right to personal liberty and clarifying the grounds on which it may be restricted (for instance Art. 5, ECHR; Art. 6, EU Charter of Fundamental Rights), and those prohibiting torture and other forms of inhumane and degrading treatment or punishment (Art. 3, ECHR; Art. 4, EU Charter).² These rules, as interpreted by the competent courts, clarify the grounds on which deprivation of liberty may be based and the minimum standards that detention conditions must comply with: the European Court of Human Rights (ECtHR) has in numerous cases held that poor detention conditions can amount to an infringement of Art. 3, ECHR.³

Both fundamental rights standards and broadly agreed criminal justice principles point to the conclusion that imprisonment should only be used as a measure of last resort, in response to serious crimes (as it entails deprivation of the fundamental right to liberty), and particularly so when it comes to pre-trial detention.⁴ Criminal detention following a conviction is generally agreed to serve the goal of promoting the social reintegration of the sentenced person, thus helping to prevent reoffending.⁵ On the other hand, pre-trial detention should only be used exceptionally, in full respect for the right to be presumed innocent until proven guilty (Art. 48, EU Charter; Art. 6, ECHR); yet, it is still largely imposed in Member States, with over 20% of the total prison population in 2014 being made up of pre-trial detainees.⁶

While prison conditions are mainly a responsibility of Member States, the European Union also has reasons to deal with them, as clarified by the European Commission in its 2011 Green Paper⁷ and as stated in the 2010 [Stockholm Programme](#) and in many European Parliament Resolutions.⁸ In order to promote mutual trust, judicial cooperation, and the proper functioning of mutual recognition tools in the criminal law area (Art. 82, TFEU), it is essential to ensure that satisfactory detention conditions exist in all Member States. As the Commission and the Parliament expressly stated, and as was examined in several recent studies,⁹ without mutual confidence in the area of detention, EU mutual recognition instruments that have a bearing on imprisonment will not work properly. In particular, national prison conditions may affect the application of the Framework Decisions on the European Arrest Warrant (EAW); on the transfer of prisoners; on mutual recognition of probation decisions and alternative sanctions; and on the European Supervision Order.¹⁰ If prison conditions in a Member State are deemed to be inhumane or degrading, arrest warrants and transfers of prisoners to that Member State might not be executed, as doing so might amount to a violation of the ECHR and the EU Charter.¹¹ This line of reasoning has recently been applied to the EAW by the Court of Justice's judgment in the [Aranyosi and Căldăraru](#) cases,¹² in which the Court found that execution of a EAW may be postponed, and ultimately refused, if the person concerned would be at risk of inhumane or degrading treatment due to the detention conditions to which he or she would be subjected if surrendered to the issuing Member State.

2. MONITORING MECHANISMS TO PREVENT TORTURE AND ILL-TREATMENT

Several mechanisms have been created, in Europe and worldwide, to monitor detention conditions in prisons, as well as in other types of closed facilities (for instance, psychiatric hospitals and immigration centres). Such mechanisms are meant as a tool to prevent torture and ill-treatment of detainees, and, more generally, to verify detention conditions at any given time. In particular, the 1987 Council of Europe's [Convention](#) for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment created a monitoring mechanism, the European Committee that goes under the same name (hereinafter CPT), which is empowered to visit any place within the jurisdiction of the States parties where persons are deprived of their liberty by a public authority. The CPT is a preventive mechanism against torture and inhumane treatment; it thus monitors both the active behaviour of law enforcement authorities, collecting allegations of violence and abuses, and the factual conditions of prisons and other detention institutions, verifying whether they comply with the [standards](#) that the CPT itself has developed over time. All 28 EU Member States are parties to the Convention and therefore subject to the monitoring mechanism it establishes. Additionally, the [European Prison Rules](#) (examined below) recommend the inspection of prisons both by governmental agencies and by independent bodies (Rules 92-93).

The creation of the CPT, and its role in monitoring detention conditions, has set a model in the international legal arena – thus, in 2002, an [Optional Protocol](#) to the UN Convention against Torture was adopted, creating a similar monitoring mechanism through regular visits in detention centres. The Optional Protocol establishes an obligation, for States parties, to set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture – the national preventive mechanisms (NPMs). Most EU Member States are parties to the Optional Protocol and have therefore established NPMs.¹³

3. SELECTED EUROPEAN STANDARDS AND RULES

Introduction

Standards and rules concerning the treatment of persons deprived of their liberty have been developed both in the European context and at the international level. International soft law instruments include, among others, the Standard Minimum Rules for the Treatment of Prisoners – first adopted in 1955, and updated in 2015 under the new name of '[Nelson Mandela Rules](#)'; and the 1990 UN Rules for the [Protection of Juveniles Deprived of their Liberty](#). Since this briefing is concerned mainly with European issues, the focus of this section will be on European standards – it is important however to stress that these are in line with international standards, but are more specific and adapted to the European regional context.

The European Prison Rules

The [European Prison Rules](#), first adopted in 1987, and amended in 2006, are a set of recommendations emanating from the Committee of Ministers of the Council of Europe: as such, they are not binding, but have been endorsed politically by the CoE, as well as in several EU documents.¹⁴ They are complemented by an official [Commentary](#).

The starting point of these recommendations is that no one is to be deprived of liberty save as a measure of last resort and in accordance with a procedure prescribed by law; restrictions placed on prisoners must be limited to those strictly necessary and proportionate, and detention is to be managed so as to facilitate prisoners' reintegration. The rules include detailed provisions, firstly, on conditions of imprisonment: on admission (only with a valid commitment order, to be recorded together with information on any visible evidence or allegation of ill-treatment, and to be followed by a medical examination); allocation and accommodation (including the requirement of separating untried prisoners from sentenced ones, males from females, and young adults from older ones, and with a strong preference

for accommodation in single cells at night); hygiene; clothing and bedding; nutrition; legal advice; contact with the outside world; prison regimes; work (always to be remunerated equitably); exercise and recreation; education; freedom of thought, conscience and religion; and many more details of life in prison. Specific provisions are dedicated to foreign prisoners, to women and children detainees, as well as to infants (who may only stay in prison, with a parent, if it is in their best interest). The rules also include specific sections dedicated to health; to good order (including rules on searches and on the use of force); to management and staff; and to inspections and visits (including a recommendation to set up an independent monitoring body). The two final sections provide for special safeguards applicable to untried prisoners held in pre-trial detention, and a description of the special regime for tried prisoners, whose objective must be to enable them to lead a responsible and crime-free life through individual sentence plans that can include elements such as work and education.

The CPT Standards

The Committee for the Prevention of Torture has, over time, developed very detailed standards concerning detention conditions, as well as good practices that are meant to reduce the risk of detainees being subjected to torture or other degrading treatment.

Some guidelines specifically address **overcrowding**: this is a very common issue in European prisons, leading to negative consequences for inmates' privacy, out-of-cell activities, healthcare and peace and safety.¹⁵ The CPT has therefore determined the exact minimum amount of space that each prison inmate must be afforded in a cell. According to the CPT, the [minimum standard for personal living space in prison establishments](#) is: 6m² of living space (plus sanitary facility) for a single-occupancy cell, or 4m² per prisoner (plus fully-partitioned sanitary facility) in a multiple-occupancy cell; moreover, the walls of the cell must be at least 2m from each other, and the ceiling at least 2.5m from the floor.¹⁶ These standards are, however, meant to be a bare minimum: in the same report, the CPT encourages States parties, especially when building new prisons, to follow the *desirable* standards (at least 10m² for a cell hosting two prisoners, 14m² for a cell hosting three, and so on).

The CPT has also published its [general standards](#), which have emerged from its visit and annual reports. These include guidelines applicable not only in prisons, but also when a person is initially detained by the police,¹⁷ as well as in other detention centres. As regards prison conditions, the CPT has developed standards meant, i.a., to reduce the risks of inter-prisoner violence, to lower the risks of ill-treatment in high security facilities, and to ensure access to natural light and fresh air. Moreover, the standards deal specifically with the issue of solitary confinement and of the adverse effects it can have on a person's health, if protracted, and with the problems arising from use of large capacity dormitories, which the CPT is strongly critical of (due to its impact on prisoners' privacy and to the increased risk of inter-prisoner violence). The standards also include a set of recommendations as regards access to quality healthcare, of a level equivalent to that granted to out-of-prison citizens, including preventative medicine and measures to prevent the spreading of transmissible diseases. The standards also address the specific situation of life-sentenced and other long-term prisoners; of juveniles; and of women imprisoned.

The ECtHR case-law

The European Court of Human Rights has developed its case-law on detention conditions mostly on the basis of Art. 3 ECHR (prohibition of degrading and inhumane treatment or punishment), often building on the standards set out by the CPT.¹⁸ According to the Court, violations of Art. 3 may arise not only by positive acts of ill-treatment and violence by State authorities over prisoners, but also through the imposition of degrading detention conditions, or through lack of action in the face of allegations of ill-treatment between prisoners. Thus, for instance, the situation of prisoners held in overcrowded, dilapidated prison facilities, with too little living space and insufficient privacy, can be considered a violation of Art. 3, regardless of the fact that the authorities never intended to humiliate the prisoners.

According to the Court's case-law, a violation of Art. 3 must be assessed on a case-by-case basis: thus, cells offering less than 3m² of personal living space to each occupant give rise to a strong (albeit still rebuttable) presumption of a violation, but even a living space exceeding this threshold may be considered insufficient, taking into account all other relevant elements (such as the time that the inmates spend in their cell every day, their access to natural light and air when in the cell, and the overall condition of the cell). Public authorities may also be held responsible for ill-treatment by other prisoners: in such cases, the authorities have a positive obligation, firstly, to secure the physical and psychological integrity and well-being of the prisoners; and secondly, to adequately investigate the case. Additional case-law concerns for instance solitary confinement and strip searches of prisoners.¹⁹

Moreover, the Court has stressed that "prisoners in general continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention, save for the right to liberty". Therefore, they continue to enjoy the rights to family life, to marry, to freedom of expression, to practise their religion, to access to a lawyer or court, and to respect for correspondence. Any restrictions on these rights must be justified, although such justification may well be found in the considerations of security, in particular the prevention of crime and disorder, which inevitably flow from the circumstances of imprisonment.²⁰

The Court has also used the new procedure of "pilot judgments"²¹ for cases concerning detention conditions in some States parties: in particular, such judgments have involved the penitentiary systems of Russia, Italy, Bulgaria and Hungary, as well as the psychiatric detention system of Belgium.²² All these cases arose from a situation of generalised overcrowding of facilities, leading to lack of personal space, lack of privacy when using sanitary facilities, and reduced access to outdoor space or showers; therefore, the Court found that the applications pointed to the existence of structural and systematic problems, whose resolution required general action on the part of the State authorities. Another pilot judgment concerning detention conditions relates to prisoners voting rights.²³

Other relevant standards and rules

The Committee of Ministers of the Council of Europe has adopted numerous recommendations dealing with the situation of prisoners, and more generally with the execution of criminal sentences. Some of the most relevant ones include: the [Council of Europe Probation Rules](#), which examine the concept of probation and the variety of probation measures available in the States parties, and include recommendations as to the establishment and proper functioning of probation agencies; the [European Rules for juvenile offenders subject to sanctions or measures](#), which aim to safeguard the rights and safety of juvenile offenders and to promote their well-being; the [Recommendation on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse](#), which examines the issues arising from pre-trial detention; the [Recommendation concerning foreign prisoners](#); the [European Code of Ethics for Prison Staff](#); the [Recommendation on the European rules on community sanctions and measures](#); and the [Guidelines for prison and probation services regarding radicalisation and violent extremism](#). All relevant recommendations are available on the Council of Europe [website](#).

4. A SELECTION OF COMMON PROBLEMS AND BEST PRACTICES

Overcrowding

Overcrowding has long been a problem in most prisons across the world, and its negative consequences have been repeatedly examined.²⁴ Indeed, it is not just a matter of living space per inmate, and of inmates' privacy: it also tends to mean a reduction in the quality of the services offered to them, as it puts a strain on prison capacity and staff. There are - in general terms - two possible responses to the issue: increasing prisons' capacity by building more prisons or enlarging existing ones, or reducing the number of prison inmates through penal reforms, amnesties, or early release programmes. Internationally, there is broad agreement

that increasing prisons' capacity is never, alone, a solution, as the prison population tends to rise together with its capacity; broader criminal and penitentiary reforms (not limited to temporary measures, such as amnesties, which have short-term effects only) are therefore also needed in order to reduce overcrowding.²⁵ In this context, it is important to be aware of the types of crimes committed by most sentenced prisoners, to understand which offences lead to such overcrowding. Across the Council of Europe States, on average, 17.6% of inmates committed drug offences, followed by 16.1% who committed theft and 13.4% robbery, 13.6% who attempted or perpetrated homicide, 8.8% convicted for battery and assault, and 7.9% for sexual crimes.²⁶

In 1999, the CoE's Committee of Ministers adopted [Recommendation \(99\) 22](#) concerning prison overcrowding and prison population inflation, in which it addressed possible solutions to structural overcrowding. Recommended measures include: ensuring that deprivation of liberty is used as a last resort, only for serious offences for which any other sanction would appear inadequate; ensuring a rational distribution of prison inmates; providing for and ensuring full application of alternatives to detention; and decriminalising certain types of offences or ensuring that they do not carry custodial sentences. Specifically, Member States faced with a situation of overcrowding are encouraged to set maximum capacity levels for penal institutions and to pay attention to the amount of space available to prisoners, to hygiene and sanitation, food and healthcare, outdoor exercise and contacts with families. Moreover, the Recommendation encourages limiting the use of pre-trial custody, in particular by making adequate use of alternatives.²⁷ As regards post-conviction detention, the CoE recommended reducing long sentences and envisaging alternative non-custodial measures for short sentences, so as to reduce entry flows into prisons:²⁸ in particular, use of conditional release (parole) is encouraged as one of the most effective alternative measures.

In May 2016, the CoE's European Committee on Crime Problems issued a [White Paper on prison overcrowding](#); the document builds on recommendation (99) 22 to develop further recommendations. Firstly, although past experience proves that building new prisons does not solve overcrowding, where prisons are old and in bad conditions building new ones, conforming to better standards, is always necessary. The White paper addresses the root causes of prison overcrowding and sketches the general principles that should serve as a guide in reducing it: considering deprivation of liberty as a measure of last resort; fixing by law its maximum length; avoiding automatic imprisonment (both in the pre-trial phase, and as a consequence of a conviction carrying with it a mandatory prison sentence); providing by law for rules on early release from prisons; and providing for release on compassionate grounds of seriously ill prisoners.²⁹ National practices as regards discretionary prosecution or diversion from prosecution (e.g. through victim-offender mediation or victim compensation) are also assessed positively. More broadly, the White paper recommends carrying out regular assessments of the criminal justice system and considering decriminalisation, decreasing the length of certain penalties, and substituting custodial measures with community sanctions. Prevention programmes should also be put in place to prevent crime and recidivism, including programmes to treat substance abuse, to teach aggression management, and to improve educational and employment skills. The White paper also describes good practices and improvements made by some Member States as a reaction to the ECtHR's pilot judgments on detention conditions, which include many of the measures listed above, as well as the introduction of judicial remedies allowing prisoners to litigate over prison conditions.³⁰

Recommendations on reducing prison overcrowding have also been drafted by the [UN Office on Drugs and Crime](#) - the solutions proposed are very similar to those suggested on the European level, but also include developing fair sentencing policies, improving the efficiency of the criminal justice system, and ensuring post-release support and the promotion of social reintegration to reduce recidivism (with the ensuing "revolving doors" effect, leading to the same persons being imprisoned over and over again).³¹

Additionally, some States have specific provisions in place to prevent overcrowding, so that convicted persons may not be admitted to prison unless there is adequate space for them;

this led, in the past, to the practice of having “waiting lists” for prisoners (for instance, in the Netherlands and in Norway) or of replacing custodial sentences with alternative measures.³²

Pre-trial detention also has a big impact on the overcrowding of prisons. To reduce the number of pre-trial detainees, so as to reduce overcrowding and also to ensure better respect of the presumption of innocence, it would be necessary to make better use of non-custodial alternatives and to speed up trials: often, high numbers of pre-trial detainees are linked to lengthy criminal procedures, leading to the protracted detention of suspects. Thus, criminal procedure reforms are also needed to reduce both the use of pre-trial detention and its length; such reforms could include giving priority to trials involving persons held in pre-trial detention, and ensuring better implementation of the principle according to which pre-trial detention should be reviewed at regular intervals to assess whether it remains justified, as suggested by the CoE [Rules on the use of remand in custody](#).³³

Alternatives to detention and non-custodial measures

Use of non-custodial measures as an alternative to detention is relevant both as a means to reduce prison overcrowding, as mentioned above, and as a tool to facilitate the **social reintegration** of convicted persons and thus to reduce **recidivism**.³⁴ However, research seems to show that such positive effects only follow when the use of alternatives to detention forms part of a broader strategy of structural penal reforms, including decriminalisation and diverting strategies: the introduction of alternatives, alone, can actually have the opposite effect of increasing the prison population, due to the so-called “net-widening” effect.³⁵

Non-custodial measures may be applied to convicted prisoners (allowing them to serve a short-time sentence, or the final part of a long-time sentence, outside prison) and to accused persons, as an alternative to pre-trial detention.³⁶ They may be foreseen by law as the reference punishment for a crime (*peine principale*), as an alternative to a custodial sentence, which the judge has the discretion to apply, or as a substitute for the enforcement of a custodial sentence.³⁷ Alternative measures are deemed to be particularly appropriate for certain groups of detainees, for whom imprisonment is considered as especially harmful, including children, drug users, mentally ill persons, and women.³⁸

Recommendations have been developed as regards the **initial introduction** of alternative measures. In order for them to function properly, it is essential to foster public support, for instance by stressing their reduced costs and rehabilitative effect when compared to imprisonment. Moreover, they must be properly designed and targeted; the judiciary must be fully involved in their design and implementation; and their implementation must be ensured through the creation of appropriate infrastructures to supervise it (including the allocation of sufficient numbers of probation staff, and the adoption of measures to increase support by the local communities where they are implemented).³⁹

The recent FRA study on [Criminal detention and alternatives](#) examines the alternative measures that currently exist in EU Member States, as regards both pre-trial and post-trial detention. Generally applicable measures include restrictions on movement, community service and communication restrictions or removal orders.⁴⁰ The European Prison Observatory has also published a [study](#) to examine existing alternatives to prison and best practices related to their implementation in 8 EU Member States. The main finding of the study is that the use of community sanctions is growing, but such sanctions are less focused on rehabilitation and individual support and focus instead on ensuring greater control. Identified good practices include those involving diverting persons suffering from mental health problems or substance abuse from prisons (for instance by replacing criminal detention for certain conducts with therapeutic treatment, or by deferring sentencing to enable the person to be treated); extended use of pre-trial probation; a presumption against short term custodial sentences; and broader reforms to decriminalise, or reduce sentencing for, certain conducts.

More specifically as regards **pre-trial detention** and alternatives to its use, Fair Trials International recently carried out a [study](#) to examine the issue in Member States. While the findings of this study are worrisome, as the organisation concludes that in many Member

States practice shows a clear preference for detention, it also highlights several good practices applied in certain states, including supervision via mobile phones or the regular provision of independent reports to substantiate the absence of any grounds for pre-trial detention. Specific good practices are examined in the ten national reports annexed to the study.

Another [study](#) carried out by the European Prison Observatory examined the actual use of alternatives to detention and their **impact in reducing prison population**. The study takes into account the Council of Europe [Probation Rules](#) and examines national practices in their light. It concludes that, with some relevant exceptions (Spain and Italy's recent experiences), there is no clear connection between the increasing use of alternatives to imprisonment and a reduction in the prison population. However, although based on limited data for two Member States only (Italy and Latvia), the research also points to a reduced recidivism rate among persons subjected to alternative sanctions in comparison to convicted persons who serve the whole sentence in prison. This finding implies a positive impact of alternatives in reducing prison overcrowding by decreasing the "revolving door" effect of imprisonment. This conclusion is supported by other [research](#), according to which there is some evidence of lower reoffending rates for persons subjected to community measures, and good evidence of less serious crimes committed by those reoffending.⁴¹ Empirical studies also stress the importance of interventions aimed at assisting probationers in finding employment and in mending damaged family relationships. This is because improving social relations (including by disassociating probationers from peers) is particularly important in reducing reoffending rates.⁴² These studies seem to indicate the need to recalibrate services offered during probation, so as to ensure that they are well-adapted to help prisoners reintegrate.

General prison conditions

While overcrowding is one of the most relevant problems affecting prisons in Europe, it is essential to keep in mind that standards relating to prison conditions include much more than mere rules on minimum living space. Indeed, the [European Prison Rules](#), to cite one example, provide for specific standards relating to a variety of issues, from food to healthcare, from hygiene to outdoor exercise. Similar standards are also included in the UN 'Nelson Mandela Rules'.

In 2013, the European Prison Observatory carried out two studies providing an **overview** of prison conditions in Europe and a selection of interesting practices in prisons management.⁴³ According to both studies, many of the recommendations of the **European Prison Rules are not widely respected** in the Member States examined. Thus, for instance, hygiene standards are often breached, as access to showers is not always guaranteed, hot water may not be available, and sanitary facilities often do not allow for any privacy. Moreover, prisoners may not receive the toiletries they need to wash. Healthcare services also tend to be sub-standard, and are often provided by different authorities than those responsible for the general public; the number of practitioners serving in prisons is often insufficient, or covers an insufficient number of hours, sometimes leading to long delays in accessing urgent services and even to frequent recourse to untrained staff (prison staff, or other inmates) for nursing activities. Vocational training is also frequently insufficient, while opportunities to work are very limited, and often far from being useful for reintegration purposes, as jobs offered in prison tend to be unqualified and repetitive, and very different from the reality of outside work. Moreover, work is not always paid, and even when it is, the salary levels tend to be much lower than in the outside world.⁴⁴ The studies however also identify a number of **good practices**. These include the Assisted Prison Visits Scheme in England and Wales (which provides financial assistance to prisoners' close relatives who visit them, thus ensuring better respect for the right to maintain contacts with families); the building of separate visiting areas for family members (ensuring full privacy) in France; the setting up of prison university centres in Poland and Italy; the User Voice Prison Council in England and Wales (which brings some elements of representative democracy in prisons, improving prisoners' sense of responsibility); and the setting up of polling stations in prisons, to ensure respect of prisoners' right to vote in practice in Poland. Research has also stressed the importance of education

programmes carried out in prisons, meeting the educational needs of prison inmates. Several such programmes already exist and are carried out with the support of EU funds.⁴⁵

Healthcare in prisons is also a matter of concern. The general principle is that prisoners should enjoy an equivalent standard of care to persons outside prisons, yet their needs tend to be greater than those of free persons, as they often led a marginalised life before entry to prison and as imprisonment may put a strain on their mental health and physical well-being.⁴⁶ Specific attention has recently been paid to treatment and prevention of the spread of certain contagious diseases, including HIV/AIDS,⁴⁷ and to the treatment of drug users and drug addicts in prisons, where drug use rates are much higher than among the general population.⁴⁸ Moreover, recommendations exist as regards the treatment of prisoners on hunger strike, and there is extensive ECtHR case-law addressing prisoners' right to health.⁴⁹

Another essential element, when looking at prison conditions, is whether **individual sentence plans** are offered, and if so, whether they are properly designed and adequately implemented, so that the regime they foresee is truly designed to enable detainees to lead a responsible and crime-free life ([European Prison Rules](#), 102 ff.). The plans should include work, education, and activities in preparation for release - the European Prison Rules thus make a link between activities offered to detainees while in prison and their social reintegration. According to [UNODC](#), **reintegration programmes** developed in prisons should be based on an individualised assessment of needs and treatment. UNODC lists among the elements that can be useful to ensure reintegration outdoor contacts, physical and mental health care, drug dependence treatment, and programmes to change behaviour and attitudes (including anger management, relapse prevention, but also more broadly, opportunities to become active citizens e.g. through work or volunteering). Programmes should also be specifically adapted during the **pre-release stage**, to facilitate reintegration upon release.⁵⁰

The **training of prison staff** is also essential to ensure good detention conditions in prisons. At the international level, several Handbooks have been developed for prison staff and leaders, focusing in particular on the human rights of detainees.⁵¹ Moreover, the Council of Europe has issued a Recommendation on the [European Code of Ethics for Prison Staff](#), and it regularly organises [Conferences of Directors of Prison Administration](#), where information and good practices can be shared.

Specific recommendations exist addressing prison conditions for **vulnerable prisoners**, both in general, and for specific categories of particularly vulnerable detainees (including children, women, LGBT, foreigners, and physically and mentally ill and elderly inmates).

Imprisonment is particularly harmful to **persons with mental disabilities**. Mental health conditions are poorer among prisoners than in the wider community, and suicide rates are higher;⁵² yet, mentally ill persons sometimes end up in prisons simply due to the absence of adequate services outside.⁵³ According to the ECtHR's case-law, inadequate treatment of mentally ill prisoners can amount to a violation of Art. 3, but also, particularly in case of suicidal prisoners, of Art. 2 (right to life).⁵⁴ [UNODC](#) recommendations include applying alternative measures to facilitate medical treatment; better prison management (including by ensuring the presence of qualified medical staff); and adequate health screening of persons admitted into prison, so that their disorders do not go undiagnosed, untreated, or inadequately treated. According to the [WHO and the ICRC](#), the current and frequent strategy of building psychiatric wings in prisons is both expensive and ineffective, as it drains resources from more effective forms of treatment. Better strategies would include: diverting people with mental disorders from the criminal justice system to the mental health system; providing those in prison with appropriate treatment (including psychosocial support, medication, and admission to general hospitals' psychiatric wards to treat acute cases); and better training of staff. Researchers also stress that inadequate release planning often leads to insufficient psychiatric after-care of released prisoners, which in turn increases the risk of relapsing and re-offending.⁵⁵ Improving after-care is therefore essential.

The situation of **children** in prisons is the subject of numerous rules. Art. 37 of the UN Child Rights Convention provides that children should only be deprived of their liberty "as a measure

of last resort and for the shortest appropriate period of time” and that they “shall be separated from adults” unless it is in their best interest not to do so. [Directive \(EU\) 2016/800](#) on procedural safeguards for children includes a preference for the use of alternative measures: detention is only to be applied to children as a last resort, and with numerous special guarantees. The International Center for Prison Studies has developed guidelines regarding the treatment of children in prisons, and the UN Committee on the Rights of the Child has addressed children’s rights in juvenile justice in its General Comment n. 10⁵⁶. The CoE Committee of Ministers has also adopted the [European Rules for juvenile offenders](#) subject to sanctions or measures. A selection of best practices as regards use of [alternatives to detention for juvenile offenders](#) has been published by the International Juvenile Justice Observatory.

Guidelines have also been developed with regard to **women** in prisons, as research has highlighted the negative impact of detention on women’s health.⁵⁷ Women should enjoy equal access to services as men, yet they are often held in unsuitable prisons, with limited if any access to vocational and educational activities, to work, or to healthcare adapted to their needs. They are also often held in a level of security higher than needed.⁵⁸ The European Parliament has addressed the situation of women in prisons and the impact of imprisonment on **detainees’ children** in its 2008 [Resolution](#) on this topic.⁵⁹ Research shows that a parent’s imprisonment can have an adverse impact on his or her children, and therefore specific programmes should be designed to reduce this impact.⁶⁰ Numerous best practices already exist on the detention of mothers (and, to a more limited extent, fathers) of infants and very young children. Such practices range from making increased use of alternatives to detention to postponing detention till sometime after the woman’s giving birth, from allowing home detention or day release to admitting infants with their mothers in specially adapted prisons.⁶¹

Another category of prisoners to which specific attention has been paid is that of **foreign prisoners**. According to CoE [data](#) for 2014, on average over 20% of prison inmates across Europe are foreigners. Recent [research](#) shows that foreigners are more often subjected to pre-trial detention, as they are more easily deemed at risk of absconding and, in some countries, they may be excluded from the application of alternative measures due to their lack of a permanent home address.⁶² Reintegration is also more complex when it comes to foreigners - this is one of the reasons prompting the EU to adopt an instrument to facilitate transfer of prisoners, so as to allow their detention in the State where the goal of social rehabilitation can be more easily achieved (Art. 3, Framework Decision [2008/909/JHA](#)). The Council of Europe has adopted [recommendations](#) as to the treatment of foreign prisoners, based on their right to non-discrimination, to respect for cultural diversity, and to their linguistic needs. [UNODC](#) has also addressed their special needs and rights.

Life-sentenced and other **long-term prisoners** are yet another category for which specific rules and recommendations exist. Indeed, the abolition of the death penalty in Europe led to an increase in life or long-term sentences. The CoE’s 2003 [Recommendation](#) on the management by prison administrations of life sentence and other long-term prisoners sets out numerous best practices as to the management of such prisoners, following six general principles: individualisation in the implementation of the sentence; normalisation (so that prison life closely resembles outside life); the granting of opportunities to exercise personal responsibility; security and safety (based on a clear risk assessment of any threats posed by the detainee); non-segregation of long-term detainees from other prison inmates; and an individual planning which should allow for progression through the prison system.⁶³

A SELECTION OF SOURCES OF INFORMATION

Statistical data

Council of Europe [Annual Penal Statistics SPACE I-Prison Populations Survey 2014](#), 2015.

Council of Europe [Main Figures on 1st January 2016, SPACE I data](#).

Eurostat data on [Crime and criminal justice](#), dataset on prison and prisoner characteristics.

European Institute for Crime Prevention and Control, [European Sourcebook of Crime and Criminal Justice Statistics](#), 2014.

European Union Agency for Fundamental Rights (FRA), [Criminal detention and alternatives: fundamental rights aspects in EU cross-border transfers](#), 2016.

Penal Reform International, [Global Prison Trends 2016](#).

UNODC [Statistics on Crime and Criminal Justice](#).

World Prison Brief, [Europe](#).

Prisoners' rights

A. Coyle, [A Human Rights Approach to Prison Management](#), 2009.

Y. Jewkes, B. Crewe, J. Bennett, *Handbook on Prisons*, Routledge, 2016.

J. Murdoch, *Le traitement des détenus*, Council of Europe Publishing, 2007.

N. S. Rodley, *The treatment of prisoners under international law*, OUP, 2009.

D. Scalia, *Droit international de la détention : des droits des prisonniers aux devoirs des États*, Helbing & Lichtenhahn 2015.

UNODC, [Handbook for prison leaders](#), 2010.

D. van Zyl Smit, S. Snacken, *Principles of European Prison Law and Policy*, OUP, 2009.

General prison conditions

CPT Reports:

All **general reports** are available online, at <http://www.cpt.coe.int/en/docsannual.htm>.

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All CPT **visit reports** are available online, at <http://www.cpt.coe.int/en/states.htm>.

Latest reports of the CPT visits to: [Austria](#) (2014); [Belgium](#) (2016); [Bulgaria](#) (2015) and [public statement](#); [Croatia](#) (2012); [Cyprus](#) (2013); [Czech Republic](#) (2015); [Denmark](#) (2014); [Estonia](#) (2012); [Finland](#) (2014); [France](#) (2010); [Germany](#) (2013); [Greece](#) (2015); [Hungary](#) (2015); [Ireland](#) (2014); [Italy](#) (2012); [Latvia](#) (2013); [Lithuania](#) (2012); [Luxembourg](#) (2009); [Malta](#) (2015); [the Netherlands](#) (2011); [Poland](#) (2013); [Portugal](#) (2013); [Romania](#) (2014); [Slovak Republic](#) (2013); [Slovenia](#) (2012); [Spain](#) (2014); [Sweden](#) (2015); [United Kingdom](#) (2012).

Other reports:

Annual reports of the National Preventive Mechanisms established under OPCAT, available at <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/AnnualreportsreceivedfromNPM.aspx>.

European Prison Observatory (EPO), [National monitoring bodies of prison conditions and the European standards](#), 2015.

European Prison Observatory, [Prison in Europe: overview and trends](#), 2013, and the country reports on [France](#), [Greece](#), [Italy](#), [Latvia](#), [Poland](#), [Portugal](#), and the [United Kingdom](#).

European Prison Observatory, [From national practices to European guidelines: interesting initiatives in prisons management](#), 2013.

Fair Trials International, [A Measure of Last Resort? The practice of pre-trial detention decision making in the EU](#), and the country reports on [England and Wales](#), [Greece](#), [Hungary](#), [Ireland](#), [Italy](#), [Lithuania](#), [Poland](#), [Romania](#), [Spain](#), and [the Netherlands](#).

G. Vermeulen et al., [Material detention conditions, execution of custodial sentences and prisoner transfer in the EU Member States](#), Maklu 2011.

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- ¹ See the [Eurostat dataset](#) for most Member States (with the exceptions of Belgium, Cyprus and Luxembourg). Also see: CoE [SPACE project](#); [World Prison Brief](#); [European Sourcebook of Crime and Criminal Justice Statistics](#) 2014.
- ² For an analysis of international law standards on detainees see e.g. D. van Zyl Smit, S. Snacken, *Principles of European Prison Law and Policy*, 2009; N. S. Rodley, *The treatment of prisoners under international law*, 1999; J. Murdoch, *Le traitement des détenus*, 2006; D. Scalia, *Droit international de la détention*, 2015.
- ³ A summary of relevant cases is available at www.echr.coe.int/Documents/FS_Detention_conditions_ENG.pdf.
- ⁴ See e.g. CoE, Committee of Ministers' [Recommendation \(99\) 22](#) concerning prison overcrowding and prison population inflation; CoE, European Committee on Crime Problems, [White paper on prison overcrowding](#), 2016.
- ⁵ See e.g. the UN [Standard Minimum Rules for the Treatment of Prisoners](#), Rule 4(1); also see the three EU Framework Decisions examined in the FRA 2016 study on [Criminal detention and alternatives](#).
- ⁶ According to the [Eurostat data](#) cited above (Fn. 1), in 2014 in the EU Member States around 482.900 prison inmates were serving their final judgment, and an additional 102.950 were in pre-trial detention. Also see the data in FRA, [Criminal detention and alternatives: fundamental rights aspects in EU cross-border transfers](#), 2016, pages 63-64.
- ⁷ European Commission, Strengthening mutual trust in the European judicial area – A Green Paper on the application of EU criminal justice legislation in the field of detention, [COM\(2011\) 327](#) final.
- ⁸ See in particular the European Parliament resolutions: on the Stockholm programme, 25 November 2009 ([P7_TA\(2009\)0090](#)); on detention conditions in the EU, 15 December 2011 ([2011/2897\(RSP\)](#)); with recommendations to the Commission on the review of the European Arrest Warrant, 27 February 2014 ([2013/2109\(INL\)](#)); on the mid-term review of the Stockholm Programme, 2 April 2014 ([2013/2024\(INI\)](#)); on the situation of fundamental rights in the European Union (2013-2014), 8 September 2015 ([2014/2254\(INI\)](#)); on the situation of fundamental rights in the European Union in 2015, 13 December 2016 ([2016/2009\(INI\)](#)). Also see the EPRS study on [Revising the European Arrest Warrant](#), and [Annexes](#).
- ⁹ See G. Vermeulen et al., [Material detention conditions, execution of custodial sentences and prisoner transfer in the EU Member States](#), Maklu 2011; FRA, [Criminal detention and alternatives](#), 2016.
- ¹⁰ Council Framework Decision [2002/584/JHA](#) of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States; 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 or measures involving deprivation of liberty for the purpose of their enforcement in the EU; Council Framework Decision [2008/947/JHA](#) of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions; Council Framework Decision [2009/829/JHA](#) of 23 October 2009 on the application, between Member States of the EU, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.
- ¹¹ See the ECtHR landmark judgment in [Soering vs UK](#), 7 July 1989; also see Article 19(2), EU Charter. In the field of intra-EU immigration and asylum transfers, see ECtHR, [M.S.S. v. Belgium and Greece](#), 21 January 2011; CJEU, Joined Cases C-411/10 and C-493/10, [N. S. and M.E. and others](#), 21 December 2011.
- ¹² Cases [C-404/15](#) and [C-659/15 PPU](#). The referring Courts had assessed the situation in the two issuing Member States in light of the judgments issued by the ECtHR with findings of degrading and inhumane detention conditions.
- ¹³ With the exceptions of Belgium and Ireland, which have signed but not ratified OPCAT, and of Slovakia and Latvia, which have neither signed nor ratified it. The status of ratifications of OPCAT is available [online](#), as is the [list of NPMs](#). The NPMs' reports are available at www.ohchr.org/EN/HRBodies/OPCAT/Pages/AnnualreportsreceivedfromNPM.aspx; for an analysis, EPO, [National monitoring bodies of prison conditions and the European standards](#), 2015.
- ¹⁴ See e.g. the references in the [Stockholm programme](#), which supported their implementation; in the Commission [Green Paper](#) on detention; and in the European Parliament [Resolution](#) on detention conditions in the EU.
- ¹⁵ See the CPT [living space per prisoner standards](#).
- ¹⁶ Different standards apply to police cells, which are only meant to be used for a short period of time.
- ¹⁷ Including in particular three fundamental rights (the right to have the fact of his detention notified to a third party of his choice; the right of access to a lawyer; and the right to request a medical examination by a doctor of his choice) and specific rules concerning the conduct of the interview as well as in-person judicial review of the arrest.
- ¹⁸ For a historical analysis of the relationship between ECtHR and CPT, S. Snacken, 'Les structures européennes de contrôle des administrations pénitentiaires,' in *Déviante et société*, 2014, 405 ff.; J. Murdoch, 'The impact of the Council of Europe's Torture Committee and the evolution of standard-setting in relation to places of detention', in *European Human Rights Law Review*, 2006, 159 ff.
- ¹⁹ An analysis of the ECtHR case-law concerning detention conditions is available on the ECtHR [website](#).
- ²⁰ ECtHR, *Hirst v. UK* (No. 2), 6 October 2005, at para. 69, and cases cited there; also see the Grand Chamber 2007 judgment in the [Dickson v. UK](#) case, concerning access to artificial insemination in order to conceive a child.
- ²¹ A pilot judgment is issued when an application reveals the existence of a structural or systemic problem which has given rise or may give rise to similar applications (so-called "repetitive cases"): see Rule 61 of the [Rules of Court](#).
- ²² For a short summary of the cases, see http://www.echr.coe.int/Documents/FS_Pilot_judgments_ENG.pdf.
- ²³ See the case [Greens and M.T. v. the United Kingdom](#), Judgment of 23 November 2010.
- ²⁴ See e.g. the already mentioned CPT [living space per prisoner standards](#); H.J. Albrecht, [Prison Overcrowding – Finding Effective Solutions](#), MPI for Foreign and International Criminal Law, 2011, at 33-34.
- ²⁵ See International Center for Prison Studies (ICPS), [Guidance Note 4: Dealing with prison overcrowding](#), 2004.
- ²⁶ See Council of Europe, [SPACE I](#) Statistics, at p. 85.
- ²⁷ Such as residence requirements, restrictions on leaving or entering certain spaces, bail, or electronic surveillance.
- ²⁸ Including suspension of enforcement of a sentence, probation, supervision, community services, treatment orders for specific categories of offenders, increased use of victim-offender mediation or compensation, or non-custodial restrictions to the liberty of movement, for instance by means of curfews or electronic monitoring.
- ²⁹ Also see the CoE Parliamentary Assembly [Resolution](#) 2082 (2015) on the fate of critically ill detainees in Europe. As stressed by [UNODC](#), however, compassionate release of ill prisoners would also require ensuring access to adequate care in the community, as otherwise ill prisoners would risk remaining without any care upon release.

³⁰ In particular, action taken by Italy in response to the *Torreggiani* decision is mentioned as having proven its effectiveness, thanks to: legislative action to reduce prison entry flows (e.g. through alternative measures); implementation of more open prison regimes; building action (rebuilding or refurbishing existing prisons, rather than expanding their capacity); and provision of a system of remedies for prisoners suffering overcrowding. According to the Italian Justice Ministry, the prison population has fallen, as a consequence of such measures, from over 66.000 inmates at the end of 2012 to 52.164 at the end of 2015. On the situation in Italy, also see the Policy Department 2014 [Background information for the LIBE delegation to Italy on the situation of prisons](#); the 10 April 2014 [Report](#) of the LIBE delegation to Italy; and the Italian Justice Ministry [slides](#) and [speech](#) on the recent positive developments in the fight against overcrowding in the Italian penitentiary system.

³¹ UNODC, [Handbook on strategies to reduce overcrowding in prisons](#), 2013.

³² See D. van Zyl Smit, S. Snacken, *Principles of European Prison Law and Policy*, cited, at 133.

³³ On reducing use of pre-trial detention, also see H.J. Albrecht, [Prison Overcrowding](#); OSI, [Presumption of Guilt: The Global Overuse of Pretrial Detention](#), 2014; van Kalmthout et al., Pre-trial Detention in the European Union, 2009.

³⁴ See the CoE Rules on Probation, at 1; Ferrara University, [Prison overcrowding and alternatives to detention](#).

³⁵ I.e., alternative measures are used on persons who would not have been jailed anyhow as a result of their criminal conduct. See EPO, [Reducing the prison population in Europe: Do community based sentences work?](#), 2016; ICPS, [Guidance note 15: Developing alternative sentences](#), 2004; UNODC, [Handbook of basic principles and promising practices on Alternatives to Imprisonment](#), 2007. Similar conclusions have recently been drawn in the context of the EU-funded research project on [prison overcrowding and alternatives to detention](#).

³⁶ See FRA [study](#), p. 62, and the sources cited in footnotes 150 and 151.

³⁷ See University of Ferrara, [Prison overcrowding and alternatives to detention: a state of art](#).

³⁸ See UNODC, [Alternatives to Imprisonment](#), cited above. On alternatives to detention for drug users, see specifically EMCDDA, [Alternatives to imprisonment – targeting offending problem drug users in the EU](#), 2005.

³⁹ ICPS, [Guidance note 15: Developing alternative sentences](#), 2004; UNODC, [Alternatives Handbook](#), cited above. Council of Europe [statistics](#) show that, across Europe, there are great variations in the number of probation officers and in the number of cases they are assigned to.

⁴⁰ See FRA [study](#) cited above, p. 64 and 68. More information on probation systems across the EU is available from the Confederation of European Probation, in the national reports of the [Probation in Europe project](#).

⁴¹ I. Durnescu, [The impact of supervision. A Literature Review](#), 2014. For a selection of national studies on recidivism, see <http://wp.unil.ch/space/publications/recidivism-studies/>

⁴² See the studies cited in B. Weaver, *Offending and Desistance: The importance of social relations*, 2015.

⁴³ EPO, [Prison in Europe: overview and trends](#), 2013; EPO, [From national practices to European guidelines](#), 2013.

⁴⁴ For an analysis of prison work, see ECOPRIS, [Prison work models critical review](#), 2014.

⁴⁵ See e.g. F. Torlone, M. Vryonides (ed.), [Innovative Learning Models for Prisoners](#), 2016; GHK Consulting, [Prison education and training in Europe](#), 2013.

⁴⁶ See e.g. CoE Committee of Ministers, Recommendation [\(98\)7](#) concerning the ethical and organisational aspects of health care in prison; ICPS, [Guidance note 10: improving prisons health care](#), 2004; WHO, [Health in prison](#), 2007; UNODC, [Handbook on Prisoners with special needs](#), 2009.

⁴⁷ See UNODC, WHO, UNAIDS, [HIV/AIDS Prevention, Care, Treatment and Support in Prison Settings](#), 2006.

⁴⁸ EMCDDA, [Prisons and drugs in Europe](#), 2012; EMCDDA, [Treating drug users in prisons](#), 2003.

⁴⁹ For a summary of the ECtHR case-law see the Factsheets on [prisoners' health rights](#), on [hunger strikes in detention](#) and on [detention and mental health](#); on hunger strikes, also see the 1991 World Medical Association [Declaration of Malta](#) on Hunger Strikers, as revised. For an analysis of healthcare rights in prison, see van Zyl Smit, Snacken, cited.

⁵⁰ UNODC, [Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders](#), 2012.

⁵¹ A. Coyle, [A Human Rights Approach to Prison Management](#), 2009; UN, [Human Rights and Prisons](#), 2005; UN [Handbook for prison leaders](#), 2010.

⁵² WHO, [Mental health in prison](#), 2014; S. Fazel et al., [Mental health of prisoners](#), *The Lancet Psychiatry*, 2016.

⁵³ WHO/ICRC, [Mental health and prisons](#), 2005.

⁵⁴ See the Factsheet on [Detention and mental health](#).

⁵⁵ Central Institute for Mental Health, [Mentally Disordered Persons in European Prison Systems](#), 2007.

⁵⁶ ICPS, [Guidance Note 14 - Children in prison](#), 2004; UN CRC Committee, [General Comment n. 10](#), 2007.

⁵⁷ See WHO, [Women's health and the prison setting](#), 2014; [Imprisonment and women's health](#), 2011.

⁵⁸ CPT, [10th General Report](#), 1999; ICPS, [Guidance note 13: reforming women's prisons](#), 2004; UNODC, [Handbook on Women and Imprisonment](#), 2014; UN "Bangkok" Rules, 2010.

⁵⁹ 13 March 2008 [Resolution](#); also see the CoE Parliamentary Assembly Resolution 1663 (2009) on [Women in prison](#).

⁶⁰ See A. D. Jones, A. E. Wainaina-Woźna (ed.), [Children of Prisoners](#), 2013; S. Lagoutte, 'The Right to Respect for Family Life of Children of Imprisoned Parents', in *International Journal of Children's Rights*, 2016, 204 ff.

⁶¹ See FRA, cited, p. 77 ff.; Law Library of Congress, [Laws on Children Residing with Parents in Prison](#), 2014.

⁶² T. Ugelvik, [The incarceration of foreigners in European prisons](#), *Routledge Handbook on Crime and International Migration* 2014; also CEP/Europris [Workshop on Foreign Nationals in Prison and Probation](#), 2016; L. Slade, [Foreign National Prisoners](#), 2015; R. Mulgrew, [Foreign prisoners in Europe](#), *Review of International Law and Politics*, 2016.

⁶³ On the situation of life-sentenced prisoners, also see the [Extract](#) from the 25th CPT General Report (2015).

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