Report of Various Size – Fieldwork research (FRANET)

Criminal Detention in the EU – Conditions and Monitoring

Country Report Poland

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1. Cell space

a) What is the national standard for cell space available to prisoners in m²? Is it regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?
b) *Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).*
c) *Please, provide a link to the National Preventive Mechanism's reports* ***from the reference period*** *(1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/*

Please cite any relevant sources

[1]. Poland, with a national standard of 3 m² of cell space available per prisoner, ranks high in the list of European countries with the lowest standard of cell surface for each prisoner. According to the 2015 Council of Europe Space I report,[1] only Hungary and FYRO Macedonia have set lower standards in their national legislation. Moreover, Poland, with a ratio of 188,85 prisoners per 100,000 inhabitants, is in the group of EU countries with the highest number of inmates in relation to the population.[2]

National standard

[2]. The standard of cell space available for a prisoner has been described in art. 110 § 2 of Executive Penal Code.[3] Pursuant to that regulation every prisoner should be provided with at least 3 m².

[3]. The methods that must be used to measure cell surface are described in the Order of the General Director of Prison Service on determining the capacity of a penitentiary unit.[4] According to that order, the surface of the window and radiator bay, as well as the sanitary annex, should not be included in the measurement of the surface of a residential cell.

[4]. The standard of cell space available for a prisoner does not differ depending on the regime of detention, but rather is the same in the units with closed, semi-closed and open regimes.

[5]. Whenever the population of penitentiary units is equal to or exceeds 100% of their capacity, the prisoners might be held in cells with a reduced standard of cell surface available for one prisoner.

[6]. According to art. 110 § 2b of the Executive Penal Code the director of the unit may decide to place a prisoner, for up to 14 days, in a cell in which the actual surface available for one prisoner is lower than 3 m², but not lower than 2m². The decision may be made only if the prisoners must be placed

[1] Council of Europe, Council for Penological Cooperation (PC – CP), *Annual Penal Statistics, Annual Penal Statistics, SPACE I – Prison Populations, Survey 2015*, 25 April 2017, available at: http://wp.unil.ch/space/files/2017/04/SPACE_I_2015_FinalReport_161215_REV170425.pdf, all links were accessed on 26 May 2018.

[2] Eurostat, Prison capacity and number of persons held, 17 May 2017, available at: http://appsso.eurostat.ec.europa.eu/nui/download?p=ce44949c-0dac-4d13-94ea-72831f232ffd-1527327909017_&_=1527328100070

[3] Poland, Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.

[4] Poland, General Director of Prison Service order no. 7/2012 on determing the capacity of the penitentiary unit (*Zarządzenie Dyrektora Generalnego Służby Więziennej w sprawie ustalania pojemości jednostek penitencjarnych*), available at: www.bip.sw.gov.pl/SiteCollectionDocuments/AS_Warszawa_Mokotow/Zarządzenie nr 7-2012 DG SW z dn. 30.01.2012 w spr. ustalania pojemności jednostek penitencjarnych.pdf

immediately in a penitentiary unit with no vacancies and if the prisoners belong to one of the groups described by law. These are as follows:

- convicted for more than 2 years of imprisonment;
- recidivists;
- persons who used crime as a constant form of income;
- sexual offenders;
- convicts who have escaped from imprisonment or did not return after being temporarily released from prison;
- prisoners transported to the unit by the order of the court or prosecution office;
- pre-trial detainees.[5]

[7]. The penitentiary judge might decide to extend the period during which a prisoner is held in a cell with a reduced standard of cell surface to 28 days. Any decision in that field should consider duration of the placement in a cell with a reduced standard and the reasons for such a decision. The prisoner may challenge the decision by making a complaint to a penitentiary court. The court is obliged to consider the complaint within 7 days. Whenever the reasons for placement cease, the decision to place prisoners in a cell with a reduced standard should be withdrawn.[6]

The issue of prison overcrowding in the activities of external bodies

CPT

[8]. The problem of the living space standard was raised for the first time during a visit of the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) to Poland in 1996. At that time, the CPT emphasized that "the existing standard of 3 m² per male prisoner does not offer a satisfactory amount of living space, in particular in cells of a relatively small size."[7] It recommended that the Polish government raise the standard of surface to at least 4 m^2. Recommendations in that field were subsequently repeated during the next five CPT visits to Poland.[8] (The CPT's report of the sixth periodic visit to Poland has not been published yet.)

[9]. In the last published report, the CPT called upon Polish authorities to redouble their efforts to combat prison overcrowding by adopting policies designed to limit the number of persons sent to

[5] Poland, art. 110 § 2b of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.
[6] Poland, art. 110 § 2c-2g of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.
[7] Council of Europe, European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT), *Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 30 June to 12 July 1996*, p. 29, 24 September 1998, available at: https://rm.coe.int/1680697913
[8] Council of Europe, European Committee for the prevention of torute and inhuman or degrading treatment or punishment (CPT), *Reports to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)*, available at: www.coe.int/en/web/cpt/poland.

prison.[9] In response to that recommendation, the government of Poland has declared that Poland will make all efforts required to raise the standard to the level of 4 m^2.[10]

CAT

[10]. Recommendations for combating overcrowding were also formulated by the Committee Against Tortures (CAT). In its concluding observations on its fifth and sixth visit to Poland, the CAT urged the Polish authorities "to take necessary steps to ensure that prison conditions are at least in keeping with the Standard Minimum Rules for the Treatment of Prisoners", especially to comply with the "European standard of a minimum of four square meters of living space for each detainee."[11]

ECtHR

[11]. The problem of Polish living space standards has also been a subject of interest for the European Court of Human Rights. In the judgments *Orchowski v. Poland*[12]and *Sikorski v. Poland*[13], concerning detention conditions in Poland, the ECtHR recognized overcrowding as a systemic problem in Polish penitentiary units.

Combatting overcrowding

[12]. The rulings in the cases *Orchowski v. Poland*[14]and *Sikorski v. Poland*[15] strengthened the process of challenging overcrowding in Polish penitentiary units. It contributed to changes in the penal policy and more frequent use of measures other than detention, especially by introducing to the Polish law the electronic surveillance of prisoners.

[13]. The process of limiting the effects of overcrowding was also assisted by Supreme Court rulings. In one of its judgments, the Supreme Court indicated that placement of a prisoner in a cell with a surface lower than the national standard of 3m^2 per prisoner might be recognized as a violation of his personal rights, making the State liable for any damage suffered by a prisoner in such circumstances.[16]

[14]. Finally, all of the aforementioned activities resulted in a long, lasting until 2015, decrease in the number of prisoners held in Polish penitentiary units. While on 30 September 2009 the population of penitentiary units equalled 85,123 prisoners (102,4% of the prisons system capacity)[17], at the

[9]Council of Europe, European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT), *Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 June to 17 July 2013*, p. 22, 25 June 2014, available at: https://rm.coe.int/1680697928

[10]Council of Europe, European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT), *Response of the Polish Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Poland from 5 to 17 June 2013*, p. 25, 25 June 2014, available at: https://rm.coe.int/1680697929

[11] United Nations, Committee Against Torture, *Concluding observations on the combined fifth and sixth periodic reports of Poland*, p. 6, 23 December 2013, available at: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsr0yVMLY8ltqp7eIpaWy9%2fzhpqAgxIv0wYIHQRBCyv6Z5WSAJ4meQ2Iea4vsJ8k3h%2fQY3d6Rp6d2fr%2fQBcD8IeLQKy%2fZWvWPMkBgl6xrsG1

[12] European Court of Human Rights (ECtHR), *Orchowski v. Poland*, No. 17599/05, 22 October 2009

[13] European Court of Human Rights (ECtHR), *Sikorski v. Poland*, No. 17885/04, 22 October 2009

[14] European Court of Human Rights (ECtHR), *Orchowskii v. Poland*, No. 17599/05, 22 October 2009

[15] European Court of Human Rights (ECtHR), *Sikorski v. Poland*, No. 17885/04, 22 October 2009

[16] Poland, Supreme Court, II CSK 51/12, 26 September 2012.

[17] Poland, Minister of Justice, Central Board of Prison Service, Annual Statistical Information for 2009 (Roczna Informacja Statystyczna, Rok 2009), p. 1, available at: www.sw.gov.pl/uploads/5846c00f_88e8_42fd_a368_213cc0a80015_rok_2009.pdf

end of December 2015 it was at the level of only 70,836 prisoners (83% of the prison system capacity).

Current situation regarding the issue of overcrowding

[15]. The situation regarding overcrowding changed in December 2015. Since then, the population of Polish penitentiary units has been increasing constantly, due to changes in the penal policy, an increase in the number of pre-trial detainees and a reduction of the number of paroles. In addition, prison authorities have decided to close several penitentiary units, especially those that could be considered old and expensive to maintain.

[16]. As a result, as of 18 May 2018, slightly more than 74,000 prisoners were incarcerated in Polish penitentiary units, meaning that the number of prisoners in relation to the overall capacity amounted to 91,9%.[18]

NPM

[17]. The issue of overcrowding was emphasized in the reports of the National Preventive Mechanism of 2015[19] and 2016.[20] In both reports, the NPM indicated that the current standard of surface per prisoner does not provide prisoners with decent conditions of detention.

[18]. Taking that into consideration, in 2016 the Commissioner for Human Rights (CHR) asked the Minister of Justice to introduce legal changes and increase the national standard of surface available to each prisoner to the level of 4m^2. CHR paid particular attention to the negative effects of detaining prisoners in a cell guaranteeing only 3m^2, especially the increased risk of infectious disease transmission, the greater risk of a prisoner becoming a victim of violence, as well as no possibility of guaranteeing prisoners that they will be detained close to their place of residence.[21]

[19]. The arguments presented by the CHR did not align with the understanding of the Minister of Justice, who refused to take any actions in that field. In his opinion, the population of penitentiary units has been decreasing. Therefore, in his view, there is no need to take any legislative action or to increase the national standard of living space per prisoner.[22]

[20]. In response to that answer, the CHR has appealed to increase the legal standard of surface per prisoner in therapeutic wards, which house prisoners with mental disabilities and non-psychotic mental disorders.

[18] Poland, Minister of Justice, Central Board of Prison Service, Information on the population of penitentiary units (*Informacja o zaludnieniu zakładów karnych oraz aresztów śledczych*), p. 1, available at: www.sw.gov.pl/assets/62/52/47/3601cf5922fdf7824bbb2c5a2de820b738456204.pdf

[19] Poland, National Preventive Mechanism (*Krajowy Mechanizm Prewencji*), Report of Human Right Defender on the activities of National Preventive Mechanism in 2015, June 2016 *(Raport Rzecznika Praw Obywatelskich z działalności Krajowego Mechanizmu Prewencji w 2015)*, available at: www.rpo.gov.pl/sites/default/files/Raport%20RPO%20KMP%202015.pdf

[20] Poland, National Preventive Mechanism (*Krajowy Mechanizm Prewencji*), Report of Human Right Defender on the activities of National Preventive Mechanism in 2016, June 2017 *(Raport Rzecznika Praw Obywatelskich z działalności Krajowego Mechanizmu Prewencji w 2016),* June 2017, available at: www.rpo.gov.pl/sites/default/files/Raport%20Krajowego%20Mechanizmu%20Prewencji%20Tortur%20w%202016%20r..pdf

[21]Poland, Commissioner for Human Rights (*Rzecznik Praw Obywatelskich*), General statement to Minister of Justice on prison overcrowding, 24 May 2016, available at: www.rpo.gov.pl/sites/default/files/Wyst%C4%85pienie%20Generalne%20do%20MS%20z%20dnia%2024.05.2016%20r_0.pdf

[22] Poland, Minister of Justice, Response to CHR's general statement on prison overcrowding, 23 June 2016, available at: www.rpo.gov.pl/sites/default/files/Odpowied%C5%BA%20Sekretarza%20Stanu%20w%20MS%20z%20dnia%2023.06.2016%20r.pdf

2. Sanitary Facilities

a) What is the national standard with regard to access to toilets? Are these located in cells? If not, do prisoners have access to these facilities without undue delay, even during the night? Do these facilities offer privacy to prisoners who use them?
b) What is the national standard with regard to access to regularly cleaned shower/bathing facilities? How often is this access provided? Do these facilities offer privacy to prisoners who use them?
c) Is the provision of cleanly sanitary facilities regulated by any legal instrument such as a legislative act, internal prison regulations, manuals, policy papers etc.?
d) *Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).*
e) *Please, provide a link to the National Preventive Mechanism's reports* ***from the reference period*** *(1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/*

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National standard

Access to toilets

[21]. There is no clear national standard regarding access to toilets. It generally depends on the regime in which a prisoner is held.

[22]. According to the Executive Penal Code, the cells in closed units have to be equipped with sanitary facilities.[23] Consequently, cells within the units that are open and semi-open may, but do not have to, be equipped with sanitary facilities.[24]

[23]. In practice, most of the cells are equipped with sanitary annexes. Toilets are lacking only in units located in old buildings and in those cells that were set up in former common rooms, infirmaries and utility rooms.

[24]. Sanitary annexes generally contain a washbasin and a toilet; however, in some cells washbasins are placed outside the sanitary annex.[25]

[25]. The NPM pointed out that prisoners' access to toilets may also differ depending on the number of people held in a cell. In practice, a prisoner placed in a cell designed for two persons has easier access to a toilet than a prisoner who is held in a cell designed for a dozen of prisoners. According to the NPM, equipping such cells with only one toilet makes it impossible for prisoners to use them at any time and contributes to conflicts between prisoners.[26]

Access to hygienic measures

[26]. In each cell, there should be at least one bowl for at least 4 prisoners. Each prisoner must be given certain required hygienic products each month - soap (100 g per man, 200g per woman), washing powder (200 g), toothpaste (60g) and toilet paper (2 rolls). Every 3 months, prisoners must be given a new toothbrush.[27] According to HFHR, most of the hygienic products provided to prisoners might be considered poor quality.[28]

Access to warm water

[27]. The standard for access to warm water differs depending on the sex of prisoners. A female prisoner has to be provided with daily access to warm water (at least once per day). Male prisoners do not have to be provided with such a level of access.[29]

[28]. Some of the penitentiary units, especially old ones, are not equipped with sanitary installations that allow prisoners to use warm water.[30] In new, recently-built units, such as the prison in Opole Lubelskie, warm water is available in each cell.[31] However, not all units enable prisoners to use warm water throughout the whole day. Generally, this issue is regulated in the internal regulations of individual units. As a result, in most of the units warm water is available only a few times a day.

Access to baths

[29]. According to the art. 32 of Minister of Justice regulation on the organization and order of imprisonment, every male prisoner should be provided with at least one shower per week.[32] A female prisoner should be given a possibility of bathing two times a week. Moreover, prisoners who are employed in work that may be considered dirty have the right to more frequent baths.[33] Baths of prisoners who are sick should be organized according to physicians' instructions.

[30]. Baths should last at least 10 minutes, during which every prisoner should be given at least 6 minutes of water out flowing from the shower.[34] The same standards apply to pre-trial detainees[35]. The temperature of the water is set by a prison service officer.

[31]. The CHR in 2014 asked the Constitutional Court whether the Polish standard of bath frequency (at least one bath per week) is in agreement with the Constitution of the Republic of Poland, especially its provisions guaranteeing prohibition of torture, inhuman and degrading treatment and an order of the Constitution to treat persons deprived of liberty in a humane manner.[36] It noted that during

[23] Poland, art. 110 § 3 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.
[24] Poland, art. 110 § 3 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.
[25] Poland, Commissioner for Human Rights (*Rzecznik Praw Obywatelskich*), *General statement to Director of Prison Service on prisoners access to sanitary facilities*, 10 March 2016, available at: www.sprawy-generalne.brpo.gov.pl/pdf/2016/3/IX.517.1494.2015/678210.pdf
[26] Poland, National Preventive Mechanism (*Krajowy Mechanizm Prewencji*), Report of Human Right Defender on the activities of National Preventive Mechanism in 2016, June 2017 *(Raport Rzecznika Praw Obywatelskich z działalności Krajowego Mechanizmu Prewencji w 2016),* June 2017, p.44, available at: www.rpo.gov.pl/sites/default/files/Raport%20Krajowego%20Mechanizmu%20Prewencji%20Tortur%20w%202016%20r..pdf
[27] Poland, Minister of Justice regulation on detention conditions for persons deprived of liberty in prisons and remand centers (*Rozporządzenie Ministra Sprawiedliwości w sprawie warunków bytowych dla osób osadzonych w zakładach karnych I aresztach śledczych)*, Journal of Laws of 2016, item 2224.
[28] Helsinki Foundation for Human Rights (*Helsińska Fundacja Praw Człowieka*), *Access to hygiene in certain EU countries (Dostęp do higieny w wybranych państwach Unii Europejskiej)*, 29 August 2013, available at: www.hfhr.pl/wp-content/uploads/2013/08/HFPC_raport_Raport_Higiena_w_zakladach_karnych.pdf
[29] Poland, Art. 32 of Minister of Justice regulation on organization and order of imprisonment (*Rozporządzenie Ministra Sprawiedliwości w sprawie regulaminu organizacyjno- porządkowego wykonywania kary pozbawienia wolności*), Journal of Laws of 2016, item 2231; art. 37 of Minister of Justice regulation on organization and order of pre-trial detention (*Rozporządzenie Ministra Sprawiedliwości w sprawie regulaminu organizacyjno- porządkowego wykonywania tymczasowego aresztowania*), Journal of Laws of 2016, item 2290
[30] Poland, National Preventive Mechanism, Report from the monitoring of prison in Herby Stare (*Raport przedstawicieli Krajowego Mechanizmu Prewencji z wizytacji w Zakładzie Karnym w Herbach Starych)*, 25 September 2017, available at: www.rpo.gov.pl/sites/default/files/Wyci%C4%85g%20-%20ZK%20Herby%20Stare%202017_0.pdf
[31] Poland, National Preventive Mechanism (*Krajowy Mechanizm Prewencji*), Report from monitoring of the prison in Opole Lubelskie (*Raport przedstawicieli Krajowego Mechanizmu Prewencji z wizytacji w Zakładzie Karnym Opolu Lubelskim)*, 3 November 2014, available at: www.rpo.gov.pl/sites/default/files//Wyci%C4%85g%20-%20ZK%20Opole%20Lubelskie%202014.pdf
[32] Poland, Minister of Justice regulation on organization and order of imprisonment (*Rozporządzenie Ministra Sprawiedliwości w sprawie regulaminu organizacyjno-porządkowego wykonywania kary pozbawienia wolności*), Journal of Laws of 2016, item 2231.
[33] Poland, Minister of Justice regulation on organization and order of pre-trial detention (*Rozporządzenie Ministra Sprawiedliwości w sprawie regulaminu organizacyjno-porządkowego wykonywania tymczasowego aresztowania*), Journal of Laws of 2016, item 2290.
[34] Poland, Art. 13 of Minister of Justice regulation on organization and order of imprisonment (*Rozporządzenie Ministra Sprawiedliwości w sprawie regulaminu organizacyjno-porządkowego wykonywania kary pozbawienia wolności*), Journal of Laws of 2016, item 2231; art. 14 of Minister of Justice regulation on organization and order of pre-trial detention (*Rozporządzenie Ministra Sprawiedliwości w sprawie regulaminu organizacyjno – porządkowego wykonywania tymczasowego aresztowania*), Journal of Laws of 2016, item 2290
[35] Poland, art. 14 of Minister of Justice regulation on organization and order of pre-trial detention (*Rozporządzenie Ministra Sprawiedliwości w sprawie regulaminu organizacyjno-porządkowego wykonywania tymczasowego aresztowania*), Journal of Laws of 2016, item 2290.
[36] Poland, Commissioner for Human Rights (*Rzecznik Praw Obywatelskich*), Motion to the Constitutional Court regarding the frequency of baths provided to male prisoners and pre-trial detainees, 8 July 2014, available at: www.rpo.gov.pl/sites/default/files/Wniosek%20RPO%20do%20TK%20ws.%20k%C4%85pieli%20tymczasowo%20aresztowanych%20i%20skazanych.pdf

135 monitoring visits by the NPM, only one facility guaranteed its prisoners access to at least two baths per week.[37]

[32]. The Constitutional Court found the challenged standard to be in line with the Constitution. In its opinion, determining the frequency of hot baths at a minimum of one per week, with a clear possibility of increasing their number and ensuring constant access to water and hygienic products to prisoners, cannot be recognized as inhuman or degrading treatment.[38]

[33]. At the same time, the General Director of Prison Service has ordered all Regional Directors of Prison Service to take action enabling the Prison Service to guarantee to every prisoner two baths per week.[39] As a result, in 2014, 144 out 154 penitentiary units allowed every prisoner to take two baths a week.[40] The Prison Service has declared that the remaining units will also meet such standards in 2015.[41]

[34]. In its recent report, the NPM indicated that, in most of the visited units, prisoners had a possibility of taking baths two times a week or even every day.[42]

Right to privacy

[35]. Whenever the cell is equipped with sanitary facilities, they have to be placed in a way that guarantees that using them will not be embarrassing for the prisoner.[43] For this reason, the NPM recommends that all visited units guarantee that sanitary annexes are fully partitioned and separated from the rest of the cell.

[36]. In the case *Szafranski v. Poland*[44] the ECtHR found the detention of a prisoner in a cell with a sanitary annex that was not fully partitioned to be a violation of art. 8 ECHR. The ECtHR stated that "the domestic authorities have a positive obligation to provide access to sanitary facilities which are separated from the rest of the prison cell in a way which ensures a minimum of privacy for the inmates."[45]

[37]. Contrary to ECtHR's judgment mentioned above, the Appellate Court in Gdańsk has ruled that decent conditions of imprisonment do not include ensuring the privacy of the prisoner, among other

[37] Poland, Commissioner for Human Rights (*Rzecznik Praw Obywatelskich*), Motion to the Constitutional Court regarding the frequency of baths provided to male prisoners and pre-trial detainees, 8 July 2014, available at: www.rpo.gov.pl/sites/default/files/Wniosek%20RPO%20do%20TK%20ws.%20k%C4%85pieli%20tymczasowo%20aresztowanych%20i%20skazanych.pdf

[38] Poland, Constitution Court (*Trybunał Konstytucyjny*), judgment in a case U 6/14, 31 March 2015 r.

[39] J. Wierzbicki, Warm bath two times per week (*Ciepła kąpiel dwa razy w tygodniu*), Forum Penitencjarne, February 2015, available at: www.sw.gov.pl/assets/11/28/47/07d0c3554a92d57301b5e3921f97db4ee1a8b523.pdf

[40] J. Wierzbicki, Warm bath two times per week (*Ciepła kąpiel dwa razy w tygodniu*), Forum Penitencjarne, February 2015, available at: www.sw.gov.pl/assets/11/28/47/07d0c3554a92d57301b5e3921f97db4ee1a8b523.pdf

[41] J. Wierzbicki, Warm bath two times per week (*Ciepła kąpiel dwa razy w tygodniu*), Forum Penitencjarne, February 2015, available at: www.sw.gov.pl/assets/11/28/47/07d0c3554a92d57301b5e3921f97db4ee1a8b523.pdf

[42] Poland, National Preventive Mechanism (*Krajowy Mechanizm Prewencji*), Report of Human Right Defender on the activities of the National Preventive Mechanism in 2016, June 2017 *(Raport Rzecznika Praw Obywatelskich z działalności Krajowego Mechanizmu Prewencji w 2016),* June 2017, p.32, available at: www.rpo.gov.pl/sites/default/files/Raport%20Krajowego%20Mechanizmu%20Prewencji%20Tortur%20w%202016%20r..pdf

[43] Poland, art. 29 of Minister of Justice regulation on organization and order of imprisonment (*Rozporządzenie Ministra Sprawiedliwości w sprawie regulaminu organizacyjno-porządkowego wykonywania kary pozbawienia wolności*), Journal of Laws of 2016, item 2231; art. 34 of Minister of Justice regulation on organization and order of pre-trial detention (*Rozporządzenie Ministra Sprawiedliwości w sprawie regulaminu organizacyjno-porządkowego wykonywania tymczasowego aresztowania*), Journal of Laws of 2016, item 2290.

[44] European Court for Human Rights (ECtHR), *Szafrański v. Poland*, No. 17249/12, 15 December 2015.

[45] European Court for Human Rights (ECtHR), *Szafrański v. Poland*, No. 17249/12, 15 December 2015.

physiological needs. Rather, they do not require placing the toilet in a separate room or separating it from the rest of the cell with a wall.[46]

[38]. Nevertheless, in the last few years, representatives of the National Preventive Mechanism have been observing an increase in the number of cells with fully-partitioned sanitary annexes. According to the NPM report of 2015, currently it is rare to have an annex which is not fully partitioned.[47]

[39]. As of 10 February 2016 nearly 2,400 cells were not equipped with fully-partitioned sanitary annexes.[48]

[40]. During the last 2 years, several other problems connected with the issue of hygiene have occurred. The CHR called upon the General Director of Prison Service to change its instructions enabling the placement of washbasins in cells outside sanitary annexes. According to the CHR such a regulation does not enable prisoners to maintain hygiene and does not guarantee a sufficient level of prisoners' privacy. Moreover, the CHR indicated that placing washbasins outside sanitary annexes does not strengthen proper hygiene habits but rather facilitates microbe transfer to the cell.[49]

[41]. In response to the CHR's statement, the Deputy General Director of Prison Service has indicated that washbasins are not designed for intimate hygiene. Therefore, their placement outside the sanitary annexes does not endanger prisoners' right to privacy.[50]

[42]. Some of the problems connected to the issue of hygiene and privacy were also noted by representatives of the NPM. During their visits to penitentiary units, they paid particular attention to single cells in which the sanitary annex was not covered at all. As a result, it was possible to observe prisoners using a toilet through CCTV system or via the hole in cell doors. Secondly, the NPM called upon the authorities of 8 out of 20 visited penitentiary units to introduce curtains separating prisoners taking baths in the bathrooms.

Cleanliness of sanitary facilities

[43]. There are no legal provisions guaranteeing prisoners the right to use sanitary facilities that are clean. Nevertheless, the prisoners have a duty to take care of cleanliness of places where they reside.[51] The Minister of Justice regulation enables prison service officers to verify whether

[46] Poland, Appellate Court in Gdańsk, judgment in case no. I ACa 3/16, 7 June 2016.

[47] Poland, National Preventive Mechanism (*Krajowy Mechanizm Prewencji*), *Report of Human Right Defender on the activities of National Preventive Mechanism in 2015, June 2016 (Raport Rzecznika Praw Obywatelskich z działalności Krajowego Mechanizmu Prewencji w 2015)*, p.28, available at: www.rpo.gov.pl/sites/default/files/Raport%20RPO%20KMP%202015.pdf

[48] Poland, Deputy Director of Prison Service, Response to the Deputy Human Right Defender letter regarding prisoners access to sanitary facilities, 5 April 2016, available at: www.rpo.gov.pl/sites/default/files/odp.%20DGSW%20dot%20zabudowy%20k%C4%85cik%C3%B3w%20oraz%20umywalek%20poza%20cel%C4%85%20mieszkaln%C4%85.pdf

[49] Poland, Commissioner for Human Rights (*Rzecznik Praw Obywatelskich*), General statement to Director of Prison Service on prisoners access to sanitary facilities, 10 March 2016, available at: www.sprawy-generalne.brpo.gov.pl/pdf/2016/3/IX.517.1494.2015/678210.pdf

[50]Poland, Deputy Director of Prison Service, Response to the Deputy Human Right Defender letter regarding prisoners access to sanitary facilities, 5 April 2016, available at: www.rpo.gov.pl/sites/default/files/odp.%20DGSW%20dot%20zabudowy%20k%C4%85cik%C3%B3w%20oraz%20umywalek%20poza%20cel%C4%85%20mieszkaln%C4%85.pdf

[51] Poland, art. 116 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.

prisoners maintain the cleanliness of their cells. As a result, the cleanliness of the cell depends mainly on the inmates living in it.[52]

[44]. The prison service should provide prisoners with sufficient resources to maintain the cleanliness of the cell, e.g. dishwashing liquid (200 ml), cleaning liquid (500 ml), cleaning sponge, toilet cleaning liquid and window cleaning liquid. Each cell should be equipped with a brush, a dustpan and a broom.[53]

3. Time out of cell

a) What is the national standard set for time per day/week spent by prisoners outside of their cells:
   a. Outdoors (within the boundary of the prison)?
   b. Indoors in the common area?
b) Are sports or other recreational and educational facilities available to prisoners? If so what types?
c) Is time spent in cells regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?
d) *Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).*
e) *Please, provide a link to the National Preventive Mechanism's reports* ***from the reference period*** *(1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English).These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/*

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National standard

Time spent in a cell

[45]. The national standard on amount of time spent by prisoners in their cells is set in the Executive Penal Code and the Minister of Justice regulations and generally depends on the regime in which prisoners serve their sentence.

[46]. There are three types of imprisonment regimes: closed, semi-open and open.

[47]. The closed regime is designed for prisoners who: have committed their crime in an organized group; who are serving life imprisonment or a sentence of at least 25 years of imprisonment, have non-psychotic mental disorders or those who are mentally disabled. Several other groups of prisoners (e.g. those who have seriously violated the order of the penitentiary unit, and those who have committed significantly harmful crimes, especially if their behaviour indicates a need to keep them in a closed regime) might be held in closed regime.[54]

[52] Helsinki Foundation for Human Rights (*Helsińska Fundacja Praw Człowieka*), Access to hygiene in certain EU countries (*Dostęp do higieny w wybranych państwach Unii Europejskiej*), 29 August 2013, available at: www.hfhr.pl/wp-content/uploads/2013/08/HFPC_raport_Raport_Higiena_w_zakladach_karnych.pdf

[53]Poland, Minister of Justice regulation on detention conditions for persons deprived of liberty in prisons and remand centers (*Rozporządzenie Ministra Sprawiedliwości w sprawie warunków bytowych dla osób osadzonych w zakładach karnych i aresztach śledczych*), Journal of Laws of 2016, item 2224.

[54] Poland, art. 88 § 3 and 6 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.

[48]. Cells in closed regimes are generally closed throughout the day and night. They may be opened only if it does not threaten the safety of the penitentiary unit. As a result, most of the prisoners held in such a regime spend a vast majority of their days closed. They are allowed to move around the penitentiary unit premises only in an organized way, under supervision of the prison service. Any educational, cultural or sport activities with their participation have to take place in the penitentiary unit, not outside. They are allowed to work outside the unit, but only with full supervision of the prison service.[55]

[49]. The semi-open regime is designed for prisoners who have committed unintentional crimes and who are serving their sentences in a system of programmed impact.[56] In such a system, the prisoner participates in designing their programme of rehabilitation, which they will undergo while serving the sentence.

[50]. Cells in semi-closed regimes remain open throughout the day. They may be closed only at night. Prisoners serving their sentences in such a regime are allowed to move around the penitentiary unit premises in the manner and times described in internal prison regulations. They are allowed to take part in educational, sport and cultural activities organized outside the unit. Regarding work, prisoners serving their sentences in a semi-open regime are able to work outside the unit with limited supervision of a prison service officer or even without such supervision.[57]

[51]. The open regime, as the most prisoner-friendly way of serving a sentence, is generally designed for prisoners who have behaved correctly while being detained in the closed or semi-open regime.[58]

[52]. Cells in open regimes remain open 24 hours per day. Prisoners in such a system are allowed to move around the penitentiary unit premises in the manner and at times specified in internal prison regulations. They are allowed to take part in educational, sport and cultural activities organized outside the unit. Regarding work, prisoners serving their sentences in the open regime generally should be working outside their prison units, without any supervision.[59]

Outdoor exercises

[53]. According to art. 112 of Executive Penal Code prisoners have a right to at least one hour of outdoor exercise. Female prisoners who are pregnant, breastfeeding or who are staying in prison with their child have a right to longer outdoor exercise.[60] Prisoners enjoying holiday leave from work have a right to longer outdoor exercise.[61] Prisoners held in a cell with a reduced cell surface per prisoner should be granted longer outdoor exercise (0,5 hour), as well as an additional amount of sport and cultural activities.[62]

[55] Poland, art. 90 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.
[56] Poland, art. 88 § 1 and 2 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.
[57] Poland, art. 91 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.
[58] Poland, art. 88 and 89 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.
[59] Poland, art. 92 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.
[60] Poland, art. 112 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.
[61] Poland, art. 124 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.
[62] Poland, art. 110 § 2h of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.

[54]. The director of a prison and prisoners' supervisors have a right to grant prisoners a right to additional or longer outdoor exercise.[63]

[55]. Prisoners during transfer to another prison have no right to outdoor exercise. However, they should be granted additional outdoor exercise.[64]

Exercising yards

[56]. Outdoor exercises take place in exercising yards in the open air, under direct supervision of prison service officers. The prison director has a right to change, due to security reasons, the way in which the outdoor exercises are organised.[65]

[57]. According to CPT, the design of exercising yards leaves much to be desired. "Yards were usually very small, contained at best only a bench, and had no shelter against inclement weather"[66].

[58]. Moreover, recreational and sports facilities owned by penitentiary units do not appear to be satisfactory. In most units there are recreation centers for sports activities, and a significant number of them have independent sports fields.[67] When a unit is equipped with a sports field, the frequency of visits to the field depends on internal prison regulations, e.g. prisoners in Warszawa Grochów Detention Center are able to use the volleyball pitch twice a month for one hour.[68]

[59]. Units that do not have sport fields use exercising yards for sport purposes,[69] but it is not always possible, especially if the yard is small and not equipped with any sport infrastructure.

[63] Poland, art. 138 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.

[64] Poland, art. 112 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.

[65] Poland, art.32 of Minister of Justice regulation on organization and order of imprisonment (*Rozporządzenie Ministra Sprawiedliwości w sprawie regulaminu organizacyjno-porządkowego wykonywania kary pozbawienia wolności*), Journal of Laws of 2016, item 2231 and art.37 of Minister of Justice regulation on organization and order of pre – trial detention (*Rozporządzenie Ministra Sprawiedliwości w sprawie regulaminu organizacyjno-porządkowego wykonywania tymczasowego aresztowania*), Journal of Laws of 2016, item 2290.

[66] Council of Europe, European Committee for the prevention of torute and inhuman or degrading treatment or punishment (CPT), *Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 June to 17 July 2013*, p. 34, 25 June 2014, available at: https://rm.coe.int/1680697928

[67] A. Jaworska (2015), Physical activity in penitentiary units and its impact on basic dimension of prisoners personality (*Aktywność fizyczna w zakładach karnych a podstawowe wymiary osobowości mężczyzn odbywających karę pozbawienia wolności*), Polish Journal of Social Rehabilitation, p. 139 available at: http://bazhum.muzhp.pl/media//files/Resocjalizacja_Polska_(Polish_Journal_of_Social_Rehabilitation)/Resocjalizacja_Polska_(Polish_Journal_of_Social_Rehabilitation)-r2015-t9/Resocjalizacja_Polska_(Polish_Journal_of_Social_Rehabilitation)-r2015-t9-s137-157/Resocjalizacja_Polska_(Polish_Journal_of_Social_Rehabilitation)-r2015-t9-s137-157.pdf

[68] Council of Europe, European Committee for the prevention of torute and inhuman or degrading treatment or punishment (CPT), *Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 June to 17 July 2013*, p. 34, 25 June 2014, available at: https://rm.coe.int/1680697928

[69] A. Jaworska (2015), Physical activity in penitentiary units and its impact on basic dimension of prisoners personality (*Aktywność fizyczna w zakładach karnych a podstawowe wymiary osobowości mężczyzn odbywających karę pozbawienia wolności*), Polish Journal of Social Rehabilitation, p. 139 available at: http://bazhum.muzhp.pl/media//files/Resocjalizacja_Polska_(Polish_Journal_of_Social_Rehabilitation)/Resocjalizacja_Polska_(Polish_Journal_of_Social_Rehabilitation)-r2015-t9/Resocjalizacja_Polska_(Polish_Journal_of_Social_Rehabilitation)-r2015-t9-s137-157/Resocjalizacja_Polska_(Polish_Journal_of_Social_Rehabilitation)-r2015-t9-s137-157.pdf

Indoor activities

[60]. As for cultural and recreational indoor activities, the prisoners have access to common rooms. The frequency of such access depends on the unit. While in Lublin Remand Center detainees were able to use common rooms 3 times a week, prisoners in Warszawa Grochów had such access only once a week. The common rooms are usually equipped with a TV and board games. In some units, prisoners may also use tables for table tennis.[70]

[61]. It is a common situation that in the cells prisoners own TVs and game consoles. They cannot use them all the time, as some of the units limit electricity usage to select hours.

Dangerous detainee regime

[62]. The NPM and CPT in their most recent reports paid particular attention to prisoners who qualified as posing a serious threat to the safety of the unit (dangerous detainee regime). According to art. 88a, art. 212a and art. 212b of the Executive Penal Code[71] such a regime might be used in several cases, including, among others, for prisoners who have committed serious crimes or who were involved in organized crime, or prisoners who have previously tried to escape from the penitentiary unit.

[63]. A prisoner who has qualified for the dangerous detainee regime serves their sentence in a closed regime within a designated ward or cell. Conditions of his detention must ensure increased protection of society, as well as the safety of the unit. They remain closed nearly 24 hours a day and are more frequently supervised than other prisoners. They can learn, work, and take part in religious services and cultural, sport and educational activities only in the ward in which they are imprisoned. Like other prisoners, they have a right to one hour of outdoor exercise, but only in designated yards under strengthened supervision.[72]

[64]. The number of prisoners held in the dangerous detainee regime is decreasing since ECtHR's judgments in *Piechowicz v. Poland*[73] and *Horych v. Poland*.[74] While in April 2012 nearly 400 prisoners were qualified for the dangerous detainee regime, currently only 114 serve their sentence in such a regime.

[65]. In the above-mentioned rulings, the ECtHR found a violation of art. 3 of the Convention due to, among other things, the duration and severity of the measures applied to applicants while they remain under the dangerous detainee regime. It has also concluded that applicants were not provided with "sufficient mental or physical stimulation, except for a daily, usually solitary walk in the segregated area and access to the television and library". As a result no efforts were made to counteract the effects of the applicant's isolation. It was an additional argument that enabled the ECtHR to find a violation of art. 3 of Convention.

[66]. The Council of Europe Committee of Ministers terminated the execution of *Piechowicz v. Poland* and *Horych v. Poland* cases in 2016, after the decision of the Polish government to amend the Executive Penal Code and change the way the prisoners are qualified for the dangerous detainee regime.[75] The amendment was recognized by HFHR as a step in the right direction. However, HFHR has pointed out that prison authorities should provide prisoners held in such a regime with sufficient mental and physical stimulation, to counteract the trauma resulting from increased isolation.[76]

4. Solitary confinement

[70] Council of Europe, European Committee for the prevention of torute and inhuman or degrading treatment or punishment (CPT), *Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 June to 17 July 2013*, p. 26, 25 June 2014, available at: https://rm.coe.int/1680697928

a) What is the national standard set regarding solitary confinement? Is it regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?
b) *Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).*
c) *Please, provide a link to the National Preventive Mechanism's reports* ***from the reference period*** *(1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/*

Please cite any relevant sources

[71]Poland, art.88a, art.212a and art. 212b of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.

[72]Poland, art. 88b of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.

[73] European Court of Human Rights (ECtHR), *Piechowicz v. Poland*, No. 20071/07, 17 April 2012

[74] European Court of Human Rights (ECtHR), *Horych v. Poland*, No. 13621/08, 17 April 2012

[75] Council of Europe, Committee of Ministers, Resolution CM/ResDH(2016)128, 7 June 2016

[76] Poland, Helsinki Foundation for Human Rights (*Helsińska Fundacja Praw Człowieka*), Report on the implementation of judgments of European Court of Human Rights in Poland, March 2017, p. 9, available at: www.hfhr.pl/wp-content/uploads/2017/03/Raport-implementacja-ETPC-10-03-2017.pdf

National standard

[67]. Solitary confinement is a disciplinary measure. It involves placing a prisoner in a separate, specially designed cell for up to 28 days (14 days in the case of pre-trial detainees). While other disciplinary measures may be applied to prisoners who have violated the order and disciplinary rules of a given unit, solitary confinement may only be imposed when the violation is serious.[77]

[68]. The use of solitary confinement and the limitations of rights and freedoms it entails are described in the Executive Penal Code. During solitary confinement, prisoners remain separated from other prisoners and are denied their rights to:

- receive visits
- make phone calls
- use audio-visual and computer equipment
- take part, together with other prisoners, in religious services (however, at their request they should be allowed to participate directly in a service, without a possibility of contacting other prisoners)
- take part in cultural, educational and sport activities (however, they may use books and press)
- purchase food and tobacco products
- work outside the cell
- educate themselves outside the cell
- use their own clothing, footwear and tobacco products.[78]

[69]. In situations justified by family, personal or educational reasons, the prison director may allow the prisoner to receive visits or make phone calls.[79]

[70]. Solitary confinement cannot be used against female prisoners who are pregnant, breast feeding or held in prison with their child.[80]

[71]. During solitary confinement, a physician or a psychologist supervises a prisoner's ability to remain confined.[81]

[72]. Only the prison director can decide to impose solitary confinement on a prisoner (other disciplinary measures might be imposed by authorized prison staff). Before imposing this measure, the director should hear the prisoner and acquaint him or herself with the opinion of the correction officer (and other persons if needed). Disciplinary proceedings may take place in the presence of other prisoners, especially for educational reasons.[82]

[73]. Moreover, before imposing solitary confinement, a physician or a psychologist must issue a written opinion on a prisoner's ability to perform this disciplinary measure.[83]

[74]. Whenever solitary confinement has been ordered for more than 14 days, a penitentiary judge must agree to it.[84]

[75]. While deciding on the type of disciplinary measure to be imposed on a prisoner, the director should take into account educational reasons, the degree of their guilt, the principle of individualization, the type and circumstance of the offence, a prisoner's attitude towards the committed offence, and their personality, health and previous behaviour.[85]

[76]. Like other disciplinary measures, solitary confinement might be imposed at the written request of a prisoner's superior, or *ex officio*. A decision to punish the prisoner should be made in writing and

include an exact description of the offense committed by the prisoner, and a notice should be sent to the prisoner.[86]

[77]. Penitentiary judges may suspend the execution of solitary confinement for the time needed to explain the circumstances of the case. They may also revoke this disciplinary measure (if it is unlawful) or refer it to the prison director for re-examination.[87]

[78]. A prisoner can only be punished once for any single offence, and only with one disciplinary measure. If a prisoner commits more offences before being punished, they should be punished more severely. A prisoner cannot be punished if more than 30 days have passed since the date the offence was committed (or more than 14 days since the prisoner's superior has learned about the offence).[88]

[79]. Generally, it is not possible to re-impose a disciplinary measure and prolong its duration. There only exception to this rule is when the total duration of the imposed measure does not exceed the statutory boundaries (28 days for solitary confinement in the case of prisoners; 14 days in the case of pre-trial detainees).[89]

[80]. Whenever educational concerns arise, a decision on a disciplinary sanction might be changed, suspended for up to 3 months, or even waived.[90]

[81]. A disciplinary measure imposed on a prisoner should be carried out without undue delay. Whenever a prisoner's health makes it impossible to execute a disciplinary measure, the prison director decides, after consultation with a physician, to postpone, discontinue or convert the sanction into another disciplinary measure.[91]

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[77] Poland, art. 144 § 3 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.
[78] Poland, art. 144 § 3 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.
[79] Poland, art. 148 § 4 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.
[80] Poland, art. 144 § 2 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.
[81] Poland, art. 148 § 3 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.
[82] Poland, art. 144 -145 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.
[83] Poland, art. 145 § 3 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652
[84] Poland, art. 145 § 3 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652
[85] Poland, art. 145 § 1 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.
[86] Poland, art. 144 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652
[87] Poland, art. 146 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652
[88] Poland, art. 147 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.
[89] Poland, art. 146 § 1 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.
[90] Poland, art. 146 § 3 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.
[91] Poland, art. 148 § 2 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652

[82]. Prisoners have a right to challenge a decision imposing disciplinary measures by filing a complaint with the penitentiary court.[92]

Solitary confinement cells

[83]. Prisoners punished with solitary confinement are placed in solitary confinement cells. However, such cells do not differ significantly from typical cells and should be equipped in the same way as regular cells. The only difference is the possibility of permanently attaching the table, bed and stool to the floor .[93]

Data on the use of solitary confinement

[84]. During 2017, the prison service imposed solitary confinement nearly 4000 times.[94] In the first quarter of 2018, solitary confinement was used in Polish penitentiary units 968 times. More than half of the cases (506) occurred in the group of penitentiary recidivists (prisoner who were re-incarcerated). Moreover, solitary confinement was used 275 times against prisoners serving a sentence for the first time. Among other groups indicated in Prison Service statistics, solitary confinement was imposed on 80 "young prisoners" and 107 pre-trial detainees.[95]

CPT assessment on solitary confinement

[85]. According to the CPT, after the visit to Poland in 2013, prisoners' solitary confinements were well-documented. The conditions in solitary confinement cells were generally acceptable.[96]

[86]. On the other hand, the CPT found the maximum period of solitary confinement to be too long, as it may have "very damaging" effects on the prisoners. As a result, it recommended that the Polish government reduce the maximum period of solitary confinement to 14 days and prohibit the possibility of imposing sequential disciplinary measures resulting in uninterrupted periods of solitary confinement.[97] The recommendation has not been implemented.

[87]. The CPT also had concerns regarding disciplinary procedures. It noted that not all of the prisoners punished with solitary confinement were provided with a written notice of the disciplinary charge brought against them. Additionally, they were not always heard or informed of their right to file a complaint.[98]

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[92] Poland, art. 144 § 5 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652

[93] Poland, Minister of Justice regulation on detention conditions for persons deprived of liberty in prisons and remand centers (*Rozporządzenie Ministra Sprawiedliwości w sprawie warunków bytowych dla osób osadzonych w zakładach karnych I aresztach śledczych*), Journal of Laws of 2016, item 2224.

[94] Poland, Minister of Justice, Central Board of Prison Service, *Statistical Information for 1st 2nd ,3rd and 4th quarter of 2017*, available at: www.sw.gov.pl/strona/Statystyka-kwartalna

[95] Poland, Minister of Justice, Central Board of Prison Service, Statistical Information for 1st quarter of 2018 *(Kwartalna Informacja Statystyczna, 1 kwartał 2018*), p. 19, available at: www.sw.gov.pl/assets/07/16/54/0ea7dce0725e67a9f8b0ca797873ada17a586fc6.pdf

[96] Council of Europe, European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT), *Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 June to 17 July 2013*, p. 45, 25 June 2014, available at: https://rm.coe.int/1680697928

[97] Council of Europe, European Committee for the prevention of torute and inhuman or degrading treatment or punishment (CPT), *Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 June to 17 July 2013*, p. 45, 25 June 2014, available at: https://rm.coe.int/1680697928

[98] Council of Europe, European Committee for the prevention of torute and inhuman or degrading treatment or punishment (CPT), *Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of*

[88]. The CPT called on prison authorities to review existing legislation and ensure that prison physicians will not be the ones confirming a prisoner's ability to be held in solitary confinement during disciplinary proceedings. According to the CPT, such a practice is "detrimental to the doctor-patient relationship that should exist between a prison doctor and inmates."[99] The recommendation in that field remains not implemented.

[89]. The CPT had further concerns regarding the fact that prisoners held in solitary confinement are automatically denied the right to receive visits of family members, write letters to them or contact them on the phone. According to the CPT, such a sanction should be imposed only where a prisoner's offence was related to such contacts.[100]

NPM

[90]. Neither the 2015 nor 2016 NPM report referred to the use of solitary confinement in penitentiary units.

5. Access to healthcare

a) What is the national standard with regard to access to medical services in prisons*? (E.g. do prisoners have prompt access to medical services within prisons or externally? Do prisoners have access to dentists and opticians?)*
b) Are there any special provisions relating to the provision of specialist care? *(E.g. for long-term diseases, for sick and elderly prisoners, the mentally ill, drug addicted prisoners etc.)*
c) Is access to healthcare in prisons regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?
d) *Please indicate whether there are different standards applicable to different detention regimes.*
e) *Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/*

Please cite any relevant sources

[91]. Poland is among the countries where prison health services constitute a part of the prison service structure. Healthcare services are provided to prisoners in healthcare institutions for prisoners. These include: in-patient clinics with sick wards (clinics), prison hospitals with specialist prison wards, diagnostic wards, dentist clinics, rehabilitation and physiotherapy rooms.

Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 June to 17 July 2013, p. 45, 25 June 2014, available at: https://rm.coe.int/1680697928

[99] Council of Europe, European Committee for the prevention of torute and inhuman or degrading treatment or punishment (CPT), *Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 June to 17 July 2013*, p. 46, 25 June 2014, available at: https://rm.coe.int/1680697928

[100] Council of Europe, European Committee for the prevention of torute and inhuman or degrading treatment or punishment (CPT), *Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 June to 17 July 2013*, p. 46, 25 June 2014, available at: https://rm.coe.int/1680697928

[92]. Healthcare facilities for inmates are the responsibility of the Minister of Justice. The activities of the prison healthcare services are organized and supervised by the Director of the Healthcare Office with a team of specialists.

[93]. Healthcare services for inmates in Poland consist of 155 in-patient clinics and 11 hospitals with 27 specialist hospital wards located in penitentiary units all over the country.[101]

National standard

[94]. According to art. 102 and 115 of the Executive Penal Code prisoners are entitled to free healthcare, medicine and hygienic products.[102] However, they do not have a right to select their own physician.[103]

[95]. Prisoners have a right to be provided with medical services without the presence of prison service officers. However, it does not apply to prisoners serving their sentences in closed units. (In such cases, a physician or a nurse may ask the prison service officer to leave the room where medical services are provided.)[104]

[96]. Whenever there are particular safety concerns, the physician or the nurse may ask prison service officers to be present during medical services provided to prisoners serving their sentences in semi-open and open regimes.[105]

[97]. The organization of the prison healthcare service and detailed description of prisoners' access to healthcare are described in the Minister of Justice Regulation on providing health services by medical entities for persons deprived of liberty.[106]

[98]. According to that regulation, prison healthcare facilities are entitled to:

- provide prisoners with medical examinations and advice;
- provide prisoners with treatment;
- provide prisoners with psychological examinations and therapy;
- provide prisoners with therapeutic rehabilitation;
- care for pregnant women and their fetuses through childbirth and confinement;
- provide prisoners with diagnostic examinations and medical analysis;

[101] Poland, Prison Service, Description of the prison healthcare system, available at: www.sw.gov.pl/jednostka/biuro-sluzby-zdrowia

[102] Poland, art. 115 § 1 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.

[103] Poland, art. 115 § 1a of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.

[104] Poland, art. 115 § 7a of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652

[105] Poland, art. 115 § 8 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652

[106] Poland, Minister of Justice regulation on providing medical services by medical entities for persons deprived of Liberty (*Udzielanie świadczeń zdrowotnych przez podmioty lecznicze dla osób pozbawionych wolności)*, Journal of Laws of 2017, item 2131.

- care for sick prisoners;
- care for prisoners with disabilities;
- apply measures, including obligatory vaccinations, to prevent the occurrence of injuries and infectious diseases;
- provide prisoners with dental treatment;
- assess prisoners' health conditions;
- provide prisoners with orthopaedic items.[107]

[99]. In justified cases, whenever the prison healthcare is unable to provide the prisoner with suitable care, medical services should be provided by public healthcare facilities, especially when there is a need to:

- provide health services immediately due to prisoners' threat to life or health;
- provide prisoners with specialist medical examinations, treatment or rehabilitation;
- carry out diagnostic examination outside the prison due to the lack of specialized medical equipment in prison healthcare facilities;
- provide health services to a prisoner who is staying outside prison because of a temporary permit to leave the prison.[108]

[100]. The decision in this regard is made by the head of a given prison healthcare facility or a prison physician.[109]

[101]. Every prisoner should be provided with appropriate preliminary, periodic and check-up examinations. The preliminary examination should take place not longer than 3 days after a prisoner's admission. No longer than 14 days after the admission, prisoners should be provided with a radiological examination of their chest. The prison physician may order any other necessary diagnostic examinations.[110]

[102]. Once every 24 months, a prisoner should be provided with a radiological examination of their chest (periodic examination).[111]

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[107] Poland, § 2 of Minister of Justice regulation on providing medical services by medical entities for persons deprived of Liberty (*Udzielanie świadczeń zdrowotnych przez podmioty lecznicze dla osób pozbawionych wolności)*, Journal of Laws of 2017, item 2131.

[108] Poland, § 2 of Minister of Justice regulation on providing medical services by medical entities for persons deprived of Liberty (*Udzielanie świadczeń zdrowotnych przez podmioty lecznicze dla osób pozbawionych wolności)*, Journal of Laws of 2017, item 2131.

[109] Poland, § 2.2 of Minister of Justice regulation on providing medical services by medical entities for persons deprived of Liberty (*Udzielanie świadczeń zdrowotnych przez podmioty lecznicze dla osób pozbawionych wolności)*, Journal of Laws of 2017, item 2131.

[110] Poland, § 3-4 of Minister of Justice regulation on providing medical services by medical entities for persons deprived of Liberty (*Udzielanie świadczeń zdrowotnych przez podmioty lecznicze dla osób pozbawionych wolności)*, Journal of Laws of 2017, item 2131.

[111] Poland, § 5 of Minister of Justice regulation on providing medical services by medical entities for persons deprived of Liberty (*Udzielanie świadczeń zdrowotnych przez podmioty lecznicze dla osób pozbawionych wolności)*, Journal of Laws of 2017, item 2131.

[103]. Each prisoner should be medically examined before being transferred to another unit or before leaving the prison (check-up examination). During that examination, the prison physician should inform the prisoner about any possible need for further treatment and provide them with the results of the recent examinations necessary for further treatment. The prison physician should also ascertain a prisoner's ability to return on their own to their place of residence and specify whether they will need to be supplied with necessary medicine, orthopedic items or any other materials.[112]

[104]. Each day the prison authorities should provide prisoners with an opportunity to report a need for a physician's assistance. Whenever the prison is not running a 24h healthcare facility, a prisoner should have the ability, in case of a threat to his life or health, to visit a physician outside the usualprocess within the physician's working hours.[113]

[105]. A physician, or a nurse when a physician is not available, may decide to place a prisoner in the infirmary. Only the prison physician may order placement of a prisoner in the prison hospital, except in situations in which a prisoner's health is endangered. In such situations, any other physician, nurse or paramedic may decide to place the prisoner in the prison hospital.[114]

[106]. The prison nurse is responsible for preparing and providing medicines for prisoners. Whenever the prison does not ensure 24h medical care, after medical practitioners' working hours, the medicines prepared by the nurse may be delivered to prisoners by prison service officers.[115]

Interruption of sentence

[107]. The court may decide to interrupt a prisoner's sentence due to various reasons that, depending on the circumstances, might be obligatory or facultative in nature.[116]

[108]. The court is obligated to grant a stay or interruption in the event of mental illness of the convict or other serious illness which prevents them from being incarcerated.[117] While analysing the above-mentioned provision, one should take into account "(...) not the duration of an illness but the severity of pathological processes leading to serious activity and organic changes of the body (...)".[118] In accordance with decisions of Polish courts, a serious illness is "(...) a state where there is a serious disturbance of basic activity of organs (central nervous system, respiratory system or circulatory system) as a result of which these organs may be expected to slow down or cease to function, and thus resulting in death (...)."[119]

[112] Poland, § 6 of Minister of Justice regulation on providing medical services by medical entities for persons deprived of Liberty (*Udzielanie świadczeń zdrowotnych przez podmioty lecznicze dla osób pozbawionych wolności)*, Journal of Laws of 2017, item 2131.

[113] Poland, § 7 of Minister of Justice regulation on providing medical services by medical entities for persons deprived of Liberty (*Udzielanie świadczeń zdrowotnych przez podmioty lecznicze dla osób pozbawionych wolności)*, Journal of Laws of 2017, item 2131.

[114] Poland, § 8 of Minister of Justice regulation on providing medical services by medical entities for persons deprived of Liberty (*U Udzielanie świadczeń zdrowotnych przez podmioty lecznicze dla osób pozbawionych wolności)*, Journal of Laws of 2017, item 2131.

[115] Poland, § 9 of Minister of Justice regulation on providing medical services by medical entities for persons deprived of Liberty (*Udzielanie świadczeń zdrowotnych przez podmioty lecznicze dla osób pozbawionych wolności)*, Journal of Laws of 2017, item 2131.

[116] Poland, art. 150-151 of the Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.

[117] Poland, art. 150 of the Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.

[118] K. Potulski (2017), Art. 150, in: Executive Penal Code – Commentary, online version with restricted access.

[119] Poland, Supreme Court: judgment in case II KR 167/76, 30 August 1976 and Supreme Court, judgment in case II KR 191/83, 15 September 1993.

[109]. Granting an interruption in the execution of a penalty is facultative in nature when there are important family or personal matters in favour of the decision.[120] Until 1 January 2012, a reason for granting facultative interruption might have been health issues. Under the act of 16 September 2011, the Executive Penal Code was amended and a health criterion was deleted as a reason enabling application for obtaining a facultative interruption.[121] The current wording of the provision makes it more difficult to obtain an interruption in the case of a prisoner's illness that is not considered "severe," which might pose a threat to the full implementation of the principle of the humane treatment of prisoners.

[110]. The number of interruptions of sentences significantly decreased in 2016. While in 2015 the courts granted a break in the execution of punishment nearly 2,000 times, in 2016 the number of interruptions decreased to 969.[122] In 2017, prisons granted prisoners a break in their sentence in only 851 cases.[123]

Therapeutic regime

[111]. Art. 96 of the Executive Penal Code sets up a "therapeutic system" in which prisoners with addictions, mental disabilities or physical disabilities requiring specialist treatment, in particular psychological care, medical care or rehabilitation, can serve their sentences.[124]

[112]. Furthermore, art. 97 of the Executive Penal Code states that with regard to prisoners serving their penalties under a therapeutic system, prison authorities should be guided by, among others, the need to prepare those prisoners for a self-sufficient life. Moreover, the execution of a prison sentence must be adapted to the prisoner's needs in terms of medical treatment, hygiene and sanitation. Lastly, convicted persons who require specialist treatment should not be transferred to another appropriate prison regime. The idea of a therapeutic regime is to guarantee that inmates are provided with psychological, medical and physician's care.[125]

[113]. For most part, therapeutic wards host alcoholics, drug addicts and persons with personality disorders. As of 31 December 2017 slightly more than 3,200 prisoners were serving their sentence in therapeutic wards, including 1,553 prisoners with non-psychotic mental disorders (but rather are mentally disabled), 509 drug addicts and 1,167 prisoners addicted to alcohol. Nearly 700 prisoners, including 1 prisoner with a physical disability, who were qualified for the therapeutic system, were serving their sentences outside therapeutic wards.[126]

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[120] Poland, art.153 § 2 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.

[121] Poland, Act amending the Executive Penal Code and other acts (Ustawa z dnia 16 września 2011 r. o zmianie ustawy – kodeks karny wykonawczy oraz niektórych innych ustaw), 16 September 2011.

[122] Poland, Minister of Justice, Central Board of Prison Service, Annual Statistical Information for 2016 (*Roczna nformacja Statystyczna, Rok 2016*), p. 16, available at: www.sw.gov.pl/assets/61/25/83/3a896fbdafca12f637f7326ee8f6eb49b5c3e24f.pdf

[123] Poland, Minister of Justice, Central Board of Prison Service, Annual Statistical Information for 2017 (*Roczna Informacja Statystyczna, Rok 2017*), p. 16, available at: www.sw.gov.pl/assets/07/04/98/5aef7bb45347469a8fec566a1c8277cd60048432.pdf

[124] Poland, art. 96 of the Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.

[125] Poland, art.97of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.

[126] Poland, Minister of Justice, Central Board of Prison Service, Annual Statistical Information for 2017 (*Roczna Informacja Statystyczna, Rok 2017*), p. 32, available at: www.sw.gov.pl/assets/07/04/98/5aef7bb45347469a8fec566a1c8277cd60048432.pdf

[114]. Pursuant to one of the regulations of the Minister of Justice, the prison psychologist should carry out psychological examinations and provide prisoners with psychological help and sufficient therapeutic and psycho-corrective activities.[127]

[115]. According to the General Director of Prison Service's Instruction 2/12, in each prison a psychologist should care for a maximum of 200 prisoners.[128] However, this requirement is not fulfilled in all penitentiary units.[129]

[116]. The Commissioner for Human Rights has asked the Polish Society of Psychologists to evaluate the standard set up in the General Director of the Prison Service's Instruction. According to that society, prison psychologists, due to the large number of tasks required of them, are not able to fulfill their duties in an effective way.[130]

[117]. As a result, the Commissioner for Human Rights, in its general statement addressed to the General Director of the Prison Service, indicated the need to increase the number of psychologists working with prisoners. The CHR pointed out that the current standard does not guarantee that prisoners are provided with sufficient care, which translates into a higher risk of prisoners' aggression and self-harm.[131]

Situation of the prison healthcare in Poland

European Court of Human Rights

[118]. The European Court of Human Rights (ECtHR) dealt several times with the issue of the effectiveness of health care in Polish prisons and remand centres. Two cases are particularly worth mentioning: *Dzieciak v. Poland*[132] *and Kaprykowski v. Poland*.[133] They illustrate the most important problems related to medical treatment. In both cases, the ECtHR found a violation of art. 3 ECHR, which provides a prohibition on torture, inhuman or degrading treatment or punishment.

[119]. Numerous problems concerning the functioning of healthcare were identified by the Court in its judgment *Dzieciak v. Poland*, where for the first time the ECtHR decided that Poland had violated the right to life. In this judgment, the ECtHR pointed not only to the lack of adequate infrastructure of the prison healthcare system but also the improper conduct of the prison and court administration, which should have reacted to the deteriorating health of the prisoner. The ECtHR decided that the national courts did not take the health of the applicant seriously. In the opinion of the ECtHR, taking into account the applicant's ailments, they should not have kept him on remand for four years. The poor quality and delays in providing medical care given to the complainant

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[127] Poland, Minister of Justice regulation on conducting penitentiary impacts in prisons and detention centers (*Rozporządzenie Ministra Sprawiedliwości z dnia 14 sierpnia 2003 r. w sprawie sposobów prowadzenia oddziaływań penitencjarnych w zakładach karnych i aresztach śledczych*), Journal of Laws of 2013, item. 1067.

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[129] Poland, Commissioner for Human Rights (*Rzecznik Praw Obywatelskich*), General statement to Director of Prison Service on psychological care of prisoners, 17 May 2016, available at: www.rpo.gov.pl/sites/default/files/Wystapienie%20do%20Dyrektora%20Generalnego%20Sluzby%20Wieziennej%20ws%20psychologow%20pracujacych%20z%20osobami%20pozbawionymi%20wolnosci%2017.05.2016.pdf

[130] Poland, Commissioner for Human Rights (*Rzecznik Praw Obywatelskich*), General statement to Director of Prison Service on psychological care of prisoners, p. 5, 17 May 2016, available at: www.rpo.gov.pl/sites/default/files/Wystapienie%20do%20Dyrektora%20Generalnego%20Sluzby%20Wieziennej%20ws%20psychologow%20pracujacych%20z%20osobami%20pozbawionymi%20wolnosci%2017.05.2016.pdf

[131] Poland, Commissioner for Human Rights (*Rzecznik Praw Obywatelskich*), General statement to Director of the Prison Service on psychological care of prisoners, 17 May 2016, available at: www.rpo.gov.pl/sites/default/files/Wystapienie%20do%20Dyrektora%20Generalnego%20Sluzby%20Wieziennej%20ws%20psychologow%20pracujacych%20z%20osobami%20pozbawionymi%20wolnosci%2017.05.2016.pdf

[132] European Court of Human Rights (ECtHR), *Dzieciak v. Poland*, No. 77766/01, 9 December 2008.

[133] European Court of Human Rights (ECtHR), *Kaprykowski v. Poland*, No. 23052/05, 3 May 2008.

during his time in the remand centre exposed his health and life to danger, and as a result led to a violation of the country's obligation to protect the lives of inmates.[134]

[120]. In *Kaprykowski v. Poland*, the applicant suffered from severe depression, encephalopathy and dementia. His health allowed him to serve his sentence only with continuous specialist psychiatric care. In the Remand Prison in Poznan he was put in the prison's general ward, not in the hospital. He shared his cell with healthy inmates who ignored his attacks of epilepsy and did not help him with routine daily activities. In the opinion of the ECtHR such conditions were not sufficient. The ECtHR stressed its disapproval of prison staff acting as if they have no obligation to ensure the safety and care of inmates who are in need, but rather making other inmates responsible for providing help in daily activities or, should it prove necessary, obligating them to provide help in emergencies. According to the ECtHR, incarcerating the applicant without providing him with proper medical care and assistance constituted inhumane treatment and resulted in a violation of art. 3 ECHR.[135]

[121]. On 21 September 2016 the Council of Europe Committee of Ministers closed the examination of the execution of eight ECtHR judgements in the group of cases *Kaprykowski v. Poland.*[136] The Helsinki Foundation for Human Rights (HFHR) found that decision to be premature. According to the HFHR, "the general measures aimed at realizing the *Kaprykowski v. Poland* group of judgments have not been sufficient to prevent similar violations," especially since Polish authorities did not set up appropriate environmental and technical accommodations for prisoners with disabilities. Moreover, the HFHR pointed out that it has directed a number of intervention letters in cases of prisoners with disabilities who were not provided with appropriate care.[137]

[122]. Moreover, the ECtHR recently delivered a judgement in the case *Bujak v. Poland*[138] concerning inadequate medical care in a prison for an inmate with serious neurological and orthopedic problems following a car accident. From the beginning of his pre-trial detention, the applicant in that case had regularly consulted various doctors and had been prescribed a hard mattress, crutches, and then a wheelchair. He alleged, however, that he never received the mattress, that the wheelchair was unsafe for use and that the Remand Centre in which he stayed had not been adapted to the needs of persons with disabilities. He claimed that, because he was not provided with sufficient medical care in detention, his health seriously deteriorated, and he suffered the humiliation of being assisted by other inmates. The ECtHR concluded that "the situation in which the applicant was placed undermined his dignity and gave rise to particularly acute hardship that caused anxiety and suffering beyond that inevitably associated with any deprivation of liberty". As a result, it ruled that Poland violated the art. 3 of ECHR.

[123]. *Supreme Audit Chamber*

[124]. In 2013 the Supreme Audit Chamber published a report on prison healthcare.[139] According to its conclusions, the healthcare provided to persons who are deprived of liberty is not fully consistent with the provisions of both national and EU law.

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[134] European Court of Human Rights (ECtHR), *Dzieciak v. Poland*, No. 77766/01, 9 December 2008

[135] European Court of Human Rights (ECtHR), *Kaprykowski v. Poland*, No. 23052/05, 3 May 2008.

[136] Council of Europe, Committee of Ministers, Resolution CM/ResDH(2016)278, 21 September 2016

[137] Poland, Helsinki Foundation for Human Rights (*Helsińska Fundacja Praw Człowieka*), Report on the implementation of judgments of European Court of Human Rights in Poland, March 2017, p. 7, available at: www.hfhr.pl/wp-content/uploads/2017/03/Raport-implementacja-ETPC-10-03-2017.pdf

[138] European Court of Human Rights (ECtHR), judgment *Bujak v. Poland*, No. 686/12, 21 March 2017.

[139] Poland, Supreme Chamber of Control (*Najwyższa Izba Kontroli*), Providing medical care to people deprived of liberty (*Sprawowanie opieki medycznej wobec osób pozbawionych wolności),* 22 February 2013, available at: https://www.nik.gov.pl/plik/id,4619,vp,6181.pdf

[125]. Based on its audit, the Supreme Audit Chamber observed that the condition of the buildings and rooms in which detainees were treated were inconsistent with the health inspection recommendations and construction supervision. Only two of the 17 controlled units had rooms that satisfied the conditions laid down by national law.[140]

[126]. Moreover, almost half of the devices used for diagnostic examination were outdated and did not pass the technical inspection. Healthcare entities that were used at the end of 2011 had special medical equipment, but in most cases the equipment was overused. In 6 of the 15 institutes in which this issue was examined, the required periodic review and follow-up was either entirely neglected or only carried out in a limited fashion. They did not comply with the manufacturer's recommendations contained in the instructions of use, and did not prepare nor comply with the mandatory technical maintenance schedules. In addition, 11 institutes offering X-ray services were not provided with the tools necessary for safe use of the equipment to protect staff and patients from the dangers arising from ionizing radiation. It was found that the device was used despite available information on excessive doses of X-rays that may arise from failure to abide by the safety standards of radiological equipment. None of the 10 visited prison hospitals were equipped with an X-ray machine.[141]

[127]. In addition, the audit found that prisoners' preliminary and periodic examinations were conducted in violation of the time limits established by law.[142]

[128]. *CPT*

[129]. In all of its reports that have been published, CPT has pointed out a number of problems that give rise to doubts as to whether Poland fulfils its obligations in accordance with art. 3 of the Convention. The most important ones include problems related to healthcare for inmates and infrastructure problems in Polish penitentiary units.

[130]. During each visit to Poland, the CPT delegation visited prison hospitals. In each of the hospitals, it pointed to the unsatisfactory living areas designated for inmates and the need to improve living conditions.[143]

[131]. During a 2013 CPT visit to Poland, the delegation received complaints from prisoners about the quality of the healthcare provided (lack of medication beyond basic medicines, superficial medical examinations, delays in gaining access to healthcare). As a result, it highlighted that "the prison authorities are responsible for the health care of all prisoners; all efforts possible must be made to ensure that a precise diagnosis is promptly established and that adequate treatment required by the state of health of the person concerned is provided to all prisoners."[144]

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[140] Poland, Supreme Chamber of Control (*Najwyższa Izba Kontroli*), Providing medical care to people deprived of liberty (*Sprawowanie opieki medycznej wobec osób pozbawionych wolności),* p. 21*,* 22 February 2013, available at: www.nik.gov.pl/plik/id,4619,vp,6181.pdf

[141] Poland, Supreme Chamber of Control (*Najwyższa Izba Kontroli*), Providing medical care to people deprived of liberty (*Sprawowanie opieki medycznej wobec osób pozbawionych wolności),* p. 22*,* 22 February 2013, available at: www.nik.gov.pl/plik/id,4619,vp,6181.pdf

[142] Poland, Supreme Chamber of Control (*Najwyższa Izba Kontroli*), Providing medical care to people deprived of liberty (*Sprawowanie opieki medycznej wobec osób pozbawionych wolności),* p. 13-14*,* 22 February 2013, available at: www.nik.gov.pl/plik/id,4619,vp,6181.pdf

[143] Council of Europe, European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT), Reports to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), available at: www.coe.int/en/web/cpt/poland.

[144] Council of Europe, European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT), Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of

[132]. *National Preventive Mechanism*

[133]. The NPM in its 2014 report noted the improvement of the state of prison healthcare. It stated that "in comparison with the previous year, having reviewed the exercise of the right of prisoners to medical care in terms of broadly defined treatment by medical personnel, it can be concluded that the situation in this regard has been significantly improved."[145] Only in two establishments did persons deprived of their liberty complain about brusqueness of a doctor. Their assessment of access to specialist medical examinations and wait times for medical appointments was positive as well.[146]

[134]. In its last report, the NPM paid particular attention to the amendment of the Minister of Justice regulation on administrative activities related to performing pre-trial detention or other sanctions resulting in deprivation of liberty and documenting those activities. According to the new meaning of paragraph 35, a prisoner whose life or health is seriously threatened may be admitted to the prison unit and should be immediately provided with sufficient healthcare. The NPM pointed out that the previous meaning of that section denied the prison authority the possibility of admitting a prisoner in such a condition to prison. According to the NPM, as long as the prison healthcare system is unable to provide prisoners with as comprehensive care as public healthcare does, the above-mentioned amendment will pose a threat to prisoners' health and life.[147]

[135]. The NPM indicated that its monitoring visits proved that a vast majority of the penitentiary units that are described as adapted to the needs of prisoners with disabilities did not guarantee such prisoners a possibility of achieving fully independent functioning.[148]

[136]. According to the NPM, architectural barriers occur mainly in units that were built long ago, in those that were placed on the list of architectural landmarks and in those that were designed without any adjustments for the needs of prisoners with disabilities. As a result, even if prisoners are placed in cells adjusted to their needs, they are frequently denied, due to architectural barriers, the ability to use common bathrooms, exercise yards, libraries etc.[149]

Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 June to 17 July 2013, p. 36, 25 June 2014, available at: www.coe.int/en/web/cpt/poland

[145] Poland, National Preventive Mechanism (*Krajowy Mechanizm Prewencji*), Report of the Commissioner for Human Rights on the activities of National Preventive Mechanism in 2014, June 2015 *(Raport Rzecznika Praw Obywatelskich z działalności Krajowego Mechanizmu Prewencji w 2014),* p.23, available at: www.rpo.gov.pl/sites/default/files/Report_of_the_Human_Rights_Defender_%28Ombudsman%29_on_the_Activities_of_the_NPM_in_Poland_in_2014.pdf

[146] Poland, National Preventive Mechanism (*Krajowy Mechanizm Prewencji*), Report of Human Right Defender on the activities of National Preventive Mechanism in 2014, June 2015 *(Raport Rzecznika Praw Obywatelskich z działalności Krajowego Mechanizmu Prewencji w 2014),* p.23, available at: www.rpo.gov.pl/sites/default/files/Report_of_the_Human_Rights_Defender_%28Ombudsman%29_on_the_Activities_of_the_NPM_in_Poland_in_2014.pdf

[147] Poland, National Preventive Mechanism (*Krajowy Mechanizm Prewencji*), Report of Human Right Defender on the activities of National Preventive Mechanism in 2016, June 2017 *(Raport Rzecznika Praw Obywatelskich z działalności Krajowego Mechanizmu Prewencji w 2016),* June 2017, p.22-23, available at: www.rpo.gov.pl/sites/default/files/Raport%20Krajowego%20Mechanizmu%20Prewencji%20Tortur%20w%202016%20r..pdf

[148] Poland, National Preventive Mechanism (*Krajowy Mechanizm Prewencji*), Report of Human Right Defender on the activities of National Preventive Mechanism in 2016, June 2017 *(Raport Rzecznika Praw Obywatelskich z działalności Krajowego Mechanizmu Prewencji w 2016),* June 2017, p. 48-50, available at: www.rpo.gov.pl/sites/default/files/Raport%20Krajowego%20Mechanizmu%20Prewencji%20Tortur%20w%202016%20r..pdf

[149] Poland, National Preventive Mechanism (*Krajowy Mechanizm Prewencji*), *Report of Human Right Defender on the activities of National Preventive Mechanism in 2016, June 2017(Raport Rzecznika Praw Obywatelskich z działalności Krajowego Mechanizmu Prewencji w 2016),* June 2017, p. 28, available at: www.rpo.gov.pl/sites/default/files/Raport%20Krajowego%20Mechanizmu%20Prewencji%20Tortur%20w%202016%20r..pdf

[137]. Moreover, the NPM has indicated that most of the prison service officers do not have sufficient knowledge of the needs of prisoners with disabilities.[150]

[138]. *Non-governmental organizations*

[139]. In May 2017, the Helsinki Foundation for Human Rights published its report on the human rights of persons deprived of liberty. One of the issues mentioned in the report was the condition of the prison healthcare system in Poland. The HFHR noticed that "complaints about the condition of prison healthcare form the bulk of issues that inmates bring to the Foundation's attention." According to the HFHR, "the level of medical care in correctional facilities, including in particular specialist medical care, does not guarantee that the inmates get access to medical services as required. What is more, there is a problem of obtaining consent to treatment outside the correctional facility when there is no access to relevant medical services. Such cases are mostly due to the fact that inmates do not have access to specialists or expensive treatment."[151]

[140]. The HFHR also received complaints from prisoners with disabilities who complained about problems moving around the correctional facility, non-adjustment of the cells to the needs of persons moving in wheelchairs, as well as the lack of assistance in daily life activities from the staff of penitentiary units.[152]

6. Special measures in place to protect juvenile prisoners.

a) Are there any legal instruments, such as a legislative act, internal prison regulations, manuals, policy papers etc. regulating the separation of juvenile prisoners from adults? (e.g. a separate juvenile ward, or part of the building, canteen, common area etc.?)
b) What age category falls under this specific juvenile prison regime?
c) *Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).*
d) *Please, provide a link to the National Preventive Mechanism'sreports* ***from the reference period*** *(1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/*

Please cite any relevant sources

[150] Poland, National Preventive Mechanism (*Krajowy Mechanizm Prewencji*), Report of Human Right Defender on the activities of National Preventive Mechanism in 2015, June 2016 *(Raport Rzecznika Praw Obywatelskich z działalności Krajowego Mechanizmu Prewencji w 2015),* p.13-14, available at: www.rpo.gov.pl/sites/default/files/Raport%20RPO%20KMP%202015.pdf

[151] Poland, Helsinki Foundation for Human Rights (*Helsińska Fundacja Praw Człowieka*), Report on the human rights of persons deprived of liberty, May 2017, p.18, available at: www.hfhr.pl/wp-content/uploads/2017/05/Report-CPT-FIN.pdf

[152] Poland, Helsinki Foundation for Human Rights (*Helsińska Fundacja Praw Człowieka*), Report on the human rights of persons deprived of liberty, May 2017, p.18, available at: www.hfhr.pl/wp-content/uploads/2017/05/Report-CPT-FIN.pdf

National standard

[141]. According to art. 10 of the Criminal Code a person who has committed an offence under the age of 17 is generally recognized not to be able to incur criminal liability or be imprisoned.[153]

[142]. In case of severe crimes (murder, group rape, and deprivation of liberty), the minimum age of criminal responsibility might be set at the age of 15 years. In such cases, a family court decides whether a juvenile might be tried as an adult.[154]

[143]. Children who have committed an offence before their 17th birthday (in some cases 15th), may face educational measures, including deprivation of liberty for educational purposes and correctional measure – placement in a correctional facility. In case of educational measures there is no minimum age. Such measures have been applied towards children as young as 6 years old. Correctional measures might, however, be applied only towards children who were at least 13 years old while committing an offence.

[144]. The Executive Penal Code does not identify the juvenile regime. Juvenile offenders are held in penitentiary units designed for young prisoners (those who are younger than 21 years old). Therefore, juveniles in Polish penitentiary units are not separated from adults.[155]

[145]. What is more, juveniles might be serving their sentences with even older prisoners. This may happen whenever there are justified reasons for allowing prisoners who were serving their sentences in units for young prisoners to remain in such units, despite exceeding the age of 21. Moreover, a prisoner who is older than 21 but was convicted for the first time, and who behaves properly in the penitentiary unit, might be placed in the young prisoners' system whenever there are justified, educational reasons. There is no age limit for such prisoners. As a result, young prisoners might be held in a juvenile regime with much older prisoners.

[146]. Prisoners who are serving their sentence in a unit designed for "young prisoners" have a right to receive one additional visit per month.[156]

[147]. All of them are included in the system of programmed impact. In such a system, a prisoner participates in designing their programme of rehabilitation that they will go through during incarceration.[157]

Statistical data

[148]. As of 31 December 2017 in Polish penitentiary units there were 1,604 (including 390 pre-trial detainees) young prisoners (under 21 years old) among 73,822 prisoners (2%). What is more, 214 of them (including 149 pre-trial detainees) were younger than 18 years old (only 2 of them were younger than 17).[158]

CPT assessment on juvenile prisoners

[149]. During the 2013 visit, the CPT noted that juveniles in Polish prisons could be placed in the same cell with one or more adult prisoners. It indicated that the prison authorities have made efforts to place juveniles with young prisoners (under the age of 21). Its recommendation to accommodate juveniles separately from adults remains not implemented.[159]

NPM

[150]. Neither the 2015 nor 2016 NPM reports referred to the issue of juveniles serving their sentences in Polish penitentiary units.

7. Special measures in place to protect prisoners from violence

a) Are any special measures in place to protect prisoners against violence, including sexual violence*? (E.g. are prisoners supervised by prison staff? Are there emergency call buttons? Do guards receive training in de-escalation? Do prisoners have access to a complaints mechanism?)*
b) Are there any special measures in place to protect LGBTI prisoners, who are particularly vulnerable to violence/sexual violence?
c) Are these measures regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?
d) *Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).*
e) *Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English) These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: https://apt.ch/en/list-of--designated-npmby-regions-and-countries/*

Please cite any relevant sources

[153] Poland, art.10 § 1 of Criminal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny*), Journal of Laws of 2017, item 2204.
[154] Poland, art.10 § 2of Criminal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny*), Journal of Laws of 2017, item 2204.
[155] Poland, art. 84 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.
[156] Poland, art. 91a of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.
[157] Poland, art. 95 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.
[158] Poland, Minister of Justice, Central Board of Prison Service (*Centralny Zarząd Służby Więziennej*), Annual Statistical Information for 2017 (*Roczna Informacja Statystyczna, Rok 2017*), p. 14, available at: www.sw.gov.pl/assets/07/04/98/5aef7bb45347469a8fec566a1c8277cd60048432.pdf
[159] Council of Europe, European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT), Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 June to 17 July 2013, p. 24, 25 June 2014, available at:

Introduction

[151]. The Prison Service does not gather official data on prisoners' sexual orientation, ethnicity, race or religion. Therefore, it is not possible to determine any numbers regarding those specific groups and indicate whether members of those groups have been treated poorly.

[152]. On the other hand, official data on the number of identified abuses may give some perspective on the safety conditions in the Polish penitentiary system. In 2017, the prison service identified 43 examples of "drastic manifestations of prison subculture" including 2 rapes committed by 6 prisoners and 41 examples of bullying fellow prisoners. The number of prisoners victimized by those activities amounted to 116. Moreover, more than 1,102 fights and batteries occurred, involving 2,445 inmates. Additionally, 186 prisoners attempted suicide and 32 committed self-harm.[160]

[153]. However, there are situations involving risks that the above-mentioned figures do not include. According to the HFHR, this may be due to two main reasons. Firstly, it is connected to the fact that "reporting a problem of such abuses and subsequently reporting them to the prosecutor's office significantly influence the image of prison administration and its effectiveness in fulfilling its obligations."[161]

[154]. Secondly, prisoners consider the complaint mechanism to be ineffective. Therefore, it is likely that not all abuses are reported to prison authorities.[162]

[155]. To give an example, during 2016 the prison service recognized nearly 50 thousand complaints. Only 385 of them (less than 1%) were found to be justified. The situation regarding complaints about ill-treatment by fellow inmates looks even worse. Among 333 complaints issued during 2016, only 1 was found to be justified, while in 2015 none of the 416 complaints were found to be justified.[163]

[156]. M.C. v. Poland[164]

[157]. In 2011 the HFHR submitted written comments to ECtHR in the case of *M.C. v. Poland*. The applicant in that case claimed that during his pre-trial detention he had been abused and subjected to an attempted rape by his fellow inmates. According to the report conducted by prison authorities after M.C.'s allegation, the inmates attempted to rape M.C. due to the fact that he was accused of sexual abuse of a minor.

[158]. In the written comments the HFHR has indicated that there "has been long penitentiary practice, despite the lack of statutory regulation in this area, to extend the special protection to the perpetrator of crimes against sexual freedom, where the victim was minor". Those prisoners are segregated from other prisoners in each prison, by being placed in separate locations or residential cells in each prison, avoiding contacts with others and subjected to frequent inspection by the officers of Prison Service.[165]

[159]. The ECtHR found that Poland violated its duty to protect M.C. from ill-treatment by his fellow inmates and ruled that there was a violation of art. 3 of ECHR.[166]

National standard

[160]. Despite 9 years that have passed since the initiation of the *M.C. v. Poland* case, no regulations were introduced to protect prisoners from being ill-treated by fellow inmates. Therefore, the regulation of that issue might be recognized as general, but not comprehensive. Moreover, there is no regulation aimed at protecting LGBT prisoners from falling victim to rape.

[161]. The Executive Penal Code states that prison administrations should take appropriate steps to ensure the personal safety of prisoners.[167] In particular, to that end, prison officials should maintain order and discipline.[168] Moreover, protection of safety is one of the duties of the Prison Service directly indicated in the Act on the Prison Service.[169] "The national legislator provides that the level of security in penitentiary units is a consequence of the organizational system in the facilities, the activities of prison service officers and their numbers."[170]

[162]. One of the most important elements of the prison safety policy is the classification of prisoners. Prisoners should be classified in order to create adequate conditions in penitentiary units, guarantee prisoners' personal safety, establish environments conducive to individual rehabilitation and reduce the impact of perverted prisoners. During classification, several circumstances should be taken into account:

- prisoners' sex;
- prisoners' age;
- prisoners' recidivism;
- deliberate nature of the crime committed by prisoners;
- the length of the sentence to be served;
- prisoners' health conditions;
- prisoners' addictions;
- degree of prisoners' demoralization and threat to society;

[160] Poland, Minister of Justice, Central Board of Prison Service (*Centralny Zarząd Służby Więziennej*), Annual Statistical Information for 2017 (*Roczna Informacja Statystyczna, Rok 2017*), p. 39, available at: www.sw.gov.pl/assets/07/04/98/5aef7bb45347469a8fec566a1c8277cd60048432.pdf

[161] Helsinki Foundation for Human Rights, Written Comments in the case Chrostowski v. Poland, 15 December 2011, p.7, available at: www.hfhrpol.waw.pl/precedens/images/stories/Skan%20opinia%20Chrostowski%20p%20Polsce.pdf

[162] Helsinki Foundation for Human Rights, Written Comments in the case Chrostowski v. Poland, 15 December 2011, p.7, available at: www.hfhrpol.waw.pl/precedens/images/stories/Skan%20opinia%20Chrostowski%20p%20Polsce.pdf

[163] Poland, Minister of Justice (*Minister Sprawiedliwości*), Information about ways of receiving and processing complaints (*Informacja o sposobach przyjmowania i załatwiania spraw*), available at: https://bip.ms.gov.pl/pl/kontakt/informacja-o-sposobach-przyjmowania-i-zalatwiania-spraw/download,3541,0.html

[164] European Court of Human Rights, *M.C. v. Poland, No. 23692/09,* 3 March 2015.

[165] Poland, Helsinki Foundation for Human Rights (*Helsińska Fundacja Praw Człowieka)*, Written Comments in the case Chrostowski v. Poland, 15 December 2011, available at: www.hfhrpol.waw.pl/precedens/images/stories/Skan%20opinia%20Chrostowski%20p%20Polsce.pdf

[166] European Court of Human Rights, *M.C. v. Poland, No. 23692/09,* 3 March 2015

[167] Poland, art. 108 § 1 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.

[168] Poland, art. 73 § 1 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.

[169] Poland, art. 2 of Act on Prison Service (*Ustawa z dnia 9 kwietnia 2010 r. o Służbie Więziennej*), Journal of Laws of 2017, item 631.

[170] Helsinki Foundation for Human Rights, Written Comments in the case Chrostowski v. Poland, 15 December 2011, available at: www.hfhrpol.waw.pl/precedens/images/stories/Skan%20opinia%20Chrostowski%20p%20Polsce.pdf

- nature of the crime committed by the prisoners.[171]

[163]. However, the procedure of prisoner classification does not always guarantee that a prisoner will not be in danger of abuse from fellow inmates. The Minister of Justice, in its information regarding the receipt and processing of complaints, noted a case of a prisoner who, despite being qualified to belong to a group of prisoners who cannot stay in a cell with members of a certain prison subculture, was placed in such a cell. Due to that mistake, the prisoner's physical integrity was violated.[172]

Supervision of safety in prisons

[164]. Prison units may be supervised with a system of CCTV. CCTV cameras can be placed in residential cells, corridors, baths, visiting rooms, work places and exercise yards. The prison director is responsible for deciding which places should be included in the video surveillance system.[173]

[165]. All residential cells should be equipped with call buttons. However, in the case of common rooms, utility rooms or infirmaries that have been transformed into residential cells, there is a danger that there are no such call buttons.

[166]. Each of the prisoners has a duty to inform prison authorities about any risks to prisoners' safety. They are also obliged to avoid such risks.[174]

[167]. Whenever any threat to prisoners' safety or the safety of the penitentiary unit occurs, a prisoner might be transferred to another unit.[175]

[168]. Some of the tasks connected with the issue of safety have been assigned to penitentiary judges. These judges are responsible for supervising safety conditions and controlling prison service's actions, including any reactions to rebellions, self-harm and deaths.[176]

Protection measures

[169]. The only protection measure indicated in the Executive Penal Code is the placement of a prisoner under special protection in conditions of increased isolation. Such protection measures are always connected to controlling prisoners' health conditions, providing them with psychological help and supervising their visits, phone calls and correspondence.[177]

[170]. The increased isolation might be also connected, within prisoners' consent, with providing the prisoner with personal protection or with protection measures that are usually applied to prisoners serving their sentences in the dangerous detainee regime. The catalogue of possible protective

[171] Poland, art. 82 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.
[172] Poland, Minister of Justice, Information about ways of receiving and processing complaints (*Informacja o sposobach przyjmowania i załatwiania spraw*), p. 43 available at: https://bip.ms.gov.pl/pl/kontakt/informacja-o-sposobach-przyjmowania-i-zalatwiania-spraw/download,3541,0.html
[173] Poland, art. 73a of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.
[174] Poland, art. 108 § 2 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.
[175] Poland, art. 100 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.
[176] Poland, Minister of Justice regulation on the manner, scope and mode of penitentiary judges' supervision (*Rozporządzenie w sprawie sposobu, zakresu i trybu sprawowania nadzoru penitencjarnego*), Journal of Laws of 2003, no. 152, item 1496.
[177]Poland, art. 88d of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.

measures is quite broad. The prison director may apply all of them or only selected ones. In particular, prison directors may decide to:

- place the prisoner in a cell supervised through CCTV (or supervise their behaviour in other prison premises through use of CCTV);
- place the prisoner in a cell equipped with necessary protection measures (strengthened bars or doors);
- place the prisoner in a cell that remains closed 24h per day and is searched more often than other cells;
- limit the prisoner's ability to work, learn and participate in religious services, sport and educational activities only to those situations that take place in the ward in which the prisoner is staying;
- order strip searches each time the prisoner is leaving or entering the cell;
- limit the prisoner's ability to move around prison premises only to necessary cases and only under strengthened supervision;
- order that the prisoner's outdoor exercises take place in designated yards, under strengthened supervision;
- order that the prisoner is able to receive visits only in designated places under strengthened supervision;
- order that the prisoner can receive visits only without direct contact between them and their relatives.[178]

[171]. The prisoner might be placed in conditions of increased isolation only if there is a serious threat (or risk of such threat) to his life or health, connected with pending or completed criminal proceedings in which the prisoner participated (as a witness, suspect, accused or victim).[179]

[172]. Thus it cannot be applied whenever the threat is connected with circumstances not related to criminal proceedings, in particular prisoners' sexual orientation, race, religion or nationality.

[173]. The prison director includes special protection at the request of the court before which the criminal proceedings are pending, or the prosecutor who conducts or supervises the pre-trial proceedings. Moreover, the prison director may impose special protection on the prisoners upon their justified request.[180]

[178]Poland, art. 88d of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.
[179]Poland, art. 88d of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.
[180] Poland, art. 88d of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.

[174]. Each time a prison director would like to impose protection measures, they should consult the court or prosecutor conducting criminal proceedings in the case of the prisoner. If such proceedings have already ended, they should consult the penitentiary judge.[181]

[175]. The decision on protection measures specifies the reasons for applying them, their duration and the types of protective measures to be used in the case of any given prisoner. Whenever the duration of protective measures ends and there is still a threat to the prisoner's live or health, the director of the penitentiary unit extends the duration of the protection measures.[182]

[176]. The prison director may cease to apply protection measures at the request of the judge or prosecutor (when the criminal proceedings are still pending, only if the risk or threat has expired), *ex officio* or at the request of the prisoner (after seeking the opinion of the judge or prosecutor).[183]

[177]. The prisoner should be provided with a decision both upon the application of protective measures and upon the termination of their. The penitentiary judge should be notified each time the protection measures are applied to, extended for or withdrawn from a prisoner,.

NPM

[178]. In its last report, the NPM described two cases connected with ill-treatment. During one of the visits, NPM representatives came across a situation in which a prisoner had beaten another prisoner to death. Despite this, the prisoner was not isolated immediately after the offense, but only moved to another cell in which he remained for a few minutes with another prisoner. According to the NPM, it directly exposed the prisoner in the other cell to the risk of falling victim to aggression.[184]

[179]. In another unit, the NPM identified a prisoner who was deaf and mute. Due to the language barrier, this prisoner , was unable to communicate with prison service officers during conflicts with other prisoners, and therefore felt that his arguments were a lost cause. .[185]

CPT

[180]. During its visit to Poland in 2013, the CPT indicated that the information regarding injuries of newly-arrived prisoners was not satisfactory. According to the CPT, "[i]nformation on injuries observed – in those limited number of cases when it was available – was only entered in the prisoners' individual files. Further, the descriptions were superficial and did not contain doctors' observations as to the consistency between any allegations made and the objective medical findings. In addition, there was no systematic transmission of information on injuries observed to the relevant prosecutor, unless the person concerned had lodged a complaint". Therefore, the CPT

[181] Poland, art. 88d of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.
[182] Poland, art. 88d of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.
[183] Poland, art. 88d of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.
[184] Poland, National Preventive Mechanism (*Krajowy Mechanizm Prewencji*), Report of the Commissioner for Human Rights on the activities of National Preventive Mechanism in 2016, June 2017 *(Raport Rzecznika Praw Obywatelskich z działalności Krajowego Mechanizmu Prewencji w 2016),* June 2017, p.33, available at: www.rpo.gov.pl/sites/default/files/Raport%20Krajowego%20Mechanizmu%20Prewencji%20Tortur%20w%202016%20r..pdf
[185] Poland, National Preventive Mechanism (*Krajowy Mechanizm Prewencji*), Report of the Commissioner for Human Rights on the activities of National Preventive Mechanism in 2016, June 2017 *(Raport Rzecznika Praw Obywatelskich z działalności Krajowego Mechanizmu Prewencji w 2016),* June 2017, p.48, available at: www.rpo.gov.pl/sites/default/files/Raport%20Krajowego%20Mechanizmu%20Prewencji%20Tortur%20w%202016%20r..pdf

recommended guaranteeing that all newly-arrived prisoners undergo a thorough medical examination.[186]

8. Responsible authorities

a) What authority is responsible for the provision of additional information requested under Article 15 of the EAW Framework Decision? *(Please specify whether there a central authority deals with these requests, if yes, please provide contact details, such as the name of the institution, a website, physical and email addresses, and a telephone number. In the absence of a central authority, who deals with those requests?)*
b) What authority is responsible for monitoring conditions of detention and putting forward recommendations?

Please cite any relevant sources

[186] Council of Europe, European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT), *Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 June to 17 July 2013*, p. 37, 25 June 2014, available at: https://rm.coe.int/1680697928

Authority responsible for providing additional information requested under art. 15 of EAW Framework Decision

[181]. There is no central authority responsible for answering the requests issued under art. 15 of EAW Framework Decision.

[182]. This issue is not covered by the provisions of the Code of Criminal Proceedings. Therefore, a request made under art. 15 of EAW Framework Decision is usually transferred to the court that issued the EAW. They prepare the answer to the request in cooperation with prison authorities.

Authorities responsible for monitoring detention conditions

[183]. Places of detention are mainly monitored by the representatives of the National Preventive Mechanism and by penitentiary judges.

National preventive mechanism

[184]. Pursuant to Article 19 of the Optional Protocol to the Convention Against Torture (OPCAT), the national preventive mechanisms have the power to examine regularly the treatment of persons deprived of their liberty in places of detention. Its aim is to prevent torture, inhuman or degrading treatment as well as to improve detention conditions and the treatment of persons deprived of liberty. The NPM is entitled to make recommendations and submit proposals and observations to the relevant authorities.

[185]. The Commissioner for Human Rights (*Rzecznik Praw Obywatelskich*) was appointed to act as the NPM in January 2008.[187]

[186]. Currently, the National Preventive Mechanisms consists of 7 persons.[188] Due to the large number of places of deprivation of liberty (2,600 places in Poland), the NPM is supported by other members of the CHR's Bureau.

[187]. In 2016, the NPM carried out 85 unannounced monitoring visits.[189]

[188]. Since its beginning, the NPM has been facing financial problems and staff shortages. As a result, it has been unable to become an effective barrier against torture, inhuman and degrading treatment.[190]

Penitentiary judges

[189]. Penitentiary judges are responsible for supervision over the legality and correctness of imprisonment and other means of deprivation of liberty (pre-trial detention, arrest, etc.).[191]

[190]. Penitentiary judges are empowered to visit penitentiary units. They have a right to enter places of detention at any time without any restrictions, move around them, review documents and demand explanations from the relevant authorities. They can also conduct, without the presence of 3rd persons, interviews with persons deprived of liberty and examine their motions, complaints and requests.[192]

[191]. Moreover, they can overrule any unlawful decision of prison authorities concerning persons deprived of liberty. The prisoner has a right to challenge the decision of a penitentiary judge and refer the case to the penitentiary court.[193]

[192]. Whenever the penitentiary judge comes across an unlawful deprivation of liberty, it may release the person who was unlawfully deprived of liberty and immediately notify the relevant authorities.[194]

[193]. The penitentiary judge may forward its observations with appropriate motions to relevant authorities and ask them for a response. If they consider the response unsatisfactory, they may refer the case to a superior prison authority.[195]

[194]. Furthermore, whenever the penitentiary judge comes across repetitive failures in the functioning of the detention facility or whenever detention conditions do not fulfil the requirement to respect human rights, the penitentiary judge may ask the superior authority to correct the failures. If the superior authority does not fulfil its obligation, the penitentiary judge may ask the relevant minister to close the detention facility.[196]

[187] Poland, National Preventive Mechanism (*Krajowy Mechanizm Prewencji*), Report of the Commissioner for Human Rights on the activities of National Preventive Mechanism in 2016, June 2017 *(Raport Rzecznika Praw Obywatelskich z działalności Krajowego Mechanizmu Prewencji w 2016),* June 2017, p.11, available at: www.rpo.gov.pl/sites/default/files/Raport%20Krajowego%20Mechanizmu%20Prewencji%20Tortur%20w%202016%20r..pdf

[188] Poland, National Preventive Mechanism (*Krajowy Mechanizm Prewencji*), Report of the Commissioner for Human Rights on the activities of National Preventive Mechanism in 2016, June 2017 *(Raport Rzecznika Praw Obywatelskich z działalności Krajowego Mechanizmu Prewencji w 2016),* June 2017, p.11, available at: www.rpo.gov.pl/sites/default/files/Raport%20Krajowego%20Mechanizmu%20Prewencji%20Tortur%20w%202016%20r..pdf

[189] Poland, National Preventive Mechanism (*Krajowy Mechanizm Prewencji*), Report of the Commissioner for Human Rights on the activities of National Preventive Mechanism in 2016, June 2017 *(Raport Rzecznika Praw Obywatelskich z działalności Krajowego Mechanizmu Prewencji w 2016),* June 2017, p.11, available at: www.rpo.gov.pl/sites/default/files/Raport%20Krajowego%20Mechanizmu%20Prewencji%20Tortur%20w%202016%20r..pdf

[190] Poland, National Preventive Mechanism (*Krajowy Mechanizm Prewencji*), Report of the Commissioner for Human Rights on the acvtivities of National Preventive Mechanism in 2016, June 2017 *(Raport Rzecznika Praw Obywatelskich z działalności Krajowego Mechanizmu Prewencji w 2016),* June 2017, p.12, available at: www.rpo.gov.pl/sites/default/files/Raport%20Krajowego%20Mechanizmu%20Prewencji%20Tortur%20w%202016%20r..pdf

[191] Poland, art. 32 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.

[192] Poland, art. 33 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.

[193] Poland, art. 34 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.

[194] Poland, art. 35 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.

[195] Poland, art. 35 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.

[196] Poland, art. 35 of Executive Penal Code (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), Journal of Laws of 2018, item 652.