



# The European Prison Rules as a Standard-Setter for European Prison Conditions

Online Seminar  
30 November -1 December 2020



## Speakers

- Athena Demetriou**, Senior Prison Manager, Cyprus Prison Department, Nicosia
- Ramin Farinpour**, Senior Lawyer, European Criminal Law Section, ERA, Trier
- Mykola Gnatovskyy**, President of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Council of Europe, Strasbourg
- Philipp Hamedl**, Researcher, Human Dignity and Public Security Team, Ludwig Boltzmann Institute of Human Rights (BIM), Vienna
- Nick Hammond**, Foreign Nationals Expert Group Coordinator, EuroPris, The Hague
- Michele Miravalle**, Researcher, Department of Law, University of Turin; Member of the European Prison Observatory
- Giuliana Monina**, Head of Human Dignity and Public Security Team, Ludwig Boltzmann Institute of Human Rights (BIM), Vienna
- Jorge Monteiro**, Head of Unit, Program and Projects Department, Directorate-General of Reintegration and Prison Services, Ministry of Justice, Lisbon
- Dr Róisín Mulgrew**, Associate Professor in Law, University of Nottingham, lecturer NUIG Galway
- Luisa Ravagnani**, Researcher in Criminology, University of Brescia, Prisoners' Ombudsman, Brescia
- Alessio Scandurra**, Coordinator, Antigone (Observatory on Prison Conditions in Italy), Rome; Coordinator of the European Prison Observatory
- Iliana Taneva**, Secretary to the Council for Penological Cooperation, Council of Europe, Strasbourg
- Dirk van Zyl Smit**, Emeritus Professor of Comparative and International Penal Law, University of Nottingham
- Benoit Van Keirsbilck**, Director, Defence for Children International, Brussels
- Jiske Wallace-Lems**, Project Manager, Custodial Institutions Agency, Ministry of Justice and Security, Rotterdam



With financial support from the European Union's Justice Programme 2014-2020

## Key topics

- The European Prison Rules and their recent revision; the CPT's latest findings and the role of National Preventive Mechanisms in improving prison standards
- Good practices in prison management, including in relation to foreign national prisoners, juveniles and mental health, as well as possible alternatives to detention
- Workshops on foreign national prisoners, juveniles and young adults, as well as mental health in prisons

Language  
English

Event number  
320SDT130

Organisers  
ERA (Ramin Farinpour) in cooperation with the Council of Europe, the Confederation of European Probation (CEP), Antigone/European Prison Observatory, European Organisation of Prison and Correctional Services (EuroPris), Ludwig Boltzmann Institute of Human Rights (BIM)



# The European Prison Rules as a Standard-Setter for European Prison Conditions

Monday, 30 November 2020

08:30 Connection time

09:00 **Welcome and introduction**  
*Ramin Farinpour, Ilina Taneva*

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## I. THE EUROPEAN FRAMEWORK FOR PRISON CONDITION STANDARDS AND THEIR MONITORING

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*Chair: Ramin Farinpour*

09:10 **The European Prison Rules and their recent revision: the Council of Europe's standard-setting work related to prisons and probation and its impact in practice**  
*Dirk van Zyl Smit*

10:00 Discussion

10:15 **Preventing torture and ill-treatment of persons in detention: the impact and latest findings of the Council of Europe's Committee for the Prevention of Torture (CPT) on detention facilities in Europe**  
*Mykola Gnatovskyy*

11:00 Discussion

11:15 Break

11:45 **Working towards harmonised detention standards in the EU: the role of National Preventive Mechanism (NPMs) in supporting the judiciary to apply mutual recognition instruments**  
*Philipp Hamedl, Giuliana Monina*

12:30 Discussion

12:45 Break

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## II. GOOD PRACTICES IN PRISON MANAGEMENT

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*Chair: Ramin Farinpour*

13:45 **Prison in Europe – setting the scene: European Prison Observatory 2019 report on European prisons and penitentiary systems**

- Comparing national prison system conditions to European norms and standards

*Alessio Scandurra*

14:30 Discussion

14:45 **Insights into practical steps at different stages of the criminal justice process to deal with and overcome prison overcrowding: recommendations from the Council of Europe's White Paper**  
*Ilina Taneva*

15:15 Discussion

15:30 Break

16:00 **The Council of Europe's 2012 Recommendation concerning foreign prisoners: the need for specialised standards and challenges in implementation**  
*Róisín Mulgrew*

16:30 Discussion

16:45 **Juveniles and young adults in prison: effective supervision and care**  
*Jiske Wallace-Lems*

## Objective

This online seminar, which forms part of a series of five co-funded by the European Commission on enhancing cross-border mutual legal assistance and recognition of decisions within the context of detention will focus on the European Prison Rules, which have and still are acting as a standard-setter for European prison conditions, as well as the work of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). An overview of issues concerning actual prison conditions, as well as possible alternatives to imprisonment, will be given and assessed.

## Who should attend?

Judges, prosecutors, lawyers, prison and probation staff from eligible EU Member States (Denmark does not participate in the Justice Programme 2014-2020) and eligible Candidate Countries (Albania and Montenegro).

## Participation fee and reimbursement of costs

Participation fee: No fee for judges, prosecutors, prison and probation officers, €70 for lawyers.

## Interactive online conference

The online conference will be hosted on ERA's own online platform. You will be able to interact immediately and directly with our top-level speakers and other participants. We will make the most of the technical tools available to deliver an intensive, interactive experience. As the platform is hosted on our own server, the highest security settings will be applied to ensure that you can participate safely in this high-quality online conference.

17:15 Discussion  
17:30 End of first day

## Tuesday, 1 December 2020

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### III. GOOD PRACTICES IN PRISON MANAGEMENT CONTD.

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*Chair: Ramin Farinpour*

- 09:00 **Mental health in prisons: understanding and dealing effectively with the issue in order to reduce the risk of recidivism**  
*Jorge Monteiro*
- 09:30 Discussion
- 09:45 **Alternatives to detention and good practices: reducing the prison population in Europe via community-based sentences**  
*Michele Miravalle*
- 10:15 Discussion
- 10:30 Break
- 11:00 **Simultaneous workshops**
- **Effective management of foreign national prisoners** (*Athena Demetriou, Nick Hammond, Luisa Ravagnani*)
  - **Juveniles and young adults in prison** (*Benoit Van Keirsbilck*)
  - **Mental health in prisons** (*Jorge Monteiro*)
- 12:30 Workshop reports and participant discussion
- 13:00 End of the online seminar

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For programme updates: [www.era.int](http://www.era.int)  
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**Times indicated are CET  
(Central European Time)**

### Your contact person



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# The European Prison Rules and their recent revision

Dirk van Zyl Smit

Emeritus Professor  
University of Nottingham



Co-funded by the Justice  
Programme of the European Union 2014-2020

## 2006 European Prison Rules

The new trendsetter

- Recognition by the ECtHR
- Interaction with the CPT
- Specialist developments by the PCCP
  - 2012 Recommendation concerning foreigners
  - 2018 Recommendation concerning children of imprisoned parents

### So why revise the 2006 EPR?

Clue:

Not only because EPR 108 says should be updated regularly

## International winds of change

- **June 2006 - OPCAT entered into force**
- **Dec 2010 Bangkok Rules, The United Nations Rules for the Treatment of Women Prisoners**
- **Dec 2015 Nelson Mandela Rules, UN Standard Minimum Rules for the treatment of Prisoners**
- **Follow the (natural) science ... .**

## European Developments

- **CPT takes lead on solitary confinement**
- **Widely defined to include separation of different types**
  - **as a result of a court order;**
  - **for good order**
  - **for protection of the prisoner concerned; and**
  - **as a disciplinary punishment**
- **Clear principles PLANN**
  - **Proportionate; lawful; accountable; non-discriminatory**
- **Applied differently to different types**

## Complicated reform process 2017-2020

### Initially limited, finally eight areas

- 1. Separation and solitary confinement
- 2. Women
- 3. Foreign nationals
- 4. Instruments of restraint
- 5. Requests and complaints
- 6. Adequate prison staffing levels and minimum service guarantees
- 7. Records and file management
- 8. Inspections and monitoring

## Focus: separation & solitary confinement

- Reconsider special high security and safety measures (rule 53)
- Add separation (Rule 53A)
- Rewrite solitary confinement as disciplinary punishment (Rule 60.6)
- *All in the light of Nelson Mandela Rules*
  - *Solitary confinement = less than 2 hours of meaningful human contact a day (Rule 43)*
  - *Separation means ??? (3 Rule 37)*

## **Reconsider special high security and safety measures (rule 53)**

- **Need safeguards if you go beyond standards safety and security measures.**
  - **Particularly for separation**
  - **Limited time**
  - **Minimum restrictions necessary**
  - **Individuals not groups**
  - **Written decision**
  - **Review by higher authority**

## ***Add separation (new Rule 53A)***

- **Whatever you call it: everyone who is separated must have at least two hours of meaningful human contact a day (with exception for solitary confinement as discipline punishment)**
  - **Same protections as special high security and safety measures**
- +
- **Same cells as others**
  - **Exercises**
  - **Visits daily from doctor and prison director**
  - **Suspended when prisoner's mental or physical health threatened**

## Rewrite solitary confinement as disciplinary punishment (Rule 60.6)

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

60.6.b The decision on solitary confinement shall take into account the current state of health of the prisoner concerned. Solitary confinement shall not be imposed on prisoners with mental or physical disabilities when their condition would be exacerbated by it. Where solitary confinement has been imposed, its execution shall be terminated or suspended if the prisoner’s mental or physical condition has deteriorated.

60.6.c Solitary confinement shall not be imposed as a disciplinary punishment, other than in exceptional cases and then for a specified period, which shall be as short as possible and shall never amount to torture or inhuman or degrading treatment or punishment.

60.6.d The maximum period for which solitary confinement may be imposed shall be set in national law.

60.6.e Where a punishment of solitary confinement is imposed for a new disciplinary offence on a prisoner who has already spent the maximum period in solitary confinement, such a punishment shall not be implemented without first allowing the prisoner to recover from the adverse effects of the previous period of solitary confinement.

60.6.f Prisoners who are in solitary confinement shall be visited daily, including by the director of the prison or by a member of staff acting on behalf of the director of the prison.”

## 2. Women (Rule 34)

- **New Rule 34.1**

***“Specific gender-sensitive policies shall be developed and positive measures shall be taken to meet the distinctive needs of women prisoners in the application of these rules.”***

- **Impact of the Bangkok Rules**
- **Need for a European recommendation concerning women prisoners?**

### 3. Foreign nationals (Rule 37)

- More emphasis on positive measures for foreigners.
- (previously mostly consular support)
- Builds on 2012 CoE Recommendation concerning foreign prisoners
- Family contacts
- Early release

### 4. Instruments of restraint (Rule 68)

- Stronger emphasis on policy principles:

*68.1 Instruments of restraint shall only be used when authorised by law and may only be imposed when no lesser form of control would be effective to address the risks posed by a prisoner.*

*68.2 The method of restraint shall be the least intrusive that is necessary and reasonably available to control the prisoner's movement, based on the level and nature of the risks posed.*

*68.3 Instruments of restraint shall be used only for the period required and shall be removed as soon as the risks posed by unrestricted movement are no longer present.*

## 5. Requests and complaints (Rule 70)

Many detailed changes to ensure that national procedures are clear including appeal and review procedures, as the ECtHR requires that other all other remedies be exhausted because cases an be brought before it.

## 6. Adequate prison staffing levels and minimum service guarantees (Rule 83)

*83. The prison authorities shall introduce systems of organisation and management that:*

- a. ensure that prisons operate at consistently high standards and are adequately staffed at all times in order to maintain a safe and secure environment in prison and to meet the requirements of national and international law including the provisions of these rules;*
- b. are capable of withstanding operational emergencies and returning to ordinary standards at the earliest opportunity; and*
- c. facilitate good communication between prisons and between the different categories of staff in individual prisons and proper co-ordination of all the departments, both inside and outside the prison, that provide services for prisoners, in particular with respect to the care and reintegration of prisoners.*

## 7. Records and file management (Rules 15, new Rule 16A)

- Greater recognition of importance of record keeping (Rule 16A)
- Greater recognition of data protection and privacy, particularly of third parties, including children of prisoners

## 8. Inspections and monitoring Rules 92 and 93

- Much more emphasis on the importance of monitoring and the powers to monitors, reflecting the rise of NPMs as a result of OPCAT
- More weight to the recommendations of monitors, without them making policy decisions.

***93.5 Independent monitoring bodies shall have the authority to make recommendations to the prison administration and other competent bodies.***

***93.6 The national authorities or prison administration shall inform these bodies, within a reasonable time, on the action being taken in respect of such recommendations.***

***93.7 Monitoring reports and the responses thereto shall be made public***

# Thank you!

Dirk.Van-Zyl-Smit@nottingham.ac.uk

“The European Prison Rules as a Standard Setter for European Prison Conditions”

ERA – Academy of European Law  
Online Seminar  
30 November – 1 December 2020



Co-funded by the Justice  
Programme of the European  
Union 2014-2020



## Preventing ill-treatment of persons in detention: the impact and latest findings of the CPT

Dr Mykola Gnatovskyy,  
President of the European Committee  
for the Prevention of Torture and  
Inhuman or Degrading Treatment or  
Punishment (CPT)

## The CPT and prison monitoring

- Role of the CPT under the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment
- 30 years of visiting places of deprivation of liberty in Europe
- CPT and ECtHR
- Nature and scope of the CPT's recommendations. “CPT Standards”
- CPT and the European Prison Rules

## Standards of the CPT on prisons

- Prevention of ill-treatment by staff and of inter-prisoner violence
- Material conditions of detention
- Prison regime and activities
- Healthcare in prisons
- Prison staff
- Contact of prisoners with the outside world
- Means of restraint
- Solitary confinement
- “Lifers”
- Preventive detention
- Complaint procedures
- Inspections
- Transport of prisoners
- Specific categories of prisoners

## Specific categories of prisoners

- Juveniles
- Women
- Foreign prisoners
- Persons with disability

## Selected issues related to the revision of the EPR and recent findings of the CPT

- Women in prison
- Solitary confinement
- Separation of prisoners
- Complaints
- Staffing levels

## Women in prison

- “In many countries, women prisoners are treated like male prisoners with no specific rules and regulations addressing their particular needs as women. In European countries, women make up a very small minority of the overall prison population and the focus of prison systems is oriented toward the standard male prisoner (i.e. how to provide a safe and secure environment and, if feasible, to prepare them for reintegration into the community). However, women have particular biological and gender-specific needs and vulnerabilities that require an alternative prison policy oriented toward their requirements. The physical environment is an important aspect of this.”

*United Kingdom (Northern Ireland): Visit 2017 [para. 65]*

- Time is ripe for the specific Council of Europe’s rules on women in detention, building on the UN’s 2010 Bangkok Rules

## Solitary confinement

- CPT's standards of 2011 (21<sup>st</sup> General Report)
- Nelson Mandela Rules of 2015
- Solitary confinement as a disciplinary punishment is an issue
  - 14 days as time limit (CPT in 2011)
  - 15 days (NMR in 2015)
  - No clear limit in revised EPR
  - Shorter limits are required as scientifically proven
  - Violent assault in prisons should be dealt with through criminal law

## Separation of prisoners

- Rule 53A of the revised EPR is welcome and reflects CPT's findings and thinking:
  - 2 hours of meaningful human contact a day is an important safeguard
  - the longer the separation the more steps to mitigate its negative effects are required
  - the right to complain
- Implementation of the new rule will require significant change in the attitude of many European prison systems: particular needs of 'problematic' individuals have to be assessed and addressed

## Complaints

- New EPR Rule 70 is welcome
  - Access to internal and external mechanisms
- CPT's approach is set out in its 27<sup>th</sup> General Report (2018):
  - Availability
  - Accessibility
  - Confidentiality/safety
  - Effectiveness
  - Traceability

## Staffing levels

- New Rule 83 of the EPT and the CPT's findings:
  - Adequate staffing levels

The dire staffing situation in all the prisons visited has been highlighted above. The CPT has already emphasised on numerous occasions that an inadequate number of custodial staff renders prisons insecure for both prisoners and staff; in particular, it impedes any efforts to maintain effective control, which often leads to stronger groups of prisoners being able to exercise their powers unchecked over other inmates. /.../ [P]rison staff in many instances relied upon the leaders of these groups to maintain order in an establishment. Furthermore, low staffing levels make it nearly impossible to provide an acceptable regime for prisoners.

*Greece: Visit 2019 [para. 63]*

- Withstanding "operational emergencies": strikes and guaranteed minimum service – *CPT's 2017 Public Statement on Belgium*

Thank you!

[Mykola.Gnatovskyy@cpt.coe.int](mailto:Mykola.Gnatovskyy@cpt.coe.int)



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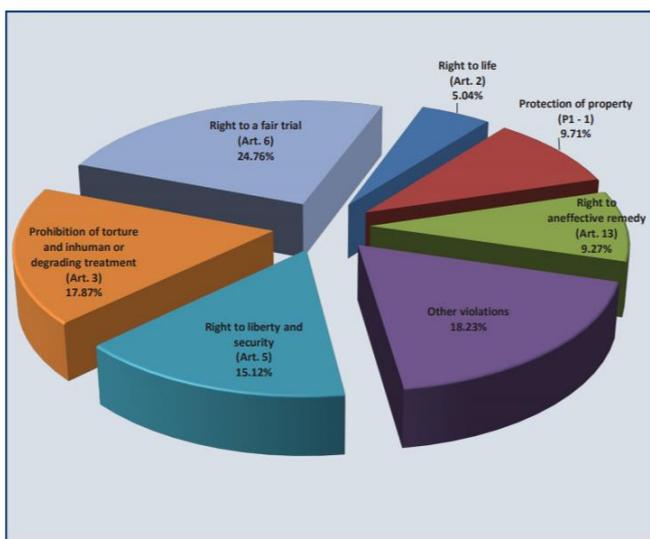
## Working towards harmonised detention standards in the EU - the role of National Preventive Mechanism (NPMs) in supporting the judiciary to apply mutual recognition instruments

Giuliana Monina, Philipp Hamedl



ERA Conference  
30.11.2020

## III-Treatment in the European Union



### ECtHR statistics for 2019

- 180 ill-treatment (incl. Romania, Portugal, Poland, Lithuania, Belgium, Croatia, Cyprus, Estonia, Finlandia, France, Greece, Hungary, Italy)

[ECtHR, facts & figure, 2019](#)

## Repercussions on criminal judicial cooperation

### Refusals on fundamental rights grounds:

- The executing judicial authorities must refrain from giving effect to EAW if it finds that there exists a real risk of inhuman or degrading treatment for the particular circumstances of each case (e.g. CJEU, *Aranyosi and Căldăraru*; *ML: Dorobantu*. See also *EUROJUST 2020*).
- Later instruments explicitly provide for a specific human rights refusal ground (e.g. EIO)
- In 2018: 82 EAW refusals reported by 5 Member States
- In 2017: 109 EAW refusals reported in 7 Member States

([EC, SWD\(2020\) 127 final](#))

## Repercussions on criminal judicial cooperation

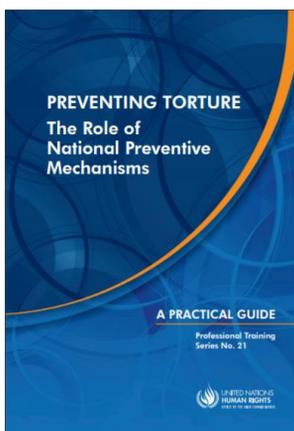
When in possession of evidence of a real risk of inhuman or degrading treatment of individuals detained in that MS, the executing judicial authority must conduct a **two-stage examination** of the prison conditions in the receiving MS:

- **General assessment:** *Rely on information that is objective, reliable, specific and properly updated on the detention conditions prevailing in the issuing Member State and that demonstrates that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention. That information may be obtained from, inter alia, judgments of international courts, such as judgments of the ECtHR, judgments of courts of the issuing Member State, and also decisions, reports and other documents produced by bodies of the Council of Europe or under the aegis of the UN (CJEU, *Aranyosi and Căldăraru*, § 88)*

## Repercussions on criminal judicial cooperation

- **Specific assessment:** *Whenever the existence of such a risk is identified, it is then necessary that the executing judicial authority make a further assessment, specific and precise, of whether there are substantial grounds to believe that the individual concerned will be exposed to that risk because of the conditions for his detention envisaged in the issuing Member State. (CJEU, Aranyosi and Căldăraru, § 92)*

## The role of National Preventive Mechanism



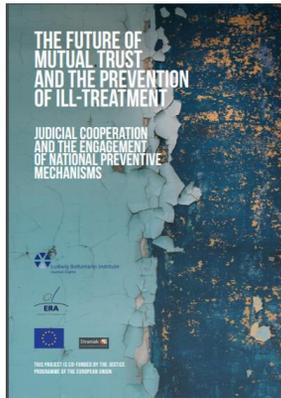
### OPCAT PREVENTIVE MANDATE

- **Visiting function** - Open up places of detention and establish a system of regular visits undertaken by independent national bodies to places where people are deprived of liberty, Art 1 OPCAT
- **Advisory function**
- **Cooperation function**

Currently 24 NPMs in the EU (not: Belgium, Ireland, Slovakia, and Latvia)

## The role of National Preventive Mechanism

*How can NPMs support the judiciary?*



**In the assessment of conditions of detention in another EU MS**  
*“That information may be obtained from, inter alia, ... decisions, reports and other documents produced by bodies of the Council of Europe or **under the aegis of the UN**” (CJEU, Aranyosi and Căldăraru, § 88)*

- NPMs can provide **first hand and updated** information on detention conditions
- Unlike international bodies (CPT, SPT), NPMs carry out visits **regularly** and a **unique insight** of national detention facilities

## The role of National Preventive Mechanisms

*How can NPMs contribute to strengthen mutual trust?*

**EU DG Justice Project**

**„Working towards harmonised detention standards – the role of NPMs“**



- **Duration:** 01/2019 – 03/2021
- **Project partners:**
  - Associazione Antigone
  - Bulgarian Helsinki Committee
  - Hungarian Helsinki Committee
  - Ludwig Boltzmann Institute of Fundamental and Human Rights

# The role of National Preventive Mechanisms

EU DG Justice Project

**„Working towards harmonised detention standards – the role of NPMs“**

**Project objective: Looking at paths for facilitating the consolidation and harmonisation of detention standards**

- Identify and clarify international detention standards, esp. with regard to 4 thematic topics
- Assess the role of NPMs in the practical application and clarification of detention standards



# The role of National Preventive Mechanism

EU DG Justice Project

**„Working towards harmonised detention standards – the role of NPMs“**

**Project Objective: Closing the ‘implementation gap’ and effective strategies by National Prevention Mechanisms**

- Strengthen the capacity of NPMs in monitoring selected issues, improving detention conditions and achieve change

*“Improving the situation of detention at home, i.e. in their national context, can contribute to enhanced mutual trust between EU MS”* EU Commission representative



## Working towards harmonised detention standards – the role of NPMs

### Individuals or Groups of Prisoners in a Situation of Vulnerability

- Children - women - LGBTIQ persons
- persons with intellectual or psychosocial disabilities
- older prisoner - foreign prisoners
- prisoners sentenced to life-imprisonment
- offenders that committed certain types of crimes
- individuals belonging to an ethnic / minority group

### Violence in Prison

and its prevention



### Solitary Confinement - Segregation, Isolation

- Solitary confinement as disciplinary punishment
- segregation for administrative purpose
- segregation for protective reasons
- court imposed isolation
- voluntary isolation

### Effective Complaints Procedures

- Right to information

## Defining prison violence

*“Violence is the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment, or deprivation.”*



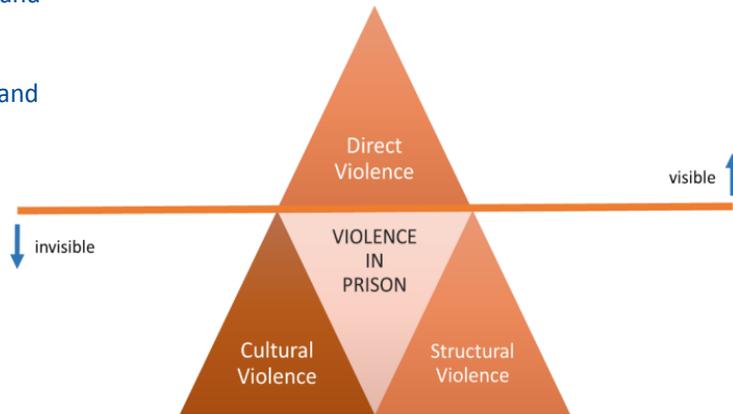
**World Health  
Organization**



# Defining prison violence

Johan GALTUNG  
 Founder of Peace and  
 Conflict Studies

"Violence, Peace, and  
 Peace Research"  
 (1969)



## Structural (indirect) Violence

- Limited access to health care
- Failing to protect prisoners in a situation of vulnerability.
- Limited access to rehabilitation programmes
- Overcrowding
- Understaffing

### Definition (J. Galtung)

- **Injustices** in social and institutional **structures**
- ...that result in harm to individuals' or groups' wellbeing
- ...that could have been avoided

No direct perpetrator -  
 "a crime without a criminal"

### Prison Context

- Autonomy and choices are severely curtailed
- human wellbeing, potentials and development are undermined
- feelings of safety and sense of security are weak
- human needs are systematically denied
- Restrictive and inequitable distribution of resources

## Cultural Violence

- Marginalizing and dehumanization others
- Attitude of prison staff
- Addressing of prisoners
- Racism & Discrimination



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Human Rights

### Definition (J. Galtung)

- Social norms that justify and legitimize violence
- A culture that make violence feel right, accepted, or normal
- Language, symbols, etc.
- not directly perpetrated

### Prison Context

- Culture of naturalizing violence
- Way violence is handled: Celebrated, ignored, trivialized, condoned or condemned?
- “atmosphere”
- Rehabilitative vs punitive culture

## Types of direct violence

### Self-directed violence

- Suicide and non-suicidal self-injury; self-inflicted violence, self-neglect

### Interpersonal violence

- **inter-prisoner violence**: physical, such as beatings, fights, murder; psychological such as bullying, threats, humiliation; sexual and gender-based violence, but also destroying another's property
- **violence by prisoners against prison staff**: physical (assaults, incl. throwing objects, spitting, beating, attacking with a weapon, taking hostage), psychological such as threats; sexual and gender based violence
- **violence by prison staff against prisoners**: physical, incl. excessive use of force), psychological (bullying, threats, humiliation, discrimination), sexual and gender based violence

### Collective violence

- **inter-prisoner violence**: gang violence, violence related to religious conflicts, fights among wings
- **violence by prisoners against prison staff**: riots
- **violence by prison staff against inmates**: excessive use of force carried out by correctional emergency response teams



## The problem of prison violence in the EU

- There is no EU-wide study on prison violence
- Official statements, statistics, CPT reports, newspaper articles and research studies point to a conspicuous and steady increase of violent incidents in some countries
- The highest numbers are manifested in inter-prisoner violence and suicide
- Estimates are that 25-50 % of prisoners are victimized by others in some way

**European Parliament** expressed concern “self-harm and suicide rates in prisons in the EU is particularly alarming.

**England and Wales:** Staff unions claim to be “operating in the most violent and hostile workplace in Western Europe” - CPT reported with “utmost concern” on the “evolution of an informal practice of ‘preventive strikes’” (CPT Visit 2019)

## Standards on prison violence and its prevention

No EU law standards on prison violence

### Binding standards:

UDHR § 1,3,5 - ICCPR § 6,7,9, 10  
UNCAT § 1,16 - ECHR § 2,3,5  
CFR § 1,2,4,6  
and jurisprudence of ECtHR

### Article 10 (1) of the International Covenant on Civil and Political Rights (ICCPR)

*“All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”*

## Soft law standards on prison violence and its prevention

Standard Minimum Rules for the  
treatment of prisoners  
(Mandela Rules)

Rule 1: [...]

The safety and security of prisoners,  
staff, service providers and visitors  
**shall be ensured at all times**

European Prison Rules

Rule 52.2

Procedures shall be in place to  
ensure the safety of prisoners,  
prison staff and all visitors **and to  
reduce to a minimum the risk of  
violence** and other events that  
might threaten safety.

## Soft law standards on prison violence and its prevention

- UN Rules for the **Treatment of Women Prisoners** and Non-custodial Measures for Women Offenders
- Recommendation CM/Rec(2012)12 concerning **foreign prisoners**
- Recommendation CM/Rec (2014) 3 75 concerning **dangerous offenders**
- Recommendation CM/Rec(2018)5 concerning **children with imprisoned parents**
- Recommendation N° R (98) 75 concerning the **ethical and organisational aspects of health care in prison**
- Recommendation CM/Rec(2010)5 on measures to **combat discrimination on grounds of sexual orientation or gender identity**
- Council of Europe Guidelines for prison and probation services regarding **radicalisation and violent extremism**

## Prison security

- Physical security
- Procedural security
- Dynamic security



## When does violence amount to torture and other forms of ill-treatment?

### Prison staff...

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>• ... must refrain from acts of torture or other ill-treatment</li> <li>• ... must take measures to prevent and protect prisoners from risks of their safety and personal security of all kinds of violence</li> <li>• ... must act with due diligence</li> </ul> | <ul style="list-style-type: none"> <li>• ... must maintain effective control</li> <li>• ... has a duty of care (positive obligation to protect)</li> <li>• ... can be held accountable also for inter-prisoner violence if it had or ought to have had knowledge of the real or immediate risk</li> </ul> |
|--|---|

## Standards on the prevention of prison violence – the role of NPMs

### In how far do NPMs use international standard in their recommendations?

- Mandela Rules and European Prisons Rules were mentioned rarely in NPMs annual reports
- CPT standards are the most used source to substantiate the recommendations of NPMs

### What do NPMs recommendations on prison violence cover?

- Safety and security
- Factors contributing to prison violence – root causes of violence, such as **shared accomodation, overcrowding, inadequate staffing level, lengthy lock-up times and lack of activity**

## Standards on the prevention of prison violence – the role of NPMs

### What do NPM recommendations on prison violence cover rarely or not at all?

- Dynamic security
- **Contributing factors:**
  - Institutional culture
  - Quality of prison life
  - Design of the regime
  - Balance of security measures
  - Use of Power / authority
  - Relationships between staff and prisoners

## Standards on the prevention of prison violence – the role of NPMs

### How else might NPMs contribute to the harmonization and improvement of detention standards?

- **NPM United Kingdom – HM Inspectorate of Prisons** published inspection criteria known as “Expectations”.
- **French NPM** published “Minimum Recommendations to Respect the Dignity and Fundamental Rights of People Deprived of Liberty”.
- **Austrian NPM** published “Preventive Recommendations to protect and promote Human Rights in Prison and Preventive Detention”

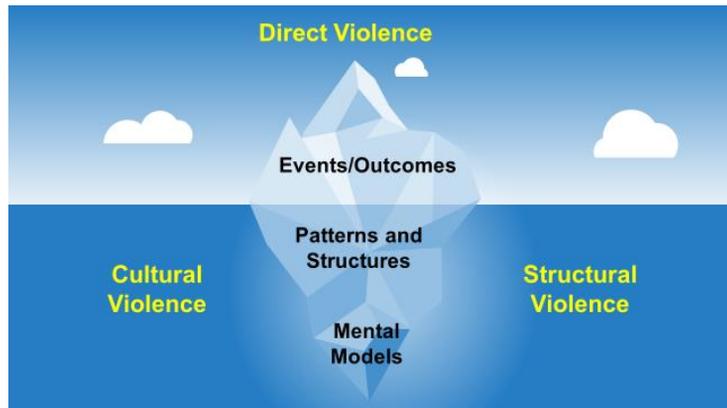
## What works in preventing violence according to research?

- The prison is a **safe, decent and procedurally fair place**
- **Good relationship between prisoners and the prison staff**
- A balanced **security regime** and good **conditions of imprisonment**
- Good **working conditions for staff**
- **Sufficient possibilities for purposeful activities** (Programmes, trainings, work, education, sports)
- The possibility to hold sustainable **family contact** and **personal development**
- **Drug control** and **health care**, including special care for groups with special needs and those in a situation of vulnerability
- A positive and **rehabilitative prison culture**

## What to strengthen in the NPMs monitoring of prison violence to achieve change?

Looking at the bottom of the iceberg, focusing on

- „what works“
- „what matters“
- patterns
- relationships
- dynamic use of authority
- cultural aspects/staff morale
- systemic failures



But also looking at: data of violence, policies and procedures, staff training

## Thank you for your attention!

Giuliana Monina - [giuliana.moninia@univie.ac.at](mailto:giuliana.moninia@univie.ac.at)

Philipp Hamedl - [philipp.hamedl@univie.ac.at](mailto:philipp.hamedl@univie.ac.at)

# Prison in Europe—setting the scene: European Prison Observatory 2019 report on European prisons and penitentiary systems

Alessio Scandurra

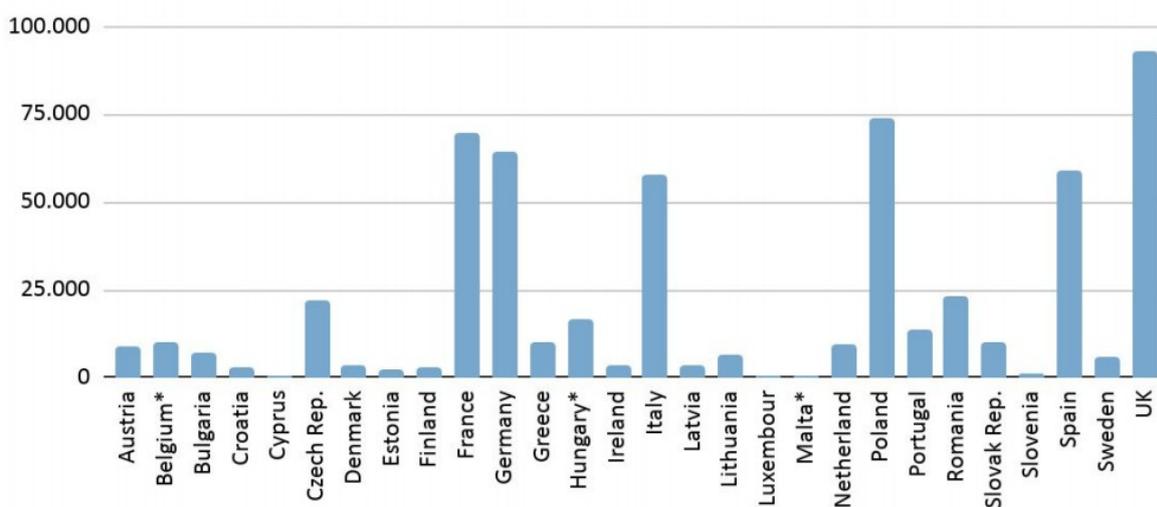


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Union



## European prisons before Covid-19

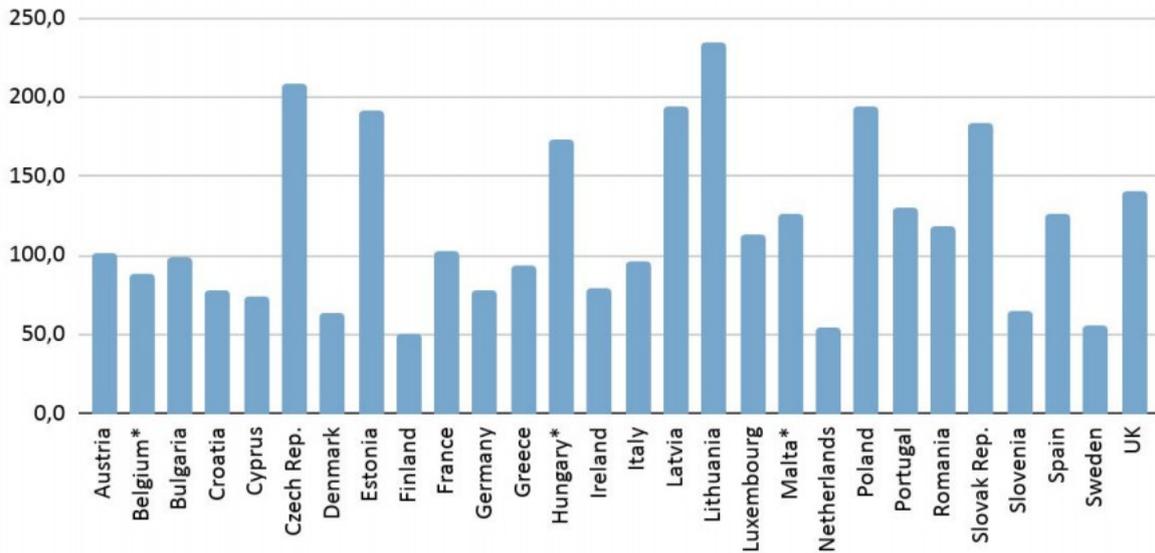
Prison population on 1st January 2018 (including pre-trial detainees)



Data source: COE. \* data from World Prison Brief

## European prisons before Covid-19

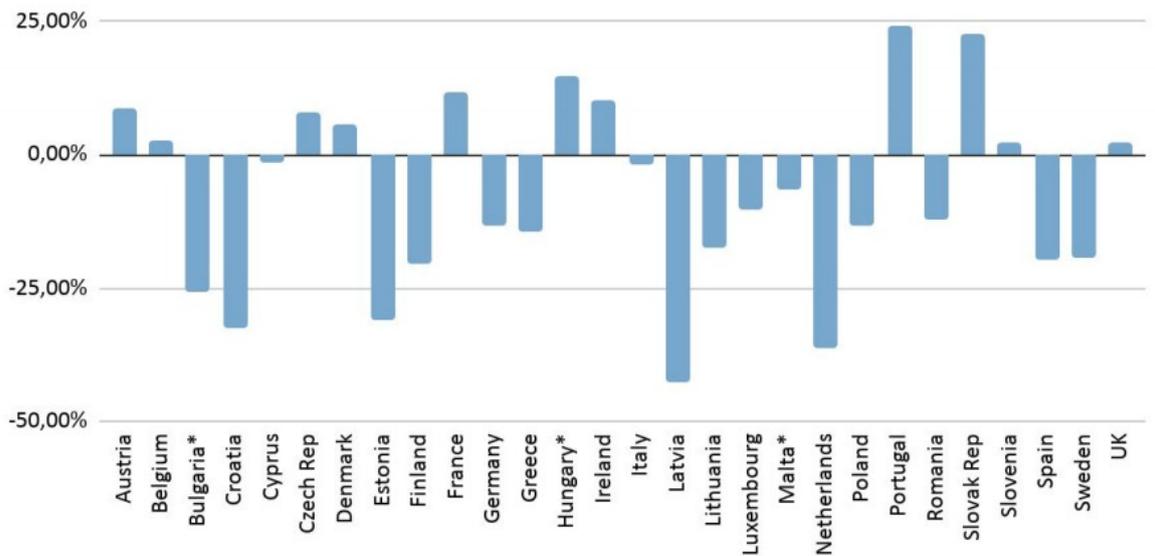
Prison population rate on 1st January 2018



Data source: COE. \* data from World Prison Brief

## European prisons before Covid-19

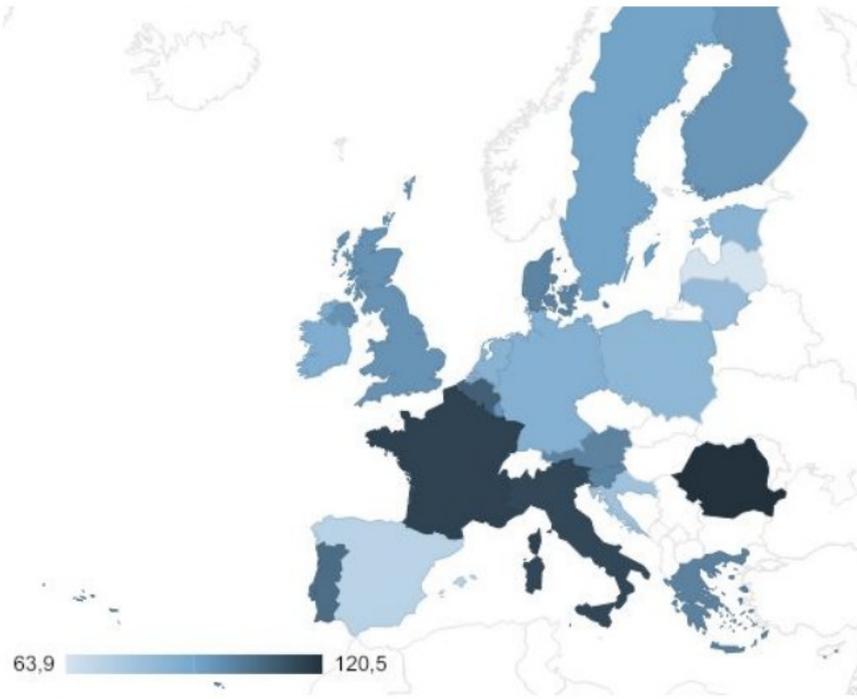
Prison population variation. 2008-2018



Data source: 2008 data Eurostat. 2018 data COE. \* 2018 data from World Prison Brief

Occupancy rate

European prisons before Covid-19



Data source: COE, World Prison Brief



## European prisons before Covid-19

Compared to the general population, heightened and unique vulnerabilities, higher prevalence of preexisting health conditions, including diabetes, high blood pressure, as well as substance use and mental health problems.

Higher prevalence of infectious diseases, such as Hiv, hepatitis C.

## European prisons before Covid-19

Prisoners aged over 50 and aged over 65 in some countries



**Prison systems go in lock-down mode**

Prison visits

Prison leaves and prisoners working outside the facilities

Access of volunteers and professionals not employed by prison administration

Access of lawyers

Access of prison staff

**Measures to prevent the diffusion**

Control people entering prison

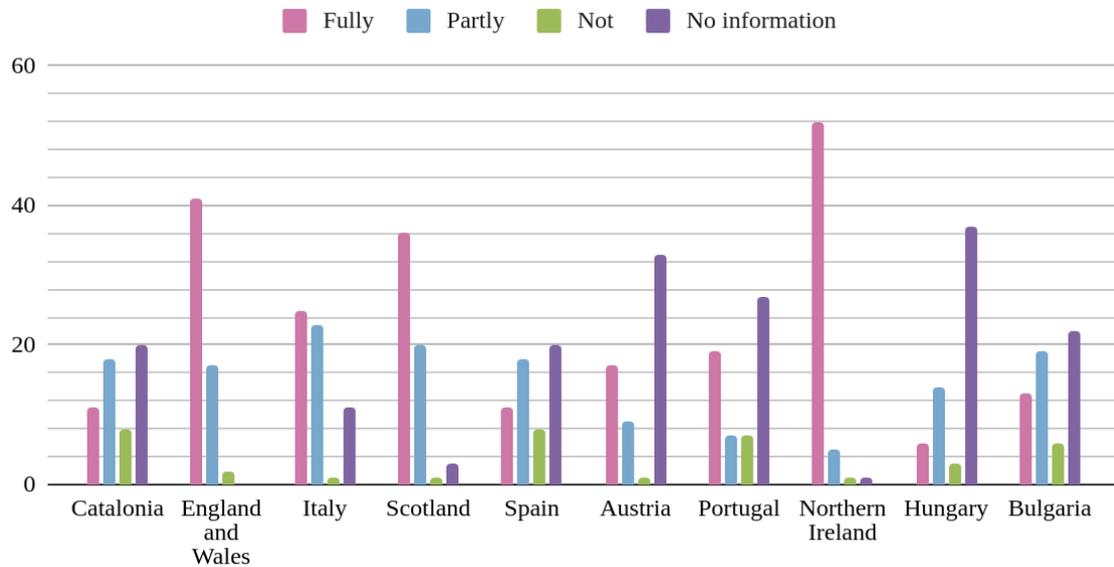
Isolating newly arrived inmates

Distribution of face masks and detergents

Management of contact and positive cases

## Measures to prevent the diffusion

### Checklist to evaluate preparedness, prevention and control of Covid-19 in prisons and other places of detention



## Reducing prison population

Back door policies

Front door policies

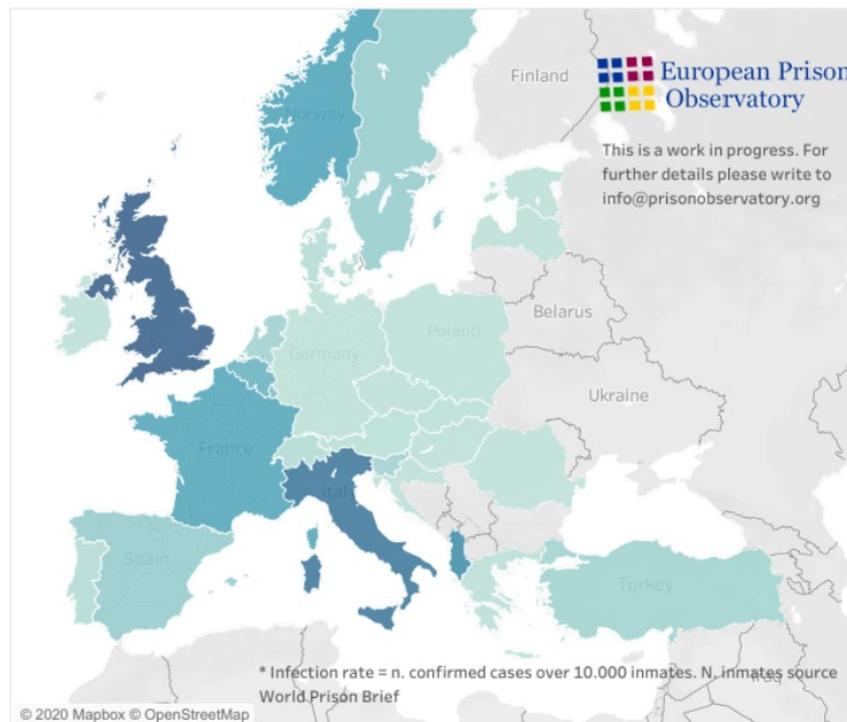
New and old legal provisions

## Reducing prison population

### Reduction of prison population

- UK
- France
- Italy
- Belgium

## Positive cases in european prisons



The pandemic is not behind us, we need to do better

- The new normality
- Transparency
- Healthcare

Topics open for future discussion

- Detention as a measure of last resort
- Social resettlement, interaction with society and new technologies
- Time served vs. time served

Thank you for your attention

Alessio Scandurra



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Union



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## The European Prison Rules as a Standard-Setter for European Prison Conditions

*ERA Online Seminar*  
30 November - 1 December 2020



Co-funded by the Justice Programme of the European Union 2014-2020

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### ***Insights into practical steps at the different stages of the criminal justice process to deal with prison overcrowding provided by the Council of Europe White Paper***

*Ilina Taneva, Deputy Head of Division, Secretary to the Council for Penological Cooperation, Council of Europe*

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## CoE - the European Organisation with expertise in the penitentiary field

- Standard-setting - since the 60-ties, done by the CDPC, CM, since 1980 by the PC-CP
- Monitoring - the ECtHR (1959), then the CPT (1987) and the HR Commissioner (1999)
- Since end of the 90-ties capacity building assistance activities



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## Before the approval by the CM of the White Paper on Prison Overcrowding in 2016

- The CM adopted a number of recommendations in the 90-ties aimed at reducing the overuse of imprisonment and at promoting the system of community sanctions and measures



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### Before the approval by the CM of the White Paper on Prison Overcrowding - continued

- The Council of Europe Annual Penal Statistics (SPACE) – collect data on prison density since 1983
- The CPT started elaborating standards regarding minimum prison space per prisoner since the 90-ties
- The ECtHR – more and more judgements on prison conditions since 2010-ties



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### Before the approval by the CM of the White Paper on Prison Overcrowding - continued

- CM Rec (99)22 concerning prison overcrowding and prison population inflation
- European Prison Rules of 2006 (revised in 2020) - a number of rules on prison conditions and humane treatment of prisoners
- 30th Council of Europe Conference of Ministers of Justice “Modernising Justice in the Third Millennium” discussed prisons in today’s Europe (Istanbul, November 2010)
- 17th Conference of Directors of Prison Administration (Rome, November 2012), a meeting with judges and prosecutors, CCPE, CCJE, CDPC, PC-CP on ways to reduce prison overcrowding



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## White Paper on Prison Overcrowding [CM(2016)121-add3]

- At the 19th Conference of Directors of Prison and Probation Services (Helsinki, 2014) an initiative was launched to set up a Working Group (2014-2016)
- Participated - CDPC; PC-CP; PC-OC; CCJE; CCPE; CPT; ECtHR; PACE; Execution of Judgements Dept



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## Some key points

- Root causes: (a) penal policy and legislation; (b) the limited use of alternatives to pre-trial and to prison; (c) length of detention on remand; (d) other factors
- How to address prison overcrowding: (a) deprivation of liberty as a measure of last resort; (b) revision of penal law; (c) prison capacity and number of prisoners; (d) recidivism; (e) monitoring mechanisms; (f) coherence among major actors and national strategies, including work with the media and the public opinion
- Increased prison capacity is not a solution on its own



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## High-Level Conference « Responses to prison Overcrowding » (Strasbourg, 24-25 April 2019)

- Held during the Finnish Presidency of the CM
- Very useful and interesting exchanges and dialogue and very positive feedback from the participants
- Recidivism rate with bad detention conditions is very high
- The responsibility for overcrowded institutions is shared among legislative, executive and judicial authorities



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### The outcomes of the Conference:

- The participants agreed that a long-term strategy is needed and that all stakeholders need to be involved and the dialogue and cooperation should be on-going
- The outcomes were presented to the EU during the Finnish Presidency (July-December 2019) and led to holding a Conference of the EU Ministers of Justice in Helsinki in July 2019 on alternatives to custody and the adoption of the Council conclusions on the same subject in December 2019.



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### **NEXT STEPS SUGGESTED:**

- CoE MJ Conference on “Today’s Challenges to the European Penal Policies”. The aim is to help modernising the vision regarding the scope and aim of penal law and policy decisions and revisiting the use and overall aim of imprisonment, preparation for release, risk assessment, rehabilitation and reintegration.



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### **Major problems faced by the countries**

- Transposing the CoE standards in national laws and regulations
- Implementation of standards
- Dialogue and cooperation among relevant agencies
- Adequately functioning structures and training of staff
- Change of professional ethics and practices



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**Prison is an expensive way of making a bad person worse » - Douglas Hurd, Tory Home Secretary, 1991  
White Paper**

**Thank you for your attention!**

**For more information:**

**[www.coe.int/prison](http://www.coe.int/prison)**

# The COE 2012 Recommendation concerning foreign prisoners: the need for specialised standards and challenges in implementation

Co-funded by the  
Justice  
Programme of  
the European  
Union 2014-2020

Dr. Róisín Mulgrew  
University of Nottingham  
National University of Ireland, Galway



## Structure

1. Foreign Prisoners in Europe
1. The 2012 Recommendation
2. Implementation?

# 1. Foreign Prisoners in Europe

## SPACE I 2019

- Median 14% and 22.9% average - 21.6% male and 20.7 female
- The percentage of foreign prisoners varies significantly from State to State and region to region (0-100%)
- 31.4% from EU MS



## Trends

- Eastern Europe (<5%), Central Europe (5-72%)  
Western Europe (up to 100%)
  - Geographical location
  - Economic development
  - Immigration policies
- Diversity – UK (150 nations)

## Reasons for over-representation

- Mobility/ crime trips
- Criminalisation of immigration (associated) offences
- Disadvantages during the criminal justice process

## Problems

- More likely to be placed and kept in custody
- Isolation
  - Language
  - Social support
- Reduced access to programmes
- Reintegration

De jure equality of rights is resulting in de facto discrimination

## 2. The 2012 Recommendation

---

## Terms of Reference

Revise or replace 1984 Recommendation

Focus on

- Numbers in detention
- Treatment
- Release and reintegration
- Training of staff
- Social, legal and consulate support

**'Humane and tangible long-term solutions based on European best practice'**

## Scope

- Non-national, non-residents
- Prisoners
- Adults

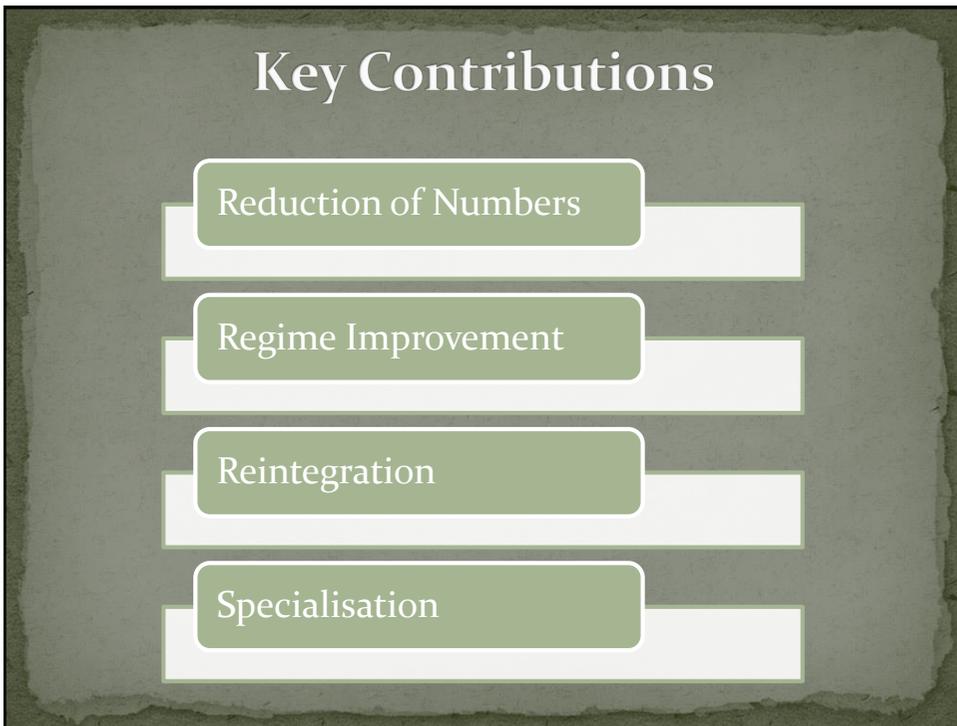
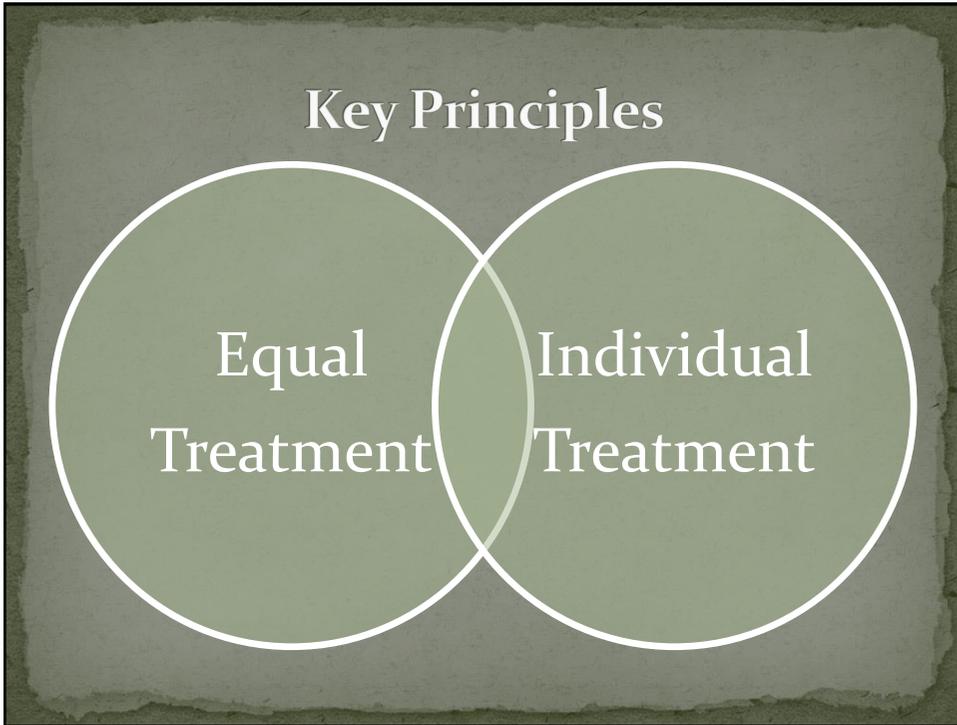
## Legal context

The preamble refers to

- Council of Europe treaty law on human rights and the transfer of sentenced persons
- 11 Committee of Ministers' recommendations on penological matters including the 2006 European Prison Rules
- UN Model Agreement on Transfer and the Bangkok Rules
- EU Framework Decisions 909, 947 and 829

## Basic Principles (Rules 3-12)

- Respect for rights, situation and needs
- Consideration for non-custodial sanctions and measures, and early release
- Positive action to avoid discrimination
- Access to interpretation and translation
- Regime to accommodate special needs and prepare for release and reintegration
- Allocation of resources
- Training of persons working with FNP



## Reducing Numbers

Front Door – alternatives to remand in custody and imprisonment

Back Door – Release

Mid Door – Transfer

**Not automatic but equal consideration**

## Conditions of Imprisonment

- Admission
- Allocation
- Accommodation
- Hygiene
- Clothing
- Nutrition
- Legal advice and assistance
- Contact with outside world
- Contact with consular representatives
- Prison regime
- Work
- Exercise and recreation
- Education and training
- Freedom of religion or belief
- Health
- Good order, safety and security
- Women
- Infants

## Regime Improvement

- Specific Needs and Positive Discrimination
- Language barriers
- Alleviating Isolation

## Specific Needs and Positive Discrimination

Culturally sensitive application of rules and procedures in relation to

- Hygiene
- Clothing
- Nutrition
- Recreation
- Freedom and exercise of belief
- Healthcare

**Equal not preferential treatment**

## Language Barriers

- Admission
- Common Language
- Literature and media in mother tongue
- Medical care

**Fundamental underlying principle that informs all interactions**

## Alleviating Isolation

- Allocation decisions
- Contact with Family and Friends
- Other support structures

## Preparing foreign prisoners for release

- Released in detaining State?
- Transferred to another State to serve sanction or sentence?
- Deported to another State at the end of the sentence?

## Preparation for Release

- Access to activities
- Work
- Education
- Training
- Leave



## 4. Implementation?

---

## Foreign Prisoner Only Facilities

### Kongsvinger Prison



### Ter Apel Prison



## Foreign Prisoner Only Facilities

### Kongsvinger Prison Norway

- Ministerial Decision 2012
- Capacity – 97
- Target Group: Sentenced persons, Likely to be returnable, Under one / two year to serve
- 57 Nationalities

### Ter Apel Prison The Netherlands

- Ministerial Decision 2013
- Capacity 434
- Target Group: Convicted of a criminal offence, No right to remain, Will be deported
- 60 nationalities

## Regime

### Challenges

- FNP usually not eligible for
- temporary leave and other progression measures
  - work outside the prison
  - social outings

Prisons have reduced recreation programmes, visiting hours, education and training opportunities

### Good practice

- Flexible approach to visits
- Open door policy in relation to fresh air
- More responsibility (access card for work)
- Facilities to cook own food and socialise together

## Contact with the outside world

### Challenges

- Location
- Inconsistent application of policies
- Costs of calls (v wages)
- Skype (technical issues and privacy)

### Good Practice

- Flexible approach to visits
- Father and kids day
- Emailprisoner.nl
- Skype
- TV Channels and papers in own language

## Language Barriers

### Challenges

Paperwork in national language

Isolation of minority linguistic groups

Reduces ability re mentoring and dynamic security

Increased likelihood of disciplinary action and escalation of tensions

### Good Practice

Access to phone/VC interpreter service

Pointing books

TV Displays of Info in main languages

Few phrases in each language and greet every individual

## 2012 Recommendation

Rule 39.4

Persons who deal with foreign suspects and offenders shall be kept informed of current national law and practices and international and regional human rights law and standards relating to their treatment, *including this recommendation*

- Complete lack of awareness of the Recommendation
- Institutions struggling to apply domestic law and policy written for residents
- No centrally devised rules or regulations to deal with this particular population



Dienst Justitiële Inrichtingen  
Ministerie van Justitie en Veiligheid

## A tailored approach

*The implementation of an improved  
judicial youth system*

*ERA online seminar*



Co-funded by the Justice  
Programme of the European Union 2014-2020

*Jiske Wallace-Lems*

Dutch Custodial Institutions Agency (DJI)

30 november 2020

## Welcome



Jiske Wallace-Lems

Projectmanager small-scale facilities for the custodial institutions  
agency in the Netherlands

[j.wallace-lems@dji.minjus.nl](mailto:j.wallace-lems@dji.minjus.nl)

## Youth justice in the Netherlands

- In 2015 the Netherlands had seven high security young offender institutions.
- Young people on remand as well as young people sentenced to a custodial sentence are placed in these institutions.
- In the Netherlands, young people can be convicted from the age of 12. Up to 17, they are subject to youth justice. Up to 23 if their personal circumstances give reason for a pedagogical approach.
- The amount of young people incarcerated had been declining since 2010, leading to closure of some institutions and more young people being placed further away from home.
- In 2015 the department of justice started a comprehensive exploration of how the system could be changed for the better.

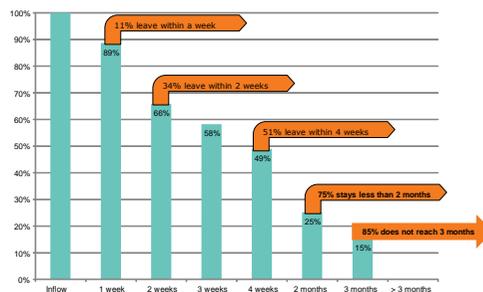
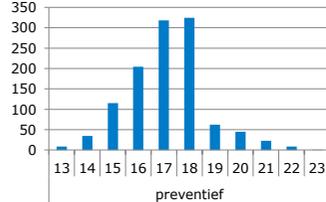
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## Juvenile data 2016

### Pre-trial detention

- Age: average 17 years old
- Length of stay: approx. 50% < 1 month
- 60% first time in JJI
- Approx. 70% live at home before incarceration
- Approx. 70% have care contacts
- Many psychosocial issues as addiction, debts and early school leaving

### Age pre-trial in juvenile centre



**Length of stay PIJ (measure, custodial treatment)**  
2011-2015: from 1414 days to 1313 days

4

## Reasons for change



### Desire to change in 2015:

- Improve continuity in care and supervision by means of 'local' placement (decentralisation);
  - Move from 'one size fits all' to tailored care and security;
  - A tailored approach to screening and placement;
  - Employ protective factors from the young people's network (non-criminogenic factors);
  - To improve the collaboration between partner organisations, including the municipality.
- From 2016-2018 there were pilots, research and monitoring to assess the way forward

5

### PROTECTIVE FACTORS



70% continued,  
37% initiated



94% continued,  
53% initiated



Accessible frequent  
contact; Active  
caregiver role

#### Follow-up

3 – 26 months (median 10)  
N=49 (78% response rate)

- 72% structural daytime activity
- 64% lives at home
- 63% good involvement network
- 50% satisfied
- 15% closed institution

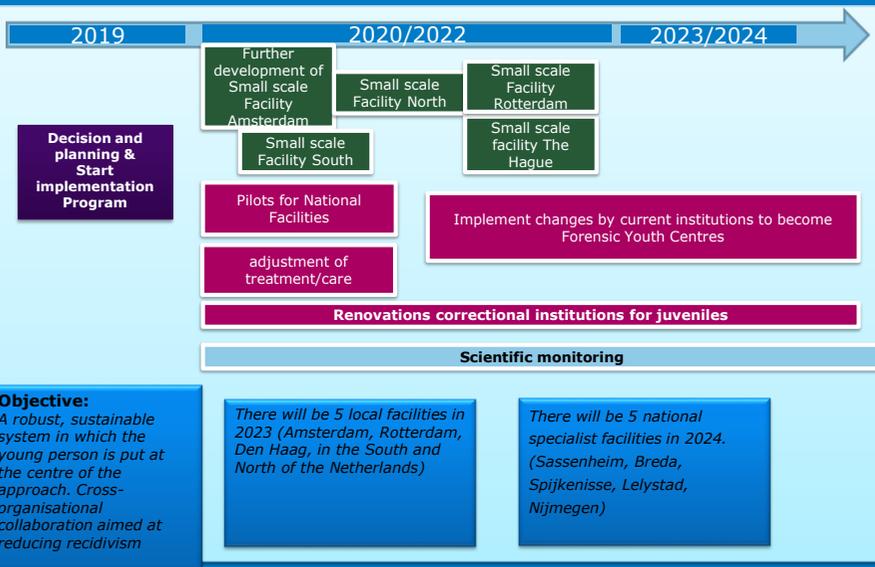


## June 2019: decision on permanent system change

- 1) Young people will be placed in either a low security of high security facility, based on their assessed level of risk and need of care or treatment.
- 2) Small scale facilities for young people on a criminal charge can be combined with small scale facilities for certain young people on secure care orders.
- 3) two high security facilities are shut down and five small scale facilities will be opened.

7

## 6. Total overview implementation of changes in judicial youth system



8

## What is a small scale facility?



- A Small-Scale Facility (KV) is a facility where young people stay close to their own living environment with a lower security level than in the current Judicial Youth Institution (JJI).
- The aim is that care and education or employment are continued or started up as much as possible during their stay.
- Positive elements in the network of the young people can be retained and existing care, treatment, education and / or work can continue.
- The KV offers young people tailored relational and physical security, supervision and guidance within a positive learning and-residential climate.
- The young people and their network are in charge of the care-plan as much as possible.
- To make the care-plan successful, a range of organisations is involved with the facility, such as probation services, care providers and the municipality.

9



10



Base group: young people enter a base group, from which it is determined to which group they move on.

Specialist care: a number of specialist departments will be maintained.

Low Security Units: A department at the FCJ with a low security level from which to practice with more liberties.

Trans-forensic care: continuity of care and expertise in the local field.

Screening and diagnostics.

Job experience and education, including further development of a range for 18+

Co-funded by the Justice Programme of the European Union 2014-2020

# ERA

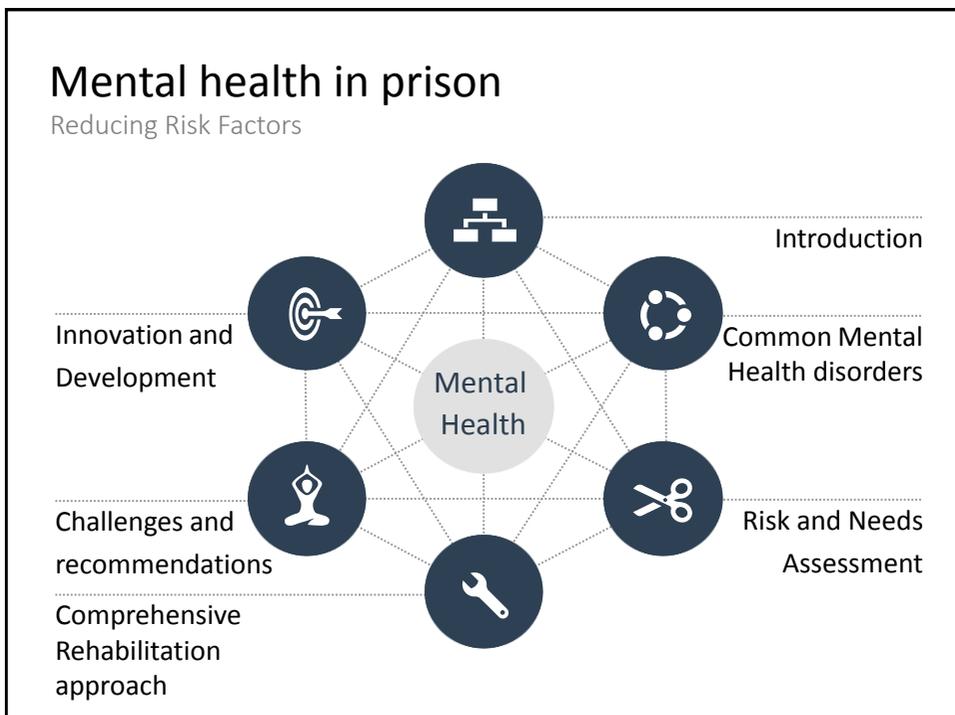
## MENTAL HEALTH IN PRISON

Reducing risk Factors

**Jorge Monteiro**  
*Clinical Psychologist  
Head of Unit  
Prison and Probation*

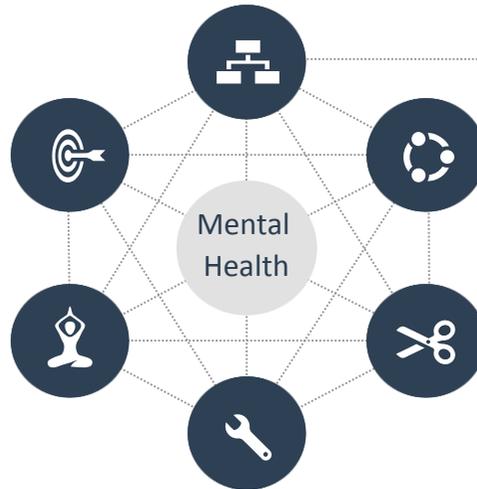
REPÚBLICA PORTUGUESA  
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DGRSP  
DIREÇÃO-GERAL DE REINSCRIÇÃO E SERVIÇOS PRISIONAIS



# Mental health in prison

Reducing Risk Factors



Introduction

# Mental health in prison

Reducing Risk Factors

## 1. WHAT IS HEALTH?



- "Health is a state of complete physical, mental and social well being and not merely the absence of disease or infirmity" (WHO,2014)

## 2. WHAT IS MENTAL HEALTH?



- Mental Health is "a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to his or her community"(WHO,2001).

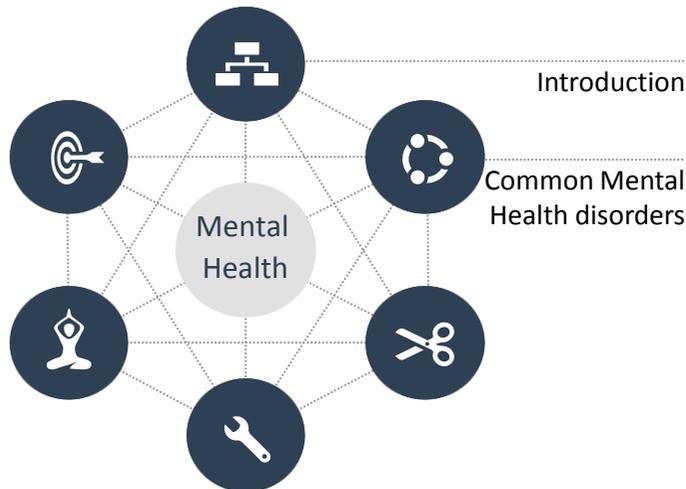
## 3. MENTAL HEALTH IN PRISON CONTEXT?



- Mental disorders develop during imprisonment it self due to the fact that prison environments are by their nature normally detrimental to protecting or maintaining the mental health of inmates
- The factors that often apply in prisons and have a negative impact on mental health include overcrowding, poor food, various forms of violence, lack of purposeful activity, the availability of illicit drugs, enforced solitude or lack of privacy, and inadequate health services, especially mental health services (Blaauw&vanMarle,2007).

# Mental health in prison

Reducing Risk Factors



# Mental health in prison

Reducing Risk Factors

- Research findings points that 47% (males) – 28% (females) were diagnosed with ASPD (Fazel and Danesh, 2002).
- Inmates are a high-risk group for suicide and rates are significantly higher (3x) than in general population.
- Many of these disorders may be present before imprisonment, and may be further exacerbated by the stressful conditions of incarceration.



- 455 M people worldwide suffer from some form of mental disorder (WHO, 2001).
- In the EU, mental disorders affect 27% of the adult population and depression is already the most prevalent health problem (EC, 2008)
- Research in some countries (U.S, Brazil, Nigeria, etc) found that 26%-43% of the prison population shows symptoms of depression.
- The same studies found that 32%-50% of PP have symptoms of anxiety disorders (irritability, tension, difficulties in sleeping).

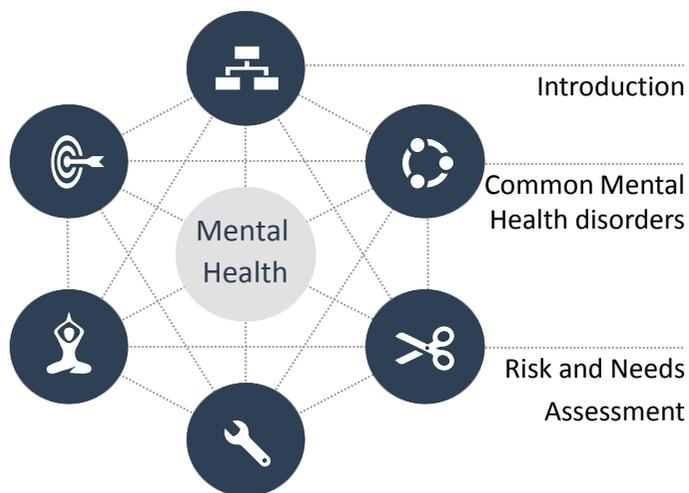
# Mental health in prison

## Reducing Risk Factors

✓	<p><b>1. Depression symptoms</b></p> <ul style="list-style-type: none"> <li>• Depressed mood;</li> <li>• Diminished or no pleasure and interest at all in activities;</li> <li>• Recurrent suicidal ideation, attempts or a plan to commit suicide.</li> </ul>
✓	<p><b>2. Anxiety disorder</b></p> <ul style="list-style-type: none"> <li>• Difficulty concentrating or mind going blank</li> <li>• Irritability and muscle tension</li> <li>• Sleep disturbance (difficulty falling or staying a sleep, or restless, unsatisfying sleep)</li> </ul>
✗	<p><b>3. Suicidal Ideation</b></p> <ul style="list-style-type: none"> <li>• Withdrawing from activities and isolating from family and friends;</li> <li>• Calling people to say goodbye and/or giving away prized possessions;</li> <li>• Aggression, Irritability, Anxiety, Hoplessness,</li> </ul>

# Mental health in prison

## Reducing Risk Factors



## RNR model

Risk – Needs - Responsivity

### 1. Level of Risk (*How much to intervene?*)

#### ...What degree of supervision/intervention.

The intensive supervision/intervention should be targeted to high risk cases; low or very low risk cases may not even require supervision/intervention.

### 2. Criminogenic Needs (*Where to intervene?*)

#### ...Which priority targets for intervention.

The intervention must address the dynamic risk factors/criminogenic needs that contribute most for the recidivism probability in a specific case and that may be changed as a result of a targeted intervention.

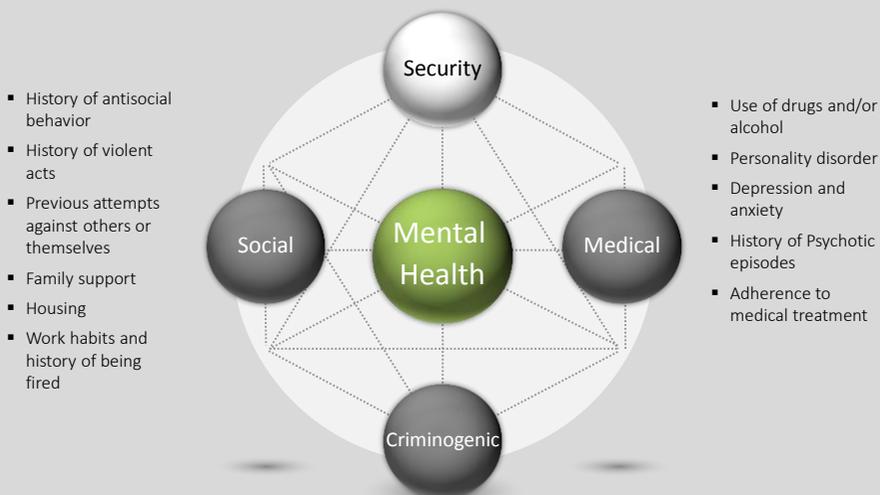
### 3. Responsivity factors (*How to intervene?*)

#### ...Model of intervention.

Adjust the intervention in terms of personal, cognitive, demographic, cultural and other factors in order to enhance the responsiveness of the convicted offender.

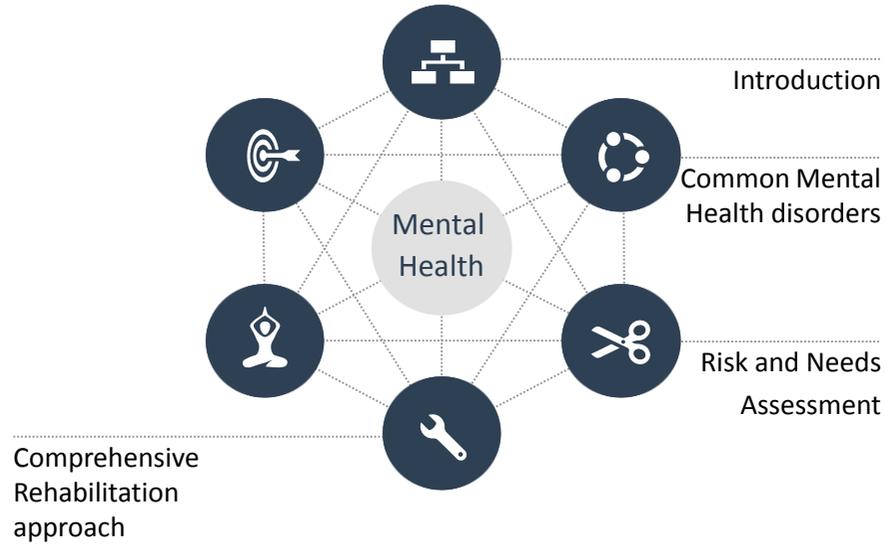
## Risk and Needs Assessment

Mental Health in prison context



# Mental health in prison

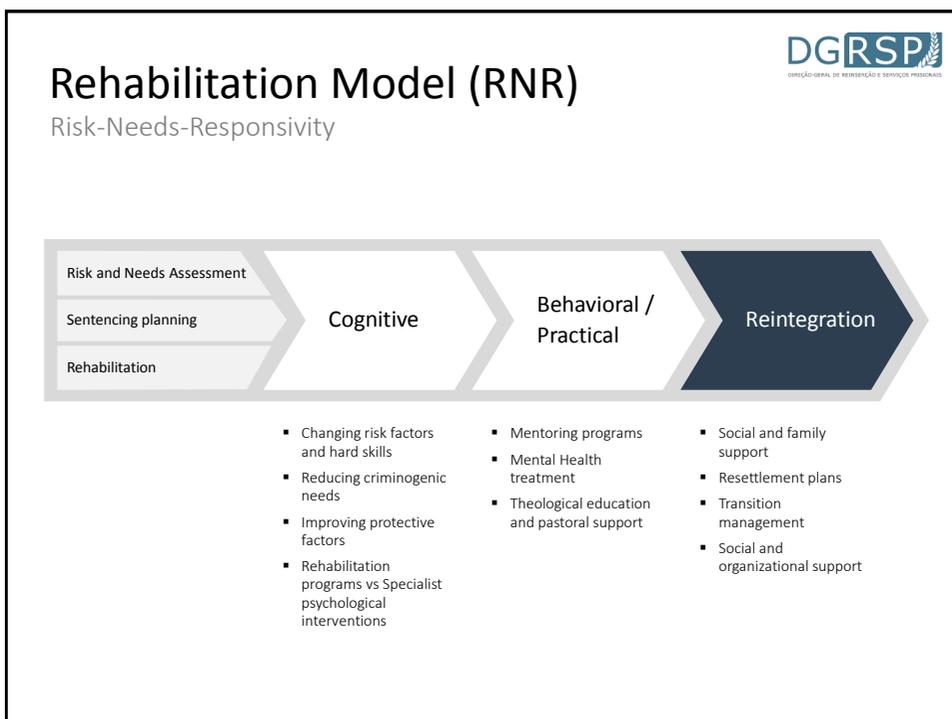
Reducing Risk Factors



# 7S-FRAMEWORK (MCKINSEY)

The seven Success Factors for rehabilitation





# Mental Health in prison

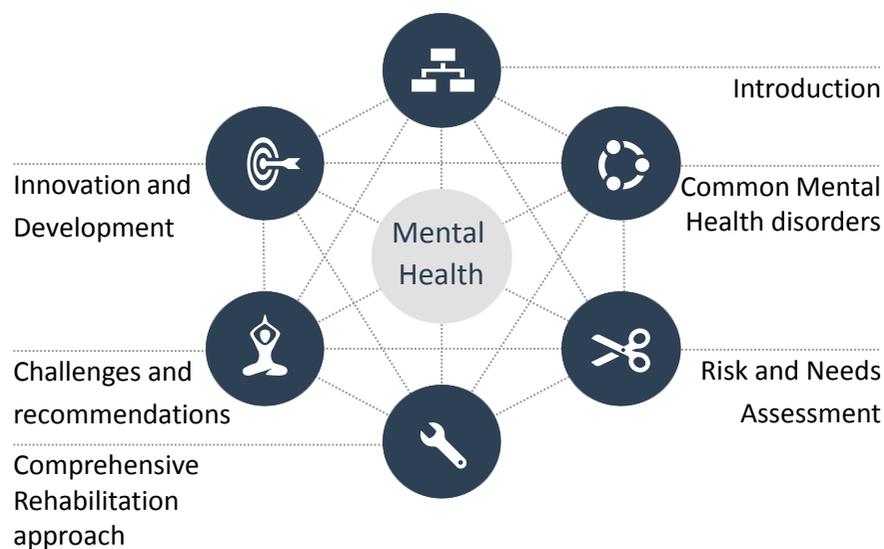
## Reducing Risk Factors

### CHALLENGES AND RECOMMENDATIONS

- Conducting initial and ongoing comprehensive assessments to identify the varied and changing needs of mentally disorder prisoners;
- Ensuring health care needs such as medical, nutritional, and psychological health, social engagement with interdisciplinary staff, and special programs to address mental health and psychosocial concerns;
- Joint development of work between the penitentiary prison hospitals and local hospitals or other external mental ill treatment institutions;
- Development and implementation of integrated and tailored approaches for early referral, assessment, diagnosis and treatment of inmates with special needs (assessment instruments and treatment programmes).
- The standardisation of the use of assessment and referral instruments across the prison and probation systems;
- Development of specific programmes for treatment of the mentally ill in prisons;
- Development of a “unique” mental health recording system integrating different instruments (screening, assessments), diagnostic results and treatment logs, etc.
- Improvement of non-medical prison staff capabilities to identify symptoms and to act according to the defined procedures (referral);
- Plan prison infrastructure to respond to the increasing needs of vulnerable groups;
- Implementation of telemedicine programmes involving prison hospitals, local hospitals or other external institutions;
- Referral of ill inmates to external to local or regional mental health care organisations that can provide treatment after incarceration or during community probation measures.

# Mental health in prison

## Reducing Risk Factors



# Mental health in prison

Reducing Risk Factors



HOME MENACE PARTNERS LIBRARY GALLERY MEDIA E-LEARNING CONTACT

Mental health, Aging  
and Palliative Care in prisons

[www.menace-project.org](http://www.menace-project.org)


**MenACE**  
 Mental Health, Aging and  
 Palliative care in European  
 Prisons

**MenACE Mental Health, Aging and Palliative Care in Prisons** aims to increase the response to mental health disorders within prisons and the quality of palliative and life care services provided by enhancing the competences of management and frontline staff to address prisoners' mental health needs and the special needs of older prisoners.

**News & events**  
 MenACE project featured in the Portuguese Newspaper "Jornal de Noticias"  
Portugal 3rd Mar 2017

Promoting change...



**ERA**  
**MENTAL HEALTH IN PRISON**  
Reducing risk Factors

**Jorge Monteiro**  
*Clinical Psychologist  
Head of Unit  
Prison and Probation*

 **REPÚBLICA PORTUGUESA**  
JUSTIÇA

**DGRSP**  
DIREÇÃO-GERAL DE REINserÇÃO E SERVIÇOS PRISIONAIS

# Alternatives to detention and good practices: reducing the prison population in Europe via community-based sentences

Dr. Michele MIRAVALLE,  
University of Turin – Department of Law  
European Prison Observatory

1st December 2020



Co-funded by the Justice  
Programme of the  
European Union 2014-  
2020

## WHO WE ARE, WHAT WE DO

...The European Prison Observatory (EPO) was launched in Rome in February 2013 and operates in **8 countries (France, UK, Greece, Italy, Latvia, Poland, Portugal, Spain)**. Through quantitative and qualitative analysis, **the EPO monitors and analyses the present conditions of the different national prison systems and the related systems of alternatives to detention in Europe**, comparing these conditions to the international norms and standards relevant for the protections of inmates' fundamental rights, particularly the **European Prison Rules (EPR) of the Council of Europe**

### ...main sources of this presentation:

Aebi M. F., & Hashimoto, Y. Z. (2020), *SPACE II –2019 –Council of Europe Annual Penal Statistics: Persons under the supervision of probation agencies*, Strasbourg: Council of Europe

Tabar O.F., Miravalle M., Ronco D., Torrente G, (2016), *Reducing the prison population in Europe: do community based sentences work?*, Rome: Antigone



Co-funded by the Justice  
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2020

PRISON VS PROBATION



In the EU over **800 thousand** people were under the supervision of probation agencies, like Amsterdam

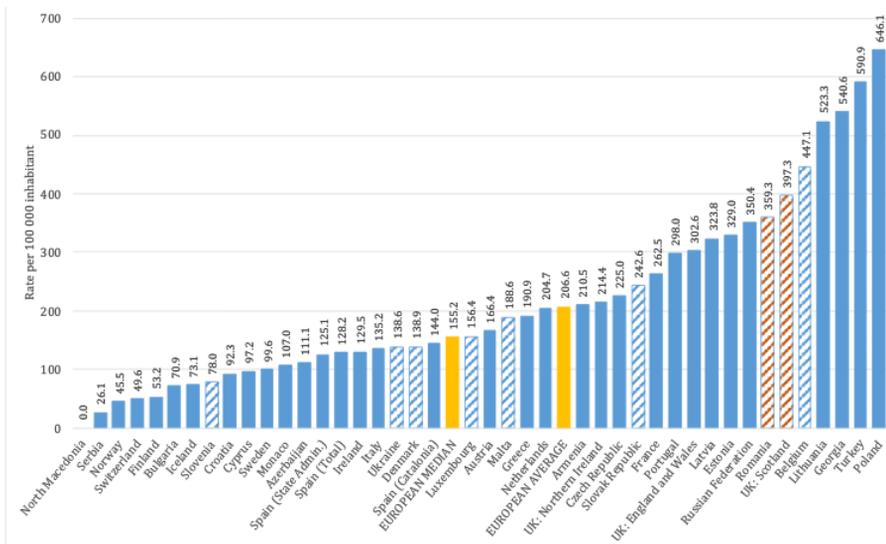
In the EU around **585,000 people (30,000 women)** are currently detained in penal institutes, like Dublin

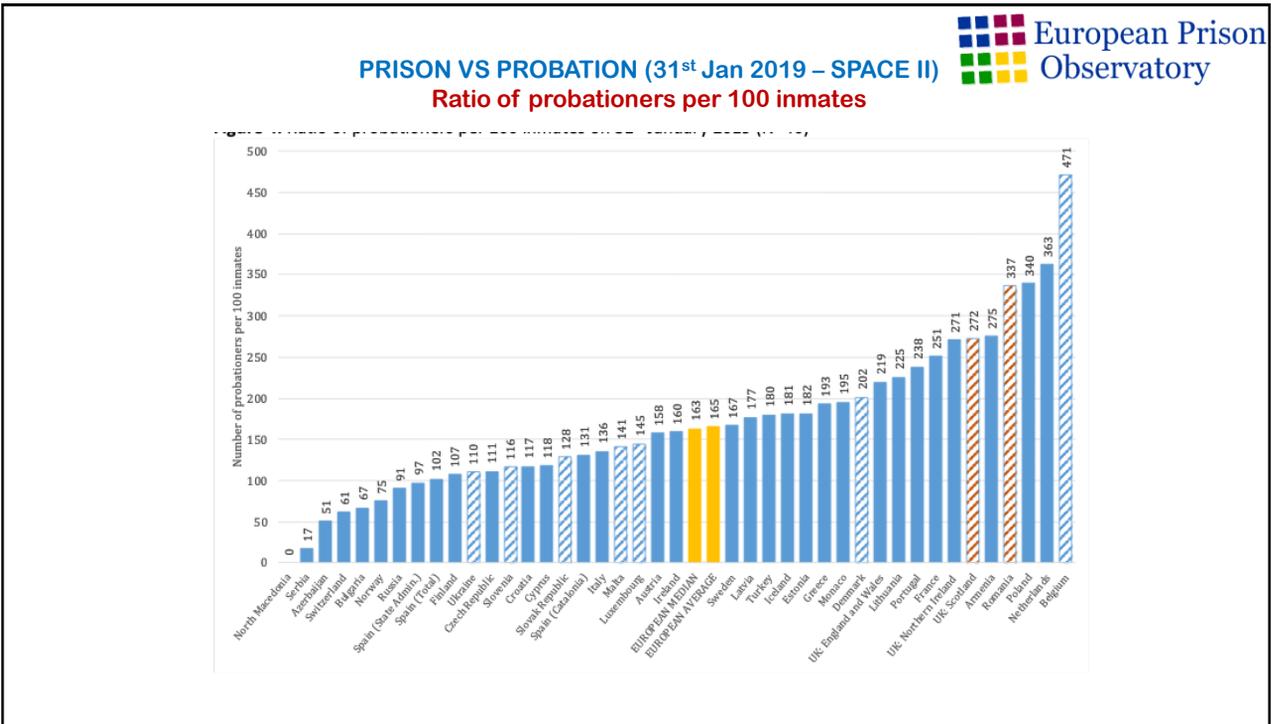
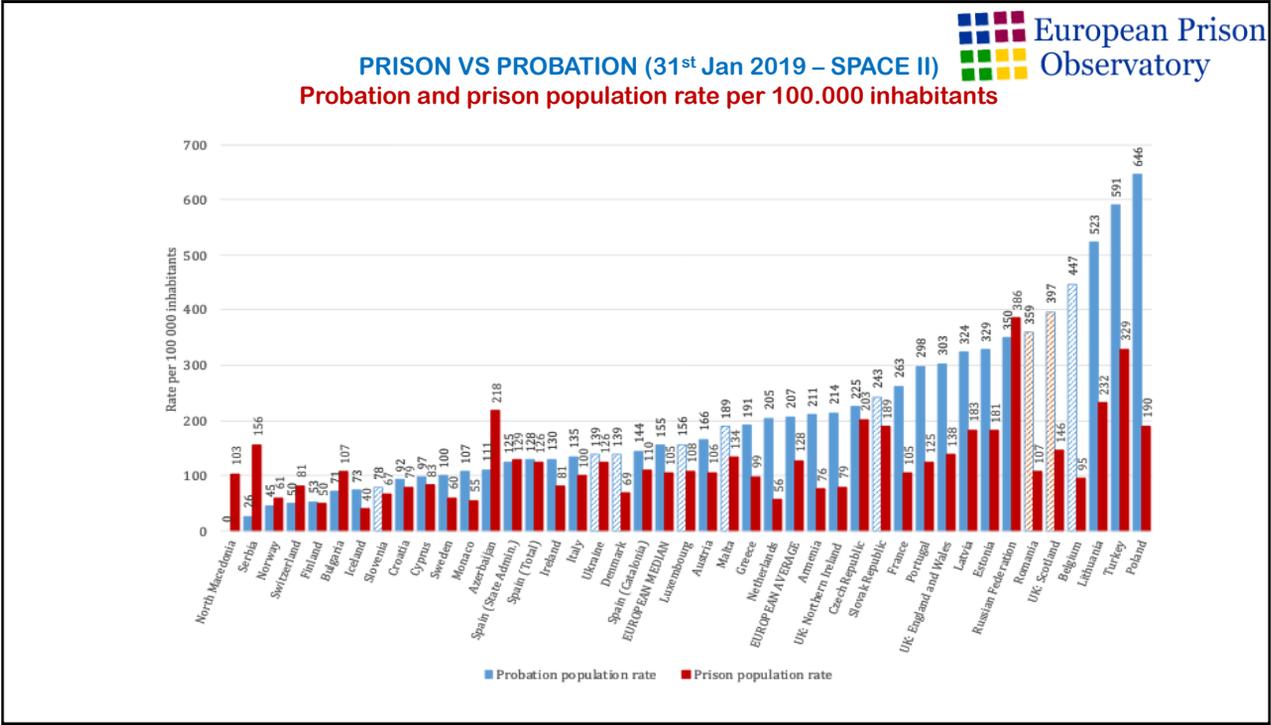


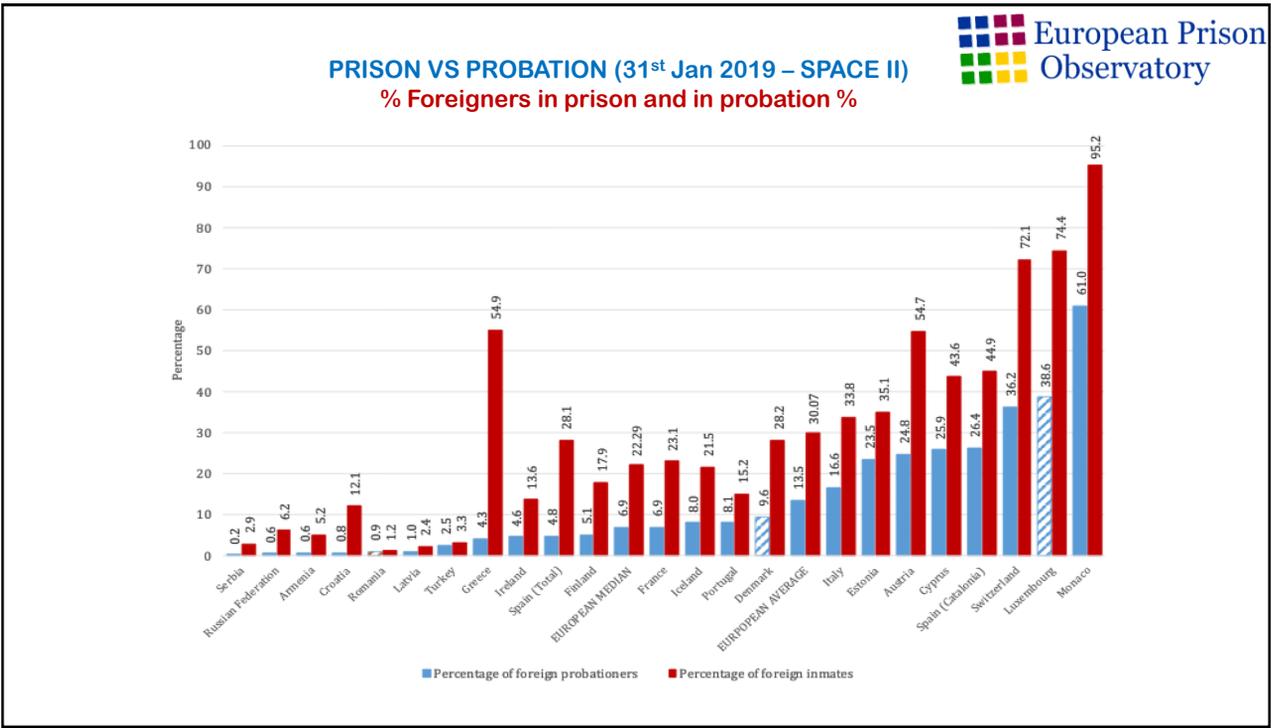
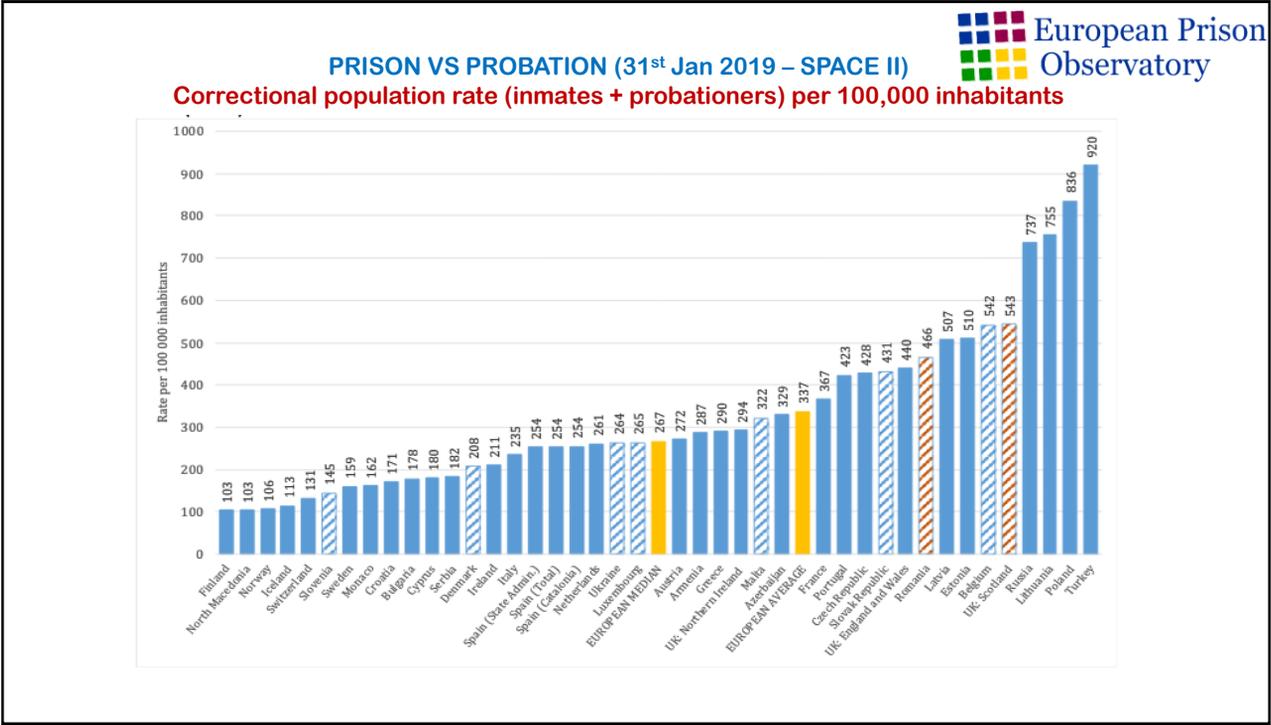
PRISON VS PROBATION (31<sup>st</sup> Jan 2019 – SPACE II)

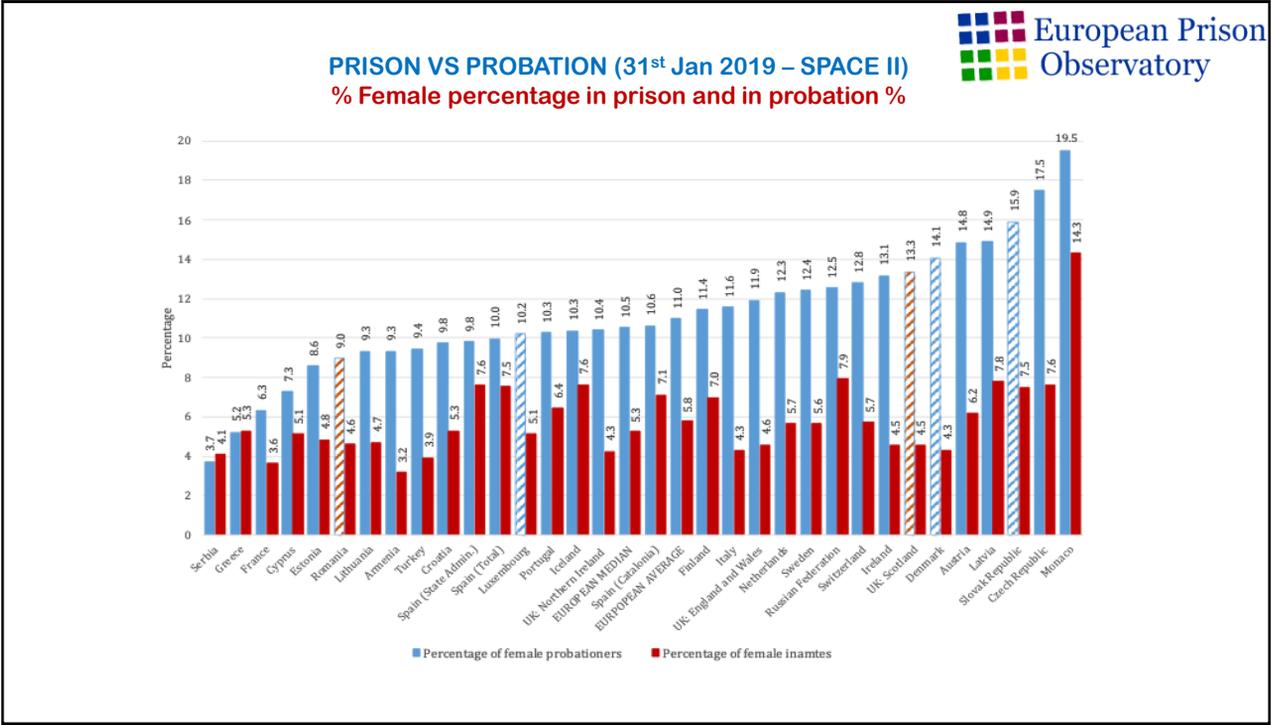


Probationers per 100.000 inhabitants









**Sharing common words...a classification of “alternatives to detention”**

European Prison Observatory

**PRE-TRIAL MEASURES**

- ALTERNATIVES TO PRE-TRIAL DETENTION WITH SUPERVISION BY PROBATION AGENCIES(TOTAL)
- CONDITIONAL SUSPENSION OF THE CRIMINAL PROCEEDINGS
- DEFERRAL (POSTPONEMENT OF THE PRONOUNCEMENT OF A SENTENCE)
- VICTIM-OFFENDER MEDIATION

**ALTERNATIVES SANCTION**

- MIXED SANCTIONS OR MEASURES
- FULLY SUSPENDED CUSTODIAL SENTENCE WITH PROBATION
- CONDITIONAL PARDON OR CONDITIONAL DISCHARGE (WITH PROBATION)
- HOME ARREST(CURFEW ORDERS)

**ALTERNATIVE DURING EXECUTION**

- ELECTRONIC MONITORING
- COMMUNITY SERVICE
- SEMI-LIBERTY
- TREATMENT
- CONDITIONAL RELEASE(PAROLE)WITHPROBATION SUPERVISION

Co-funded by the Justice Programme of the European Union 2014-2020

## Sharing common words...a classification of “alternatives to detention”

**CARE ORIENTED MEASURES**

**CONTROL ORIENTED MEASURES**

**MIXED MEASURES**



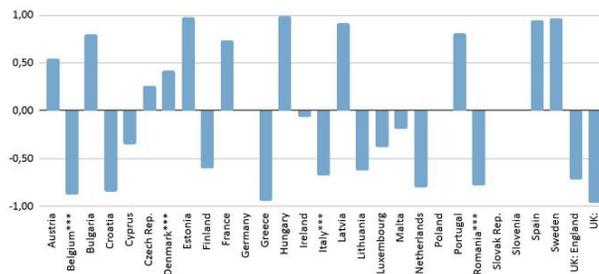
Co-funded by the Justice Programme of the European Union 2014-2020

### The NET-WIDENING EFFECT

An issue worth exploring is the correlation between the trends measured between 2010 and 2018 of alternatives to detention and the number of detained people. When a correlation is detected, it does not necessarily mean that one variable affects the other, it simply shows that the trend of the two variables is some how connected.

**Thanks to a coefficient that varies between 1 and -1, it is possible to measure the correlation between any two sets of data. If the coefficient is closer to 1, the correlation is positive, if it is closer to -1, it is negative, and if it is 0, there is no correlation**

Correlation between the trends in prison population and those of people (or cases) under the supervision of probation agencies

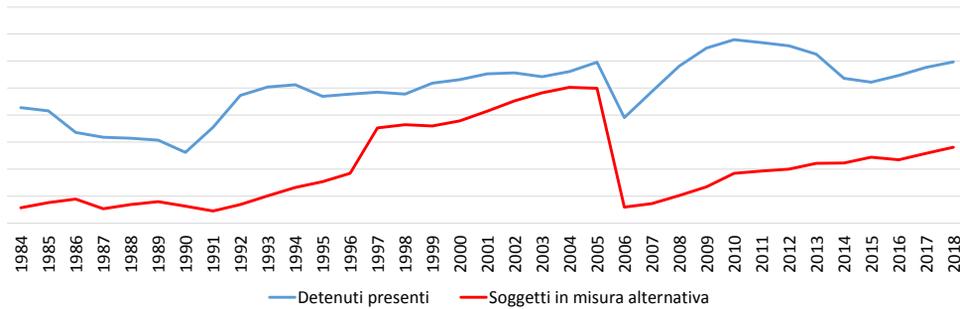


Data source: COE; World Prison Brief; \*\*\*The data refers to the number of cases

The NET-WIDENING EFFECT: ITALY AS CASE STUDY

«Instead of being alternatives to imprisonment, community sanctions and measures have contributed to widening the net of the European criminal justice systems. The situation in Europe is thus similar to the one described 20 years ago in the United States and Canada. [These measures] have become one of the instruments of an increasingly punitive approach to crime control»

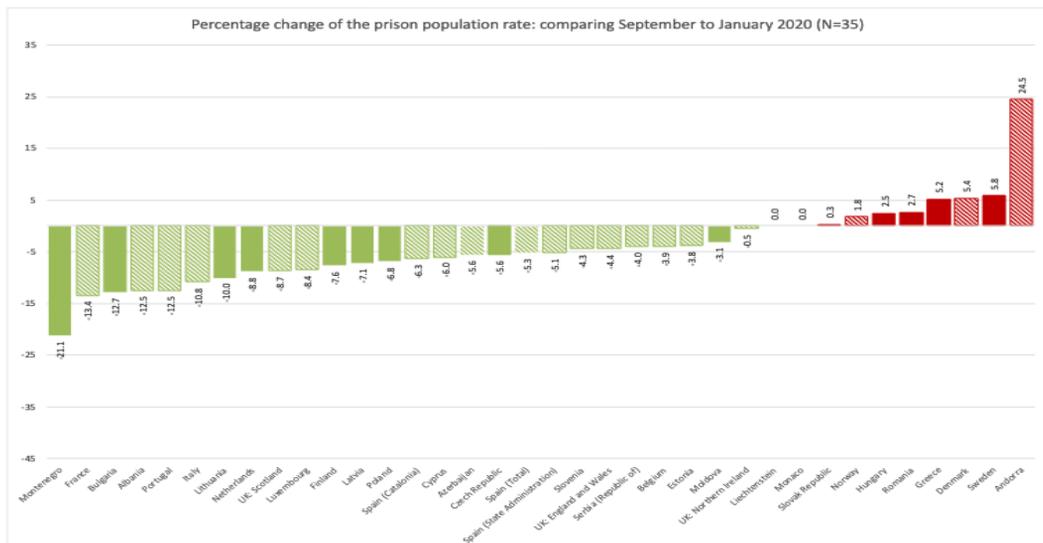
Correlation between «prison» and «probation» in Italy (1984 – 2018)



PROBATION & PANDEMIC

Percentage change in prison population rates (1 jan – 15 sept)

Percentage change of the prison population rate: comparing September to January 2020 (N=35)



### POLICY RECCOMANDATIONS

- **MINIMIZING NET-WIDENING EFFECT (DE-ESCALATION OF PUNISHMENT),**  
 Diverting people to treatment and health interventions where needed; **D**eferring prosecution or sentencing, to enable other interventions to be effective; **R**eplacing short custodial sentences with community-based measures.
- **PRE-TRIAL ALTERNATIVES MEASURES AND THE PRESUMPTION OF INNOCENCE**  
 If defendants are required to undergo treatment or supervision at the pre-trial stage, this must only be with their full, free and informed consent. It must not be imposed as a condition of avoiding detention.
- **GROWTH COMMUNITY SANCTIONCS** a community sanction is still a punishment or involves the threat of punishment or restriction of liberty. Therefore they must **tailored on the person**, properly targeted, based on a thorough, objective assessment of the person's background and support needs.
- **EFFECT of BREACH** There must be no automatic recourse to prison or any other harsher sanction than that for which the measure itself was imposed. A reasoned decision must be taken based on all the available information.
- **ACCOUNTABILITY AND TRANSPARENCY**

# Thank you for your attention

*Dr. Michele Miravalle*  
*michele.miravalle@unito.it*



With financial support from the  
Criminal Justice Programme of  
the European Union



# The European Prison Rules as a Standard-Setter for European Prison Conditions

## Effective management of Foreign Nationals in Cyprus Prisons



*Athena Demetriou  
Cyprus Prisons Department  
1.12.2020*

## Contents

- Cyprus Prisons: Statistics of the population (incl. FNPs)
- Introduction – a shift to the prison system of Cyprus
- EPRs and CoE Ministers' Rec (2012) 12 concerning foreign prisoners (Aristotle Model of Communication)
  - Life of FNPs during imprisonment (rights of FNPs)
  - Staff & Dynamic security
  - Concluding remarks

# Cyprus Prisons Department – Statistics of the population

- Today - Total population: appr.: 650, capacity: 566

Before COVID: 840 inmates

- 616 (15.4.20 – early releases, CoE SPACE Statistics)
- 49.01% FNPs (Today)
- From 67 countries
- 52% FNPs (2013, CPT visit, p.27 609 inmates)
- 55% FNPs (10/2014, Prison Registry)
- 45% FNPs (2015, Prison Registry)
- 40% FNPs (2/2017, 611 inmates – 244 FNPs, CPT visit to Cyprus, p.39)
- 43.5% FNPs (1.9.18, www.prisonstudies.org)

- Capacity: 455 (2013, CPT visit, p.27),
- Capacity today: 566
- [www.prisonstudies.org](http://www.prisonstudies.org) (56 COUNTRIES, 1.9.2018)

Ranking	Title	Foreign Prisoners (%)
1	Monaco	100.0
2	Andorra	88.5
3	Liechtenstein	75.0
4	Luxembourg	74.7
5	Switzerland	69.6
6	Austria	53.2
7	Greece	52.7
8	San Marino	50.0
9	Belgium	44.2
10	Cyprus (Republic of)	43.5
11	Malta	41.4

2000	312
2002	345
2004	546
2006	599
2008	831
2010	900
2012	930
2014	681
2016	668
2018	621

## INTRODUCTION – a shift to the prison system of Cyprus

- Punitive philosophy/system
- Discrimination / inequalities
- Favouritism
- ill – treatment/ torture/ impunity
- Poor living conditions
- Increased inter-prisoner violence, riots
- Suicides
- Self-harms
- Overcrowding
- Corruption scandals
- Poor health care system/ mental health care

- Human centered philosophy/ humane regime
- Rehabilitation, normalization, re/socialization, re/integration
- Non-discrimination principle
- Respect to human dignity & diversity
- Application of new concepts of Management
- New mind-set/ values/ vision
- Change in priorities
- Significant drop in incidents of inter-prisoner violence and self-harms (statistics)



# ADMISSION, ALLOCATION ACCOMODATION



• Rec (2012) 12:  
R. 15.1 – 17,  
21.1 – 21.5

• EPRs:

R. 14-15, 17.1 – 17.3,  
18.1 – 18.10, 37.1 -  
37.5, 38.1- 38.3

- Admission/ In-take procedure
  - Initial interviewing and screening/assessment (medical and mental)
- Effective management of risks & needs
- Contact with family/ consulates/ lawyers/ other person
  - Information about rights
  - Interpretation services
- Allocation/accommodation – individual needs and particularities

# HYGIENE IN PRISONS



• Rec (2012) 12: R. 18.1  
– 18.2

• EPRs:  
R. 19.1 – 19.7



- Decent living conditions
- High hygienic standards
- Hygiene of the facilities
  - Personal hygiene
  - COVID-19

(zero incidents for staff & Inmates)



## FREEDOM OF RELIGION OR BELIEF

- **Rec (2012) 12:**  
R. 19.1, 19.2, 20,  
30.1, 30.2

- **EPRs:**  
R. 20.1 – 20.4,  
22.1 – 22.6, 29.1 – 29.3

- Freedom of religions (religious duties/habits)
- Additional visits from religious representatives
- Individual hygienic, nutrition and clothing preferences
- Specific appearance

## SUPPORT TO POOR INMATES

### PRISON MANAGEMENT



- Financial assistance
  - Clothing
  - Tele-cards
  - Cigarettes
- Items for personal hygiene

## CONTACT WITH THE OUTSIDE WORLD

• **Rec (2012) 12:**  
R. 22.1 – 25.4

• **EPRs:**  
R. 7, 23.4,  
24.1 – 24.12,  
29.2, 99c



- On admission and regular contact
- Everyday contact – A variety of means of contact
- Physical visits: 10 (up to 3 adults + children) by Family & friends/ Less physical visits during COVID
- Additional visits by lawyers, consulates, religious representatives
- Use of SKYPE
- Access to phone-booths everyday
- **Unlimited phone calls** (0800-2030)
- Visiting areas – playgrounds
- Home leaves/ Transfers to attend family events
- Correspondence
- Newspapers, periodicals, books, publications, TVs, radios



## PRISON REGIME

• **Rec (2012) 12:**  
R. 26.1 – 29.3

• **EPRs:**  
R. 25.1 – 25.4,  
26.1 – 26.17,  
27, 28.1 – 28.7,  
100.1, 100.2



- **Constructive, humane, open- door regime** (0700 – 2100/2200)/ **Decent living conditions**
- Rehabilitation, normalization, re/socialization, re/integration
- Non-discrimination principle/ Diversity
- Application of new concepts of Management: learning organisation and work-life balance, Good lives model
- **Prison education/ vocational training** (same as country's), 8 schools,  $\frac{3}{4}$  participation, projects
- Creative & cultural **activities**
- Physical education & Sports (8 gyms, football/basketball grounds)
- Social/charitable/sport events inside and outside
- Library facilities/ educational DVDs
- Increased opportunities for Work

## Health Care & Treatment

- **Rec (2012) 12:**

R. 31.1 – 31.9

- **EPRs:**

R. 39-46, 19.7, 34.1-36.3

40.4, 40.5, 42.3b, 42.3h

47.1, 47.2

- Same HC&T, MHS as outside prisons
- 2 GPs /nursing staff 24/7
- Mental Health Services (MHS)
- In-take procedure: medically screened and psychiatrically assessed
- Drug treatment program/Substitution program
- Non-stop access to medical care
- Emphasis in prevention of suicides and self-harms
- Effective management of Vulnerables
- Female FNP's
- Review of assessments/ Follow-ups

## HEALTH CARE SYSTEM - STATISTICS

- **2019**

Transfers to state and private hospital 1369 cases of inmates to 48 medical specialties

Physician: 7768, Dentist: 1187, Dermatologist: 420, mandoux test: 976, nursing processes: 16472

Mental Health Services:11547 (2/3 of cases were FNP's)

- **2018**

Transfers to state and private hospital 1205 cases of inmates to 44 medical specialties

Nursing processes: 14695

**Mental Health Services: 2/3 of cases were FNP's**

# STAFF



- **Rec (2012) 12:**  
R. 32.1 – 32.4, 38,  
39.1 – 39.5, 40



- **EPRs:**  
51.2 – 54.1, 71 - 89



- Selection (nearly 400)
- Dynamic security
- Training & specialization
- Leadership invests in learning
- Raise awareness
- Develop skills/knowledge
- Professional standards
- Participation together with inmates in projects/ conferences/ workshops/ activities inside and outside prisons
- Budget for staff training today: 100.000 euro, previously 6.000

## Prison Regime - Statistics

### 2009 – late 2014 Punitive regime

- Humiliating Prison Conditions
- Ill- treatment
- 6 suicides (2013 – 2014), 3 Cypriots, 3 FNPs
- 12-13 attempts of suicides annually for 2013 & 2014
- 2-3 self-harms daily, <600
- 2-3 incidents of inter-prisoner violence daily
- Corruption scandals
- 4 ECHR cases v. Cyprus
- (1 Cypriot, 3 FNPs)

### 2015 – 2020 Humane Regime

- **Education:** ¾ of our inmates: 8 schools, best practice in 2017 (Rome), 2018 (in the Hague)
- **8 gyms & Sports (football, basketball, volleyball, badminton)** more than 70% participation of FNPs
- **High standards of living conditions**
- **Prison Academy for staff, 2 gyms, Operations Center (simulation)**
- **Staff training:** In 2019, 1002 participations in courses
- **Very good working conditions for staff**
- **Fight against corruption:** 6 officers were arrested
- **ECHR (3FNPs) :** 5 Interim measure requests all rejected, M.A v. Cyprus was unanimously ill founded
- **2015 – present:** 1 suicide, 12 self-harms, 1 suicide attempt, 47 cases of inter-prisoner violence [19 were in 2019 – overcrowded with nearly 850 inmates in 2020], **zero COVID incidents**

# Concluding Remarks

Rec(2012) 12: 35.1 – 37.2, EPRs: 33.1 – 33.8, 37, 37.5)

- Application of the Rules
- Education, vocational training, recognition of qualifications
- Health care and treatment/ Mental Health Care
- Non-discriminatory constructive regime
- Increased contact with outside world
- Rehabilitation, normalization, re/socialization, re/integration – FNPs are not discriminated in prisons
- **OVERREPRESENTED** as pre-trials (2015-2019: rate of conviction 64%)
- **Disadvantaged in other stages of the penal process**
- **Are not granted home leaves without escort**
- **Cannot enjoy the privileges of the Open Prison and of the Reintegration Center**
- **Cannot participate in activities outside prisons (most of the times)**
- **Legal status is determined upon release/ not early after the sentence**



## THANK YOU!



demetriouathena@gmail.com

## Promoting Professional Prison Practice



European Organization of Prison  
and Correctional Services

The European Prison Rules as a Standard-  
Setter for European Prison Conditions  
ERA Online Seminar  
30<sup>th</sup> November – 1 December 2020

## 'Managing Foreign National Prisoners' E-Learning Module

Nick Hammond Coordinator, Foreign  
Nationals in Prison & Probation Expert Group

Supported by the Justice Programme  
of the European Union



## Foreign Nationals in Prison & Probation Expert Group

- comprises 17 members, 11 countries – prison/probation managers, NGOs, academics
- promotion of best practice & CoE Recommendations on Foreign Prisoners 2012(12)
- FNP Workshops 2014 London, 2016 Bruges, 2018 The Hague, + Special Edition FNP Newsletters – \*November 2020

## collaborative work producing FNP E-Learning Module

- in CoE HELP Programme
- Dr Roisin Mulgrew    University of Nottingham
- Isabelle Storme        Belgium Prison Service
- Nick Hammond         EuroPris



CoE Strasbourg – March 2019

## Managing Foreign National Prisoners E-Learning Module

E-Learning module using

- innovative & engaging format with animations - videos – voice overs
- quizzes testing current & new learning

aimed at

- those working with & responsible for foreign national prisoners
- new & established prison staff
- specialist prison staff
- prison managers, trainers, policy makers
- prison NGO/voluntary group workers

# Managing Foreign National Prisoners E-Learning Module

- access through registering on CoE HELP <http://help.elearning.ext.coe.int/>
- for - prison, probation staff, trainers working with foreign national prisoners
- available in English, Spanish, French, German, Greek, Italian
- independent/self-learning or 'tutored' prison training programme-shared learning & discussions
- interactive & engaging, using quiz's, videos, animations, voice-overs

## 7 chapters

1. introduction
2. effective communication for foreign prisoners
3. prison regime Improvement
4. contact with outside world
5. resettlement & rehabilitation Issues
6. 'Staff Matters' – selection, training & specialization
7. Tests

## Module Chapters

Click on the chapters from the menu to explore the module.  
Start with the Introduction.

1. Introduction

2. Effective communication for foreign prisoners

3. Prison regime improvement

4. Contact with the outside world

5. Resettlement and rehabilitation issues

6. Staff matters

7. Final test

### How to use this E-Learning course?

You may choose to go through the module **individually** or as a **group**. Undertaking it along with others provides the opportunity for discussion, debate and the sharing of knowledge and experience which is useful.

You may undertake the chapters in any order though working through them from I to VII is advised. Click in at the beginning of each chapter and work through the screens.

There are **quizzes and questions** included in the module with additional ones collected together in chapter VII, to embed learning.

This Module is a **self learning** course. There is no time limit for completing each chapter and your answers will not be seen by anybody.

## **‘Managing Foreign National Prisoners’ e-learning module & supporting material**

- used by European Prison Service staff, European Penitentiary Training Academies members + others
- promotional video available
- supporting resources on module course pages
- information on EuroPris website [www.europris.org](http://www.europris.org)



Co-funded by the Justice  
Programme of the European Union 2014- 2020

## Workshop Foreign Nationals and managing them in Prisons

Managing Foreign National Prisoners - perspectives  
from Italy

*Luisa Ravagnani*

*Researcher in Criminology and penitentiary Criminology. Department of Law, University of Brescia – Italy*

*Prisoners' Ombudsman – Brescia, Italy*

### The Covid-19 pandemic in prison (1)

- Emergency situation in prison started at the end of feb-2020
- D.L 11/2020, 8th March 2020 – complete closure of the Italian prisons
- 8-9 March 2020: prison riots: 13 prisoners died: **11 foreigners, 2 Italians**
- D.L. 18/2020, 17th March 2020: specific measures to reduce prison population
- Specific pronunciations of the judiciary and circulars of the Italian Department of Prison Administration:
  - 1) reduction of the application of detention as a precautionary measure
  - 2) Postponed application of detention, when possible

## Foreign prison population during the Covid-19 pandemic

### Before the pandemic:

- Tot. number of prisoners in Jan 2020: 60971
- % of foreign prisoners: 32,5%

### First pandemic wave:

- Tot. Number of prisoners: 53904
- % of foreign prisoners: 33,1%

### Beginning of the second pandemic wave:

- Tot. Number of prisoners: 54868
- % of foreigners: 32,2%

The percentage of foreigners in prison has not been significantly influenced by the pandemic

## New prison rules – impact on foreign prisoners *Pros and Cons*

1

No contact visits (normally, foreigners are less likely to have these for various reasons)



For the first time, video calls were granted to all prisoners (this gives the possibility to see family in their home also for foreigners who normally didn't have contact visits)

2

Language barriers



Foreigners are said to apply specific health guidelines in a language different by the one they are familiar with. For this reason...?

3

Increased risk of radicalization



Due to isolation from the outside and spiritual guides not visiting prisons, vulnerable prisoners are subject to higher risk of being involved in radicalization pathways

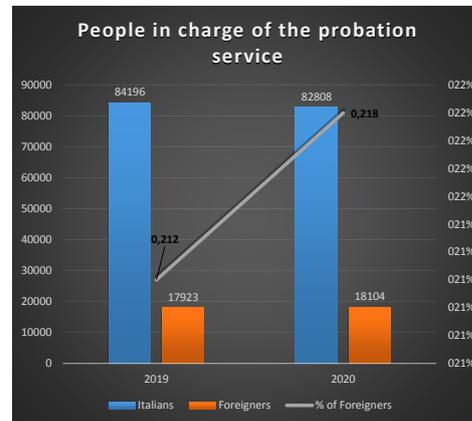
## People under probation service before and after the first pandemic wave

### Before the pandemic:

- % of foreigners in charge of the probation service: 21,20%

### During the pandemic (data referred to the 31st Oct.2020)

- % of foreigners in charge of the probation service: 21,80%



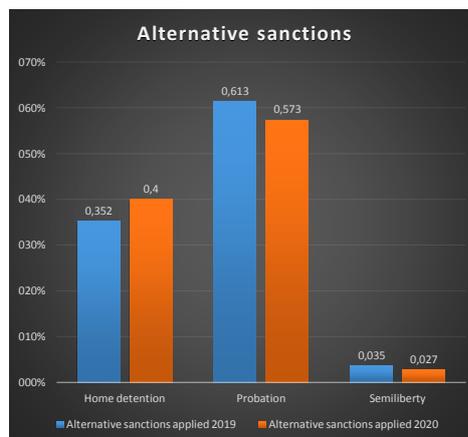
## Application of alternative sanctions before and during the pandemic

### Before the pandemic

- 1) Probation
- 2) Home detention
- 3) Semilibrty

### During the Pandemic

Small increase in the application of *home detention* due to the new law, the faster application procedure **and** the strenghtening of the social housing **networks**



## Example of Social Housing Project in Pandemic: the Brescia Experience



453 prisoners (in two facilities) at the beginning of the year (serious overcrowding)

410 prisoners (in two facilities) at the end of September 2020 (still serious overcrowding)



6 Organizations – 34 housing places in March 2020

25 people (**10 F – 15 I**) hosted until 15<sup>th</sup> Nov. 2020 to serve an alternative to detention applied according with the new emergency procedure

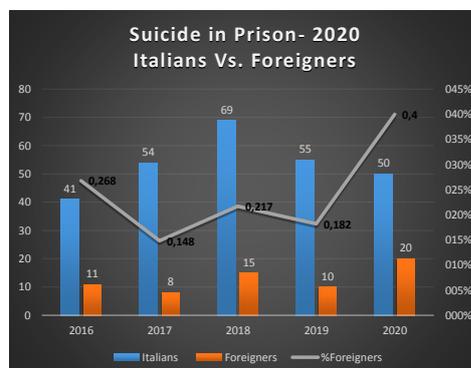
## Suicide in prison before and during the pandemic

### Suicide rate of foreigners in prison before the pandemic:

- Variable among 26,8% and 14,8% in the last five years

### Suicide rate of foreigners in prison during the pandemic:

- Percentage reached the second highest registered level in the last 10 years: **40%** (2013 – 47.1%)



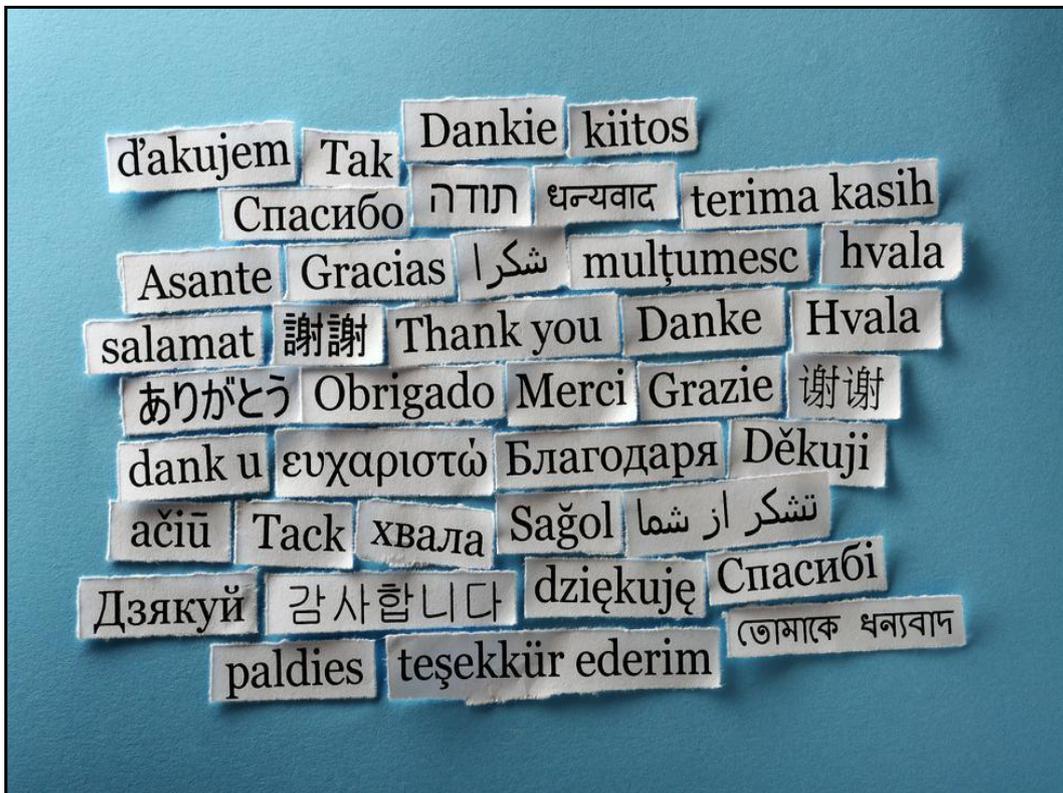
## What happened to the application of EU FDs during the pandemic?

- No official data available
- Temporary suspension of the transfer of prisoners (under 909 or extradition) in the first Covid-19 Pandemic wave
- Re-activation of the transfer from June 2020 but timeframe unlikely to be observed **with scarce possibility to respect the timeframe provided by the law** (necessity to follow specific health guidelines and transfer granted only in priority cases **of necessity**)

## Freedom square project

The way to meet each other in the "*freedom square*" is through a writing, a drawing, a poem, a lyric of a song or everything else you want to share, to be sent to the email address [p4hr@act-bs.it](mailto:p4hr@act-bs.it) or to the email address [z508@act-bs.it](mailto:z508@act-bs.it)







## The European Prison Rules as a Standard-Setter for European Prison Conditions

### Juveniles and young adults in prison

1st December 2020 – ERA online seminar



Co-funded by the Justice Programme of the European Union 2014-2020

### OBJECTIVES of the Workshop:

- Understand the **context of deprivation of liberty of children**
- Be aware of the global **legal framework** of deprivation of liberty of children and the means for a **correct implementation** of these principles
- Understand the context and importance of the **monitoring** of places where children are deprived of liberty and of the **complaints mechanisms** accessible to children deprived of liberty
- Discover the **Global Study on Children Deprived of Liberty**





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## 1. Definition of « deprivation of liberty »



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### • Definition

“Any form of **detention or imprisonment** or the **placement** of a person in a **public or private custodial setting**, from which **this person is not permitted to leave** at will, by order of any **judicial, administrative or other authority**”.

Havana Rules (RPJDL), Optional Protocol to the Convention against Torture and other cruel, inhuman or degrading treatment or Punishment (OPCAT) and European Rules for Juvenile offenders subject to sanctions and measures (ERJO)

“An interpretation **as expansive as possible** should be taken in order to maximise the preventive impact of the work of the NPM” (National Preventive Mechanisms).

Sub-Committee on the Prevention of Torture and other cruel, inhuman or degrading treatment or Punishment (SPT)



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## 2. Where does deprivation of liberty happens



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- **Places where children can be deprived of liberty**
- Any kind of establishment – penal, correctional, educational, protective, social, therapeutic, medical, administrative – public or private – from which a child is not allowed to leave at will.
- Many different names which does not especially reflect the reality



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- **In the context of criminal justice**
- Children suspected, accused or convicted of having committed a criminal offence.
- can be held in:
  - Police detention facilities including cells in police stations or vehicles;
  - Cells in court-houses;
  - House arrest;
  - Pre-trial detention centres or remand homes;
  - Facilities, including prisons that hold children who have been convicted for an offence.



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- **context of the child protection or child welfare system.**
- For reasons of protection or education, or because children have disabilities or suffer from physical or mental problems.
- can be held in:
  - Educational institutions and rehabilitation centres;
  - Child detention schools;
  - Psychiatric institutions and establishments
  - Establishments for disabled children;
  - Facilities where children are placed or hospitalised (voluntarily or not);
  - Youth care institutions;
  - Drug rehabilitation units;
  - Isolation cells/rooms (even in open institutions)



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- **context of migration.**

- Unaccompanied or separated children, asylum-seeking children, refugee children can be deprived of their liberty alone or together with members of their family because they enter another country or have to leave a specific country.
- can be held in:
  - Reception or deportation/detention centres;
  - Retention centres/transit zones;
  - Return flights;
  - Any form of administrative detention.



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- is detention for **public security reasons.** Other forms include **military detention** or detention for committing administrative offences.
  - Military camps
  - All forms of military places



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### 3. Who decides



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- **Courts** or (juvenile) judges or other judicial authorities;
- **Police** or law enforcement officials;
- **Public prosecutions** services;
- **Administrative authorities**, such as immigration services, border police, the military or security forces or private companies designated with public tasks and duties;
- **Medical doctors, psychologists**, social workers, child care and protection boards, youth care organisations, special commissions drawn up to decide on placement in educational or rehabilitation centres.



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## 4. Context of deprivation of liberty. What are the main features



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- **Imbalance** of power
- **Separation** from the family, friends
- **Isolation** / absence of any support / dependency
- **risk of abuse** (including in many cases sexual abuse) and discrimination from adults or peers
- Excessive use of **discipline and security** measures (searches / **solitary confinement** )
- **Substance** abuse



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- **Psychological fragility** and potential state of trauma / reinforced psychological disorder
- Absence of **separation** between children and adults or of boys and girls, or of younger and older children together
- lack or inadequacy of **individualised care**, treatment and/or educative programmes
- denial or limited access to **physical activities**, recreation, leisure, and contacts with the family and outside world
- Absence of **education**



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## **Some children are at higher risk**

- **Girls**
- **foreign children** or children on the move
- children with **mental health problems** or with disabilities
- children from ethnic or religious **minorities**
- lesbian, gay, bisexual, transgender or intersexual children (**LGBTI**)



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## Arrest

- The time of arrest by the police is particularly risky: the arrest can be **arbitrary**, the force can be used **excessively** as well as verbal **abuses** and threats, lack of information on their rights and no access to parents, guardians or **legal assistance**



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## Pre-trial detention

- Presumption of innocence?
- Pressure to admit crimes
- indefinite period
- Absence of legal assistance
- Absence of trial : arbitrary detention



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## Detention as a sentence

- Punishment vs. Education
- Length : live long sentences / detention without parole
- Context : punitive, boot camps, adult prisons
- And ... death penalty (death row)



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## Consequences of detention on the child





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## 5. Principles : last resort & shortest period of time



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- Principles :
- CRC, art. 37 (b) No child shall be deprived of his or her liberty **unlawfully or arbitrarily**. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a **measure of last resort** and for the **shortest appropriate period of time**



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- **Last resort =**
- Use in limited circumstances
- Priority to other community-based measures
- There is no other appropriate response.

So, only in limited, specific cases.

See report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health: the scale and magnitude of children's suffering in detention and confinement **called for a global commitment to the abolition of child prisons** and large care institutions

CRC Committee : States parties should immediately embark on a **process to reduce reliance on detention to a minimum.**



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- **Shortest period of time=**
- Requires tailor-made decisions
- Balance between the interests of the child and other interests of the justice system
- Regular revision of the measure
- Start the reintegration process as soon as possible



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- **The reality :**

- Detention is the first response - Long periods of time.
- Most custodial systems ineffective to prevent crime and re-shape the deviant conduct
- Fundamentally an act of violence - It happens in squalid conditions
- Without adequate oversight and regulation
- has a negative impact on children's mental and physical development
- Other fundamental rights are at stake : education, access to proper health care, access to justice,...



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- Four key principles :

1. **Proportionality** to the circumstances and the gravity of the offence AND to the needs of the juvenile as well as the society;
2. Careful **individual** consideration;
3. No other **appropriate response**;
4. The **well-being** of the juvenile.



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## Principles : how to implement them

- The **legislation** should give the **priority to non-custodial** measures
- The **procedures** should ensure that all actors will consider **non-custodial measures before** considering deprivation of liberty
- There is an **individual reintegration plan** in place and immediately implemented **for each child deprived of liberty**
- There are **concrete non-custodial measures in place** (like supervision by a probation officer)
- There is a **clear political will** to do so



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## 6. Main rights in detention





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<b>ACCESS TO A LAWYER</b>	<b>RECORD / FILE</b>	<b>STAFF RECRUITMENT / TRAINING / CONDUCT</b>	<b>PROTECTION FROM TORTURE / ILL TREATMENT</b>
<b>USE OF ISOLATION &amp; SOLITARY CONFINEMENT</b>	<b>USE FORCE &amp; METHODS OF RESTRAINT</b>	<b>SEARCH</b>	<b>PROTECTION FROM VIOLENCE</b>
<b>DISCIPLINARY PROCEDURES &amp; REGISTERS</b>	<b>SEPARATION</b>	<b>OVERCROWDING</b>	<b>SANITATION &amp; HYGIENE</b>



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<b>FOOD &amp; DRINKING WATER</b>	<b>LIGHTING AND VENTILATION</b>	<b>CLOTHING &amp; BEDDING</b>	<b>RIGHT TO PRIVACY</b>
<b>EDUCATION &amp; VOCATIONAL TRAINING</b>	<b>PARTICIPATION</b>	<b>CONTACT WITH THE OUTSIDE WORLD</b>	<b>WORK &amp; REMUNERATED ACTIVITIES</b>
<b>OUTDOOR EXERCISE / LEISURE &amp; CULTURAL ACTIVITIES</b>	<b>RELIGION BELIEF</b>	<b>WELFARE</b>	<b>REINTEGRATION</b>



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HEALTH CARE

MEDICAL STAFF

PSYCHOLOGICAL  
SUPPORT

REPORTING ILL-  
TREATMENT

SPECIAL NEEDS OF  
GIRLS

MENTAL HEALTH

ADDICTION PROBLEMS

ALCOHOL

RIGHT TO SEXUALITY  
/ SEXUAL HEALTH

TRANSMISSIBLE  
DISEASES

SELF-HARM / SUICIDE

TRANSLATION &  
INTERPRETATION



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## 7. How to ensure the implementation of the rights of the child when deprived of liberty





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## • 1. **Monitoring system**

- *“Independent and qualified monitors should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative; they should place special emphasis on holding conversations with children in the facilities in a confidential setting.”*

## • 2. **Complaint mechanisms**

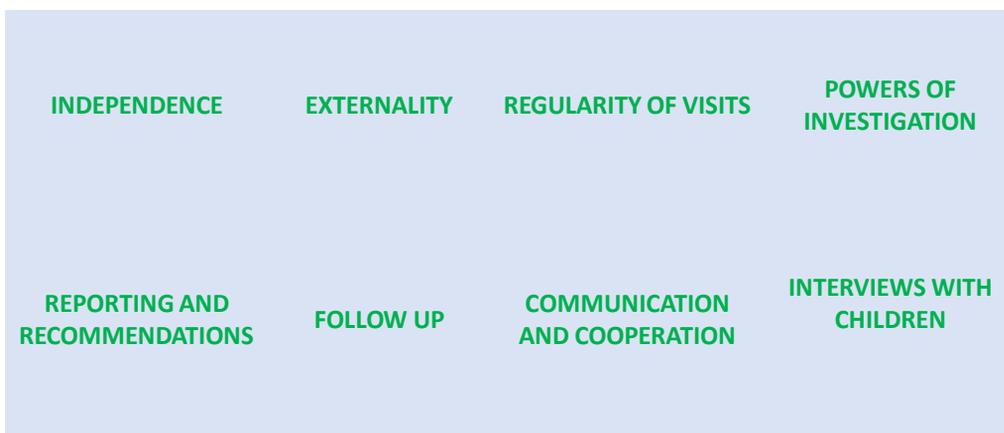
- *Complaint mechanisms include procedure / processes for requests and / or complaints made by children deprived of their liberty regarding the conditions, treatment and care provided in this context.*



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## • Basic **requirements** for effective **monitoring**





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- Basic **principles** for **monitoring**:

DO NO HARM

KNOW THE  
STANDARDS

RESPECT FOR THE  
AUTHORITIES

CREDIBILITY

CONFIDENTIALITY

SECURITY

SENSITIVITY

OBJECTIVITY &  
TRANSPARENCY



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- Basic principles for **complaint mechanisms**:

ACCESSIBILITY

CHILD FRIENDLY

PROTECTION FROM  
REPRISALS

KNOWN

CONFIDENTIALITY

SECURITY

SENSITIVITY

FOLLOW UP



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## 8. The Global Study on Children Deprived of Liberty



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### Call for a Global Study

- In July 2013, Defense for Children International decided to “launch a call for a Global study on children deprived of liberty”
- 144 international NGOs joined the NGO Panel for the Global Study
- In May 2014, the UN Committee on the Rights of the Child send a letter to the UN General Assembly to request this Study
- The call received the support of many important stakeholders : the COE, ENOC, the former Chair of the UN CRC Committee,...



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## UN resolution

The United Nations General Assembly by Resolution 69/157 of 18 December 2014 requested the Secretary-General to commission an **in-depth global study on children deprived of liberty**.

In October 2016, **Manfred Nowak** (Austria – former Special rapporteur on torture) was appointed by the United Nations Secretary General as Independent Expert leading this Study.



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## Main objectives

- **1.** To assess the **magnitude** of this phenomenon, the number of children deprived of liberty (disaggregated), the root-causes, type and length of deprivation of liberty and places of detention;
- **2.** To document **good practices** and experiences and to capture the views and experiences of children to inform the Global Study's recommendations;
- **3.** **To raise awareness and promote a change** in stigmatizing attitudes and behaviour towards children at risk of arrest or detention as well as children who are deprived of liberty;
- **4.** To provide **recommendations for law, policy and practice** to safeguard the rights of children concerned, and prevent the detention of children and **significantly reduce the number of children deprived of liberty** through effective non-custodial alternatives guided by the best interests of the child



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## Key focus areas

- I. Children in **conflict with the law**
- II. Children deprived of liberty for **migration-related reasons**
- III. Children deprived of liberty in **institutions**
- IV. Children living in places of **detention with their parents**
- V. Children deprived of liberty in the **context of armed conflict**
- VI. Children deprived of liberty on **national security grounds.**



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## HOW?

- I. Questionnaire send to ALL States
- II. It primarily aims at collecting and providing quantitative statistical data about the number of children deprived of liberty in the key focus areas.
- III. National and regional consultations
- IV. Desk researches
- V. National and regional studies



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Some of the Study's key findings:

- At least 410.000 children are held every year in jails and prisons, where **violence is "endemic"**. Many are charged with "status offenses" that are not criminal offenses for adults, including truancy, disobedience and underage drinking;



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Some of the Study's key findings:

- Although UN experts have concluded that detention of children for **migration-related reasons** can never be in the best interests of a child, at least 330.000 children in 77 countries are held in immigration detention each year;





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Some of the Study's key findings:

- While between 430.000 and 680.000 children have been placed by judicial authorities in institutions that meet the legal definition of deprivation of liberty, **the total number of children in institutions is estimated at 3.5 to 5.5 million.**



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Some of the Study's key findings:

- **Children with disabilities** are significantly overrepresented in detention in the context of administration of justice and institutions.





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Some of the Study's key findings:

- The **number of children detained** in the context of armed conflict and national security has **increased sharply**, driven by aggressive counter-terrorism measures that can include detention and prosecution of children for online activity, including posts to Facebook and Twitter.



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## Main conclusions

- Deprivation of liberty **aggravates existing health conditions** in children and can cause new ones to emerge, including anxiety, depression, suicidal thoughts, and post traumatic stress. **Psychiatric disorders** for children in detention can increase tenfold during detention, and detention is correlated with early death among children once released.



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## Main conclusions

- *“Detention is **fundamentally harmful** to children, yet many countries use it as their first response to difficult circumstances, rather than the last,”*
- *“Governments should **invest in alternatives** that not only protect children’s rights but produce much **better outcomes** for children, families, and society overall.”*



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## Main conclusions

- There are some areas of progress, including a reduction in some countries in the number of children in **institutional care** or detained in the criminal justice system. At least 21 governments said that they do not detain children for migration-related purposes. Some countries have adopted formal protocols to avoid detaining children in the context of armed conflict. The nongovernmental groups urged all countries to examine and **adapt the good practices** documented in the study.



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## Main conclusions

- The Study recommends that states “*most rigorously*” apply the Convention on the Rights of the Child, which requires that deprivation of liberty shall be applied **only as a measure of last resort in exceptional cases**. He urged countries to “*make all efforts to significantly reduce the number of children held in places of detention and prevent deprivation of liberty before it occurs, including addressing the root causes and pathways leading to deprivation of liberty in a systemic and holistic manner.*”



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- Some references :
- **Monitoring places where children are deprived of liberty**
  - [www.childrensrightsbehindbars.eu](http://www.childrensrightsbehindbars.eu)
- **Role and mission of the lawyer of a child**
  - [www.mylawyermyrights.eu](http://www.mylawyermyrights.eu)
- **Global Study on children deprived of liberty**
  - <http://www.ohchr.org/EN/HRBodies/CRC/StudyChildrenDeprivedLiberty/Pages/Index.aspx>
  - <https://omnibook.com/Global-Study-2019>
  - <http://www.childrendeprivedofliberty.info/>
  - <https://childrendeprivedofliberty.info/mooc-on-children-deprived-of-liberty-learning-from-the-un-global-study/>
- **Child friendly justice**
  - [http://www.coe.int/t/dghl/standardsetting/childjustice/default\\_en.asp](http://www.coe.int/t/dghl/standardsetting/childjustice/default_en.asp)
- **Committee on the rights of the child**
  - General comment No. 24 (2019) on children's rights in the child justice system (CRC/C/GC/24) - 18 September 2019-  
[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=fr](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=fr)