



## Remand detention

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### 1. Introduction

52. In many European countries, the persistent problem of overcrowding in prisons, with all its related challenges, has to be ascribed to a large extent to the high proportion among the total prison population of remand prisoners (i.e. prisoners who are detained by court order and are still awaiting their trial or have not been convicted by a final judgment). However, this is not the only reason why the CPT pays close attention to remand prisoners during its visits. In the CPT's experience, remand prisoners in particular are all too often held in dilapidated and overcrowded cells and are frequently subjected to an impoverished regime. In a number of visit reports, the CPT has taken the view that the conditions of detention of remand prisoners in the establishments visited were totally unacceptable and could easily be considered to be inhuman and degrading. Moreover, remand prisoners are frequently subjected to various types of restrictions (in particular as regards contacts with the outside world), and, in a number of countries, certain remand prisoners are held in solitary confinement by court order (sometimes for prolonged periods).

The CPT also wishes to stress that, for the individual, detention on remand can have severe psychological effects – suicide rates among remand prisoners can be several times higher than among sentenced prisoners<sup>1</sup> – and other serious consequences, such as the breaking up of family ties or the loss of employment or accommodation.

53. Within the Council of Europe area, the frequency and duration of remand detention appears to differ enormously in practice from one country to another, with the proportion of remand prisoners of the total prison population ranging from 8% to 70%. On average, some 25% of all prisoners in the Council of Europe area are on remand. For foreign nationals in remand detention, the proportion is significantly higher, with an average of some 40% of the overall number of imprisoned foreign nationals.<sup>2</sup>

Due to its intrusive nature and bearing in mind the principle of presumption of innocence, the basic tenet is that remand detention should only be used as a measure of last resort (*ultima ratio*). It should be imposed for the shortest time possible and should be based on a case-by-case evaluation of the risks of committing a new crime, of absconding, or of tampering with evidence or witnesses

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<sup>1</sup> Council of Europe Annual Penal Statistics, SPACE I – Prison Populations, Survey 2015, PC-CP (2016) 6, 15 December 2016, tables 5.1 and 13.1.

<sup>2</sup> Council of Europe Annual Penal Statistics, SPACE I – Prison Populations, Survey 2015, PC-CP (2016) 6, 15 December 2016, tables 4 and 5.1.

or otherwise interfering with the course of justice.<sup>3</sup> Moreover, the nature and gravity of the offence the person is suspected of having committed should be duly taken into account when assessing the proportionality of the measure.

In the CPT's view, the principle that remand detention should only be imposed as a last resort implies in the first place that, as far as possible, non-custodial measures should be applied. This requires the availability of a broad range of measures, such as the conditional suspension of pre-trial detention, bail, house arrest, electronic monitoring, the obligation to comply with certain orders, judicial supervision, the removal of passports, etc. Such a range of alternatives should also be considered for foreign nationals, and the fact that such a person is neither a national nor a resident of the state, or that he/she does not have any other links with that state, should not, in itself, be sufficient to conclude that there is a risk of flight.<sup>4</sup>

## 2. Remand detention in prisons

54. Reception and induction programmes have an important role to play for persons remanded in custody who enter the prison system. If performed properly, they will enable prison staff to carry out an individual risk and needs assessment, including the identification of those most at risk of self-harm, and will relieve some of the anxiety experienced by all newly-arrived prisoners. Further, they will provide an opportunity to acquaint prisoners with the running of the prison, including the regime and daily routine, as well as ensure that they have been able to contact their family. To this end, prisoners should be provided with oral information and a comprehensive information booklet which should exist in an appropriate range of languages. Particular attention should be paid to ascertain that the information provided is understood by prisoners with reading and writing difficulties and by foreign nationals who do not speak the language(s) spoken by staff.

Given the strong impact a first-time admission to a prison may have on the person concerned, consideration might be given to extending the above-mentioned induction programme over several days in order to provide newly-admitted prisoners with a greater opportunity to absorb the information. If such an induction programme is not properly carried out, prisoners will rely on other prisoners to tell them about the regime and the rules, which can easily place certain prisoners in a superior position.

The CPT's experience shows that in some countries, reception and induction programmes may last for several weeks and the regime applied to prisoners undergoing them may be very restrictive, sometimes amounting to solitary confinement. The CPT considers in this respect that newly-admitted prisoners should be allocated to ordinary accommodation units as soon as possible after a risk and needs assessment has taken place upon admission. Moreover, conditions for newly-arrived prisoners should not amount to a solitary confinement-type regime for prolonged periods. Further, in addition to induction-related activities, a minimum of one hour of outdoor exercise per day should be provided from the outset of the induction period.<sup>5</sup>

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<sup>3</sup> See Articles 5(1)(c) and 5(3) of the European Convention on Human Rights and the relevant case-law of the European Court of Human Rights, as well as the White Paper on Prison Overcrowding, the Council of Europe's Committee on Crime Problems (CDPC), PC-CP (2015) 6 rev 7, paragraph 62.

<sup>4</sup> See Rule 13.2 of Recommendation CM/Rec(2012)12 of the Committee of Ministers to member states concerning foreign prisoners.

<sup>5</sup> See also paragraph 68 concerning juveniles.

55. Most countries make provision for separating remand and sentenced prisoners, as stipulated in the European Prison Rules (Rule 18.8) and other international instruments.<sup>6</sup> The European Prison Rules (Rules 18.9 and 101) also allow exceptions in this regard to enable remand prisoners to participate in joint organised activities with sentenced prisoners, whilst generally keeping both categories of prisoner separate at night.

In some countries, arrangements are made to organise joint activities for remand and sentenced prisoners, with both categories sometimes being accommodated in the same cells/units. In the CPT's opinion, allowing remand prisoners to participate in organised activities together with sentenced prisoners is undoubtedly better than confining remand prisoners to their cells for up to 23 hours a day for prolonged periods as is currently the case in many Council of Europe member states. However, efforts should be made to accommodate remand prisoners separately from sentenced prisoners. In fact, the CPT has a preference for remand prisoners having a satisfactory programme of activities whilst always being separated from sentenced prisoners, in full respect for the principle of presumption of innocence. Such separation also protects remand prisoners who enter the prison environment for the first time and who may be innocent from the potential criminal influence of sentenced prisoners. In this connection, the importance of a risk and needs assessment of all persons entering prison, as described in paragraph 54, cannot be over-emphasised, as it may not be appropriate to mix first-time remand prisoners with the large numbers of persons re-entering prison for a second time or more.

56. During its many visits, the CPT found that remand prisoners frequently had to share cells which provided less than 3 m<sup>2</sup> of living space per person (and sometimes even less than 2 m<sup>2</sup>). Moreover, the cells were not always equipped for the number of inmates they accommodated. For instance, prisoners were compelled to sleep on mattresses placed directly on the floor or even had to share beds and sleep in shifts. Among other things, this results in a complete lack of privacy and may well increase tension between inmates. Such intolerable conditions, which may last for months or even years, are often exacerbated by the fact that remand prisoners have to spend most of the time in their cell, as the regime of organised activities is often extremely limited for this category of prisoner (see, in this regard, paragraph 58).

In the CPT's opinion, the *minimum* standards for personal living space in prison establishments should be 6 m<sup>2</sup> for a single-occupancy cell and 4 m<sup>2</sup> per prisoner for a multiple-occupancy cell (excluding sanitary facilities).<sup>7</sup> Providing living space of less than 4 m<sup>2</sup> significantly increases the risk of a violation of Article 3 of the European Convention on Human Rights. In this context, in its recent Grand Chamber judgment in the case of *Muršić v. Croatia*,<sup>8</sup> the European Court of Human Rights stated that “[w]hen the personal space available to a detainee falls below 3 sq. m of floor surface in multi-occupancy accommodation in prisons, the lack of personal space is considered so severe that a strong presumption of a violation of Article 3 arises. [...] In cases where a prison cell – measuring in the range of 3 to 4 sq. m of personal space per inmate – is at issue the space factor remains a weighty factor in the Court's assessment of the adequacy of conditions of detention.”

57. The Committee also wishes to reiterate that every effort should be made to phase out the practice of accommodating remand prisoners in dormitories and to move towards cellular accommodation for a small number of inmates. Ideally, remand prisoners (as well as sentenced prisoners) should be accommodated in single cells except where it is preferable for them to share sleeping accommodation.<sup>9</sup>

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<sup>6</sup> See, for instance, Article 10(2)(a) of the International Covenant on Civil and Political Rights and Rule 11(b) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (*Nelson Mandela Rules*).

<sup>7</sup> 25<sup>th</sup> General Report on the CPT's activities (CPT/Inf (2016) 10), paragraph 84.

<sup>8</sup> *Muršić v. Croatia* [GC], no. 7334/13, 20 October 2016.

<sup>9</sup> See also Rules 18.5 and 96 of the European Prison Rules.

58. Since the beginning of its activities in the early 1990s, the CPT has emphasised the crucial importance a satisfactory programme of activities has for prisoners, including those on remand. In this regard, it is a matter of serious concern that, in a considerable number of countries, the specific recommendations made by the Committee concerning the regime of remand prisoners remain to be implemented. Whilst acknowledging that the provision of organised activities in remand prisons, where there is likely to be a high turnover of inmates, poses particular challenges, it is not acceptable to lock up remand prisoners in their cells for up to 23 hours per day and to leave them to their own devices for months or even years on end.

The CPT calls upon the prison authorities of the countries concerned to devise and implement a comprehensive regime of out-of-cell activities. The aim should be to ensure that remand prisoners (as well as sentenced prisoners) are able to spend a reasonable part of the day (i.e. eight hours or more) outside their cells, engaged in purposeful activity of a varied nature (work, preferably with vocational value,<sup>10</sup> education, sport, recreation/association). The longer the period of remand detention, the more varied the regime should be. All prisoners, without exception, must be offered at least one hour of outdoor exercise a day, in suitable facilities.

59. As regards contact with the outside world, the CPT considers that remand prisoners should in principle be allowed to communicate with their family and other persons (correspondence, visits, telephone) in the same way as sentenced prisoners.<sup>11</sup> All inmates should benefit from a visiting entitlement of at least one hour every week and have access to a telephone at the very least once a week (in addition to the contacts with their lawyer(s)). Moreover, the use of modern technology (such as free-of-charge Voice over Internet Protocol (VoIP) services) may help prisoners to maintain contact with their families and other persons.

60. In certain countries, the CPT observed that, according to the applicable rules, certain restrictions were imposed on all remand prisoners as a matter of policy, for instance, a total ban on telephone calls, visits or the obligation to receive visits only under closed conditions (i.e. through a glass partition). In the CPT's view, applying such restrictions indiscriminately to all remand prisoners is not acceptable; any restrictions must be based on a thorough individual assessment of the risk which prisoners may present.

61. Further, in a number of countries, remand prisoners are obliged to request authorisation from a judge or prosecutor for every single visit. In this regard, the CPT considers that remand prisoners should be entitled to receive visits (and make telephone calls) as a matter of principle, rather than these being subject to authorisation by a judicial authority. Any refusal in a given case to permit such contacts should be specifically substantiated by the needs of the investigation, require the approval of a judicial authority and be applied for a specific period of time. If it is considered that there is an ongoing risk of collusion, particular visits (or telephone calls) can be monitored.

62. The CPT has repeatedly come across situations where far-reaching restrictions are imposed on remand prisoners by judicial authorities, in the interests of an ongoing criminal investigation. Such restrictions may entail a total prohibition of contacts with the outside world (except with the lawyer) combined with segregation from all other prisoners, the result being that the prisoners are held for a certain period under conditions amounting to solitary confinement.

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<sup>10</sup> It should be added, however, that, according to Rule 100.1 of the European Prison Rules, “[u]ntried prisoners shall be offered the opportunity to work but shall not be required to work”.

<sup>11</sup> See Rule 99 of the European Prison Rules.

The CPT acknowledges that there may be justification, in an individual case, for keeping a given remand prisoner apart from certain other prisoners or, in even more exceptional circumstances, from prisoners in general, and for restricting his/her contact with the outside world. However, in the CPT's view, the starting point for devising regimes for remand prisoners must be the presumption of innocence and the principle whereby prisoners must not be subject to more restrictions than are strictly necessary to ensure that they are incarcerated without risk and that the interests of justice are duly served. Any restrictions should be kept to a minimum and last for as short a time as possible. Whatever the circumstances, restrictions should never be applied for the purpose of bringing pressure to bear on persons remanded in custody in order to induce them to co-operate with the justice system. Placement in solitary confinement (or in conditions which in practice amount to this) must be resorted to only in exceptional situations and where there is direct evidence of a serious threat to the course of justice if the person concerned associates with particular individuals or other persons in general.

63. Decisions imposing restrictions described in the previous paragraph should normally be taken when the remand prisoner appears in court and be subject to appeal in a separate procedure. The written decision should provide reasons for every restriction imposed and should be given to the prisoner concerned and/or his/her lawyer. The restrictions must be reviewed by the competent court on a frequent basis to ensure that there is a continuing need for them. The longer a restriction is imposed on a prisoner in remand custody, the more rigorous should be the test as to whether the measure remains necessary and proportionate.

64. The material conditions and the detention regimes provided to inmates held in solitary confinement must meet the standards laid down by the CPT;<sup>12</sup> in particular, prisoners should be provided with appropriate human contact throughout the duration of the measure and the prison authorities should make every possible effort to alleviate the potentially damaging effects of solitary confinement on the prisoner concerned.

### **3. Juveniles on remand**

65. In principle, the remarks made in the preceding sections also apply to juveniles. However, in the CPT's view, there are a number of specific standards which should be taken into account when dealing with juveniles in remand detention. These standards are set out in more detail in the 24<sup>th</sup> General Report on the CPT's activities.<sup>13</sup> For ease of reference, the Committee wishes to recall certain key aspects which deserve particular attention.

66. First of all, it is a well-established precept that, in all action concerning juveniles, their best interests shall be a primary consideration and they should only be deprived of their liberty as a last resort and for the shortest possible period of time.<sup>14</sup>

67. Further, the CPT considers that detained juveniles who are suspected (or convicted) of a criminal offence should, as a rule, not be held in institutions for adults but in facilities which are specifically designed for persons of this age group, offer a non-carceral environment and a regime tailored to their specific needs and are staffed by persons trained in dealing with juveniles.

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<sup>12</sup> 21<sup>st</sup> General Report on the CPT's activities (CPT/Inf (2011) 28), paragraphs 53 to 64.

<sup>13</sup> See paragraphs 96 to 132 of CPT/Inf (2015) 1 (Juveniles deprived of their liberty under criminal legislation).

<sup>14</sup> See Articles 3 and 37.b of the United Nations Convention on the Rights of the Child and Rules 5 and 10 of the European Rules for Juvenile Offenders; see also Rule 13.1 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (*Beijing Rules*), Rule 17 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (*Havana Rules*) and the 2010 Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice.

Regrettably, in many Council of Europe member states, it remains the case that juveniles on remand in particular are frequently held in prisons for adults. The CPT acknowledges that, in such cases, juveniles are nowadays usually accommodated separately from adults, often in a designated unit. In addition, significant improvements have been observed in recent years in terms of material conditions in juvenile units.

However, in a number of countries, the regime offered to juvenile remand prisoners held in adult prisons still leaves much to be desired, especially in remand establishments which usually accommodate only very small numbers of juveniles (in particular female juveniles). On several occasions, the CPT observed that only one juvenile was being held on remand in a given establishment or unit. In this regard, the Committee acknowledges that there may be an argument in favour of juveniles participating in out-of-cell activities with suitable adult inmates, on the strict condition that there is appropriate supervision by staff. This also has the benefit of avoiding a situation of *de facto* solitary confinement of the juveniles concerned.

68. As repeatedly stated by the CPT in the past, although a lack of purposeful activity is detrimental for any prisoner, it is especially harmful for juveniles, who have a particular need for physical activity and intellectual stimulation. Juveniles in remand detention should be offered a full programme of out-of-cell activities suited to their age, such as education, sport, vocational training and recreational activities. Physical education should constitute an important part of that programme. Juveniles should also be offered at least two hours of outdoor exercise every day, from the moment they arrive at a detention establishment. As already mentioned in paragraph 58 regarding remand prisoners in general, the longer the period of detention on remand, the more varied should be the activities on offer.

#### **4. Remand detention in law enforcement establishments**

69. The CPT has serious reservations about the practice observed in a number of countries of holding persons remanded in custody by courts in a law enforcement establishment well beyond the statutory time limit of police custody, pending their transfer to a remand prison, or of returning persons placed in a remand prison to a law enforcement establishment for the purpose of investigative actions.

Such periods of stay may last several days or weeks and, on occasion, even longer. Usually, persons remanded in custody remain in a law enforcement establishment after their court hearing or are returned to the law enforcement establishment from a prison for the purpose of investigative actions, at the request of the law enforcement official who is responsible for the criminal investigation. In some cases, delays in transferring persons remanded in custody to a remand prison are explained by logistical obstacles in arranging escorts or by the lack of space for accommodation in the remand prison (due to severe overcrowding).

70. The CPT recalls that, as a matter of principle, remand prisoners should not be held in law enforcement establishments;<sup>15</sup> such facilities are not designed for lengthy periods of stay. Moreover, prolonged detention on the premises of law enforcement agencies increases the risk of intimidation and ill-treatment by law enforcement officials dealing with the criminal investigation against the person concerned. Therefore, persons remanded in custody should always be promptly transferred to a prison.

Further, the return of remand prisoners to detention facilities of law enforcement agencies should be sought and authorised only very exceptionally and when it is absolutely unavoidable, for specific reasons and for the shortest possible time. Such a return should in each case be subject to the express authorisation of a prosecutor or judge. As a rule, the prisoners concerned should not be held

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<sup>15</sup> See also Rule 10.2 of the European Prison Rules.

overnight in law enforcement establishments. It is axiomatic that the fact that a remand prisoner has been returned to a law enforcement establishment should be duly recorded (at both the prison and the law enforcement establishment concerned) and that, upon re-admission to the remand prison, the prisoner concerned should again be subjected to medical screening (see paragraph 72). If further police questioning is necessary, it is far preferable for this to be carried out at the remand prison, rather than transferring the remand prisoner concerned back to a law enforcement establishment.

## 5. Remand detention and health care

71. In the CPT's experience, remand prisons in particular are not always equipped with a health-care system that is able to provide medical treatment (including preventive and specialised treatment) and nursing care, or psychological assistance and physiotherapy, in conditions equivalent to those enjoyed by patients in the outside community.

In this regard, the CPT considers that all detained persons, irrespective of their legal status and the place in which they are being held, should have effective access to medical services. Further, remand prisoners should in principle be given the opportunity to consult and be treated by their own doctor (it being understood that this may be carried out at their own expense).<sup>16</sup>

72. The CPT has repeatedly stressed the importance of medical screening of newly-arrived prisoners, especially in establishments which constitute points of entry to the prison system. Such screening is essential, in particular to prevent suicide and the spread of transmissible diseases (such as tuberculosis, hepatitis B/C, HIV). Prison health-care services can also make a significant contribution to the prevention of ill-treatment during the period immediately prior to imprisonment, namely when persons are in the custody of law enforcement agencies, through the systematic and timely recording of injuries and, when appropriate, the provision of information to the relevant authorities.<sup>17</sup>

Every newly-arrived remand prisoner should be properly interviewed and physically examined, as soon as possible and no later than 24 hours after his/her admission, by a medical doctor (or a fully qualified nurse reporting to a doctor), under conditions guaranteeing medical confidentiality. In this connection, particular attention should be paid to the specific needs of vulnerable groups such as juveniles, elderly persons, substance-addicted persons and persons with mental disorders.

73. In the CPT's experience, medical treatment which has been started in the outside community is sometimes interrupted when a person is remanded in custody and placed in a prison. Likewise, treatment is on occasion interrupted when a prisoner is released or transferred from one establishment to another. In some countries, the CPT has observed that treatment which requires a longer-term commitment is not provided to remand prisoners because of the short-term or uncertain remand period. Such an approach is contrary to the state's duty of care vis-à-vis persons it has deprived of their liberty. The Committee considers that the necessary arrangements must be made to ensure continuity of care after admission to, or release from, prison, as well as following a transfer from one penitentiary establishment to another.

As regards more specifically newly-arrived substance-addicted remand prisoners, particular attention should also be paid to withdrawal symptoms resulting from the use of drugs, medication or alcohol, and opiate substitution treatment which has started prior to their admission to the prison should be continued in prison.<sup>18</sup>

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<sup>16</sup> See also paragraph 37 of Recommendation Rec(2006)13 of the Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse.

<sup>17</sup> For further details, see paragraphs 71 to 84 of the 23<sup>rd</sup> General Report on the CPT's activities (CPT/Inf(2013)29).

<sup>18</sup> See also World Health Organization (WHO) Europe, Status Paper on Prisons, Drugs and Harm Reduction, May 2005, available on-line at [http://www.euro.who.int/\\_data/assets/pdf\\_file/0006/78549/E85877.pdf](http://www.euro.who.int/_data/assets/pdf_file/0006/78549/E85877.pdf).