



Strasbourg, 15 December 2015

CPT/Inf (2015) 44

Living space per prisoner in prison establishments: CPT standards

The CPT's minimum standard for personal living space in prison establishments is:

- 6m² of living space for a single-occupancy cell
+ sanitary facility
- 4m² of living space per prisoner in a multiple-occupancy cell
+ fully-partitioned sanitary facility
- at least 2m between the walls of the cell
- at least 2.5m between the floor and the ceiling of the cell

Introduction

1. Since the 1990s the CPT has developed and applied minimum standards regarding the living space that a prisoner should be afforded in a cell. While these standards have been frequently used in a large number of CPT visit reports, they have so far not been brought together in a single document.

2. At the same time, there is a growing interest in these standards, at the national level (among member states' authorities responsible for the prison estate, national detention monitoring bodies such as national preventive mechanisms established under OPCAT¹, domestic courts, NGOs, etc.) and at the international level, not least because of the problem of prison overcrowding and its consequences. Currently, the Council of Europe's Council for Penological Co-operation (PC-CP) is preparing a White Paper on prison overcrowding. For its part, the European Court of Human Rights is frequently being called upon to rule on complaints alleging a violation of Article 3 of the European Convention on Human Rights (ECHR) on account of insufficient living space available to a prisoner.

3. Against this background, the CPT decided in November 2015 to provide a clear statement of its position and standards regarding minimum living space per prisoner; such is the aim of this document.

4. The cells referred to in this document are ordinary cells designed for prisoners' accommodation, as well as special cells, such as disciplinary, security, isolation or segregation cells. However, waiting rooms or similar spaces used for very short periods of time are not covered here.²

Minimum standards for personal living space in prison establishments: general aspects

5. During its monitoring activities, the CPT has frequently encountered situations of prison overcrowding. The consequences of overcrowding have been highlighted repeatedly by the CPT in its visit reports: cramped and unhygienic accommodation; constant lack of privacy; reduced out of cell activities, due to demand outstripping the staff and facilities available; overburdened health-care services; increased tension and hence more violence between prisoners and between prisoners and staff. The CPT considers that the question of minimum living space per inmate is intrinsically linked to the commitment of every Council of Europe member state to respect the dignity of persons sent to prison.

6. Minimum standards for personal living space are not as straightforward a matter as they might appear at first sight. To begin with, the "minimum living space" standards used by the CPT differ according to the type of the establishment. A police cell for short-term detention of several hours up to a few days does certainly not have to meet the same size standards as a patients' room in a psychiatric institution; and a prison cell, whether for remand or sentenced prisoners, is again an entirely different matter.

¹ Optional Protocol to the Convention against Torture of the United Nations

² The issue of living space in other places where persons could be deprived of their liberty (police stations, psychiatric establishments, immigration detention facilities, etc.) is not covered by this document.

7. Secondly, a differentiation should be made according to the intended occupancy level of the accommodation in question (i.e. whether it is a single cell or a cell designed for multiple occupancy). The term “multiple occupancy” also needs to be defined. A double cell is arguably different from a cell designed for holding for instance six or more inmates. As regards large-scale dormitories, accommodating dozens and sometimes even up to one hundred inmates,³ the CPT has fundamental objections which are not only linked to the question of living space per inmate, but to the concept as such.

In its 11th General Report⁴ the CPT criticised the very principle of accommodation in large-capacity dormitories; frequently such dormitories hold prisoners in extremely cramped and insalubrious conditions. In addition to a lack of privacy, the Committee has found that the risk of intimidation and violence in such dormitories is high, and that proper staff control is extremely difficult. Further, an appropriate allocation of individual prisoners, based on a case-by-case risk and needs assessment, becomes an almost impossible task.⁵ The CPT has consequently long advocated a move away from large-capacity dormitories towards smaller living units.⁶

8. Thirdly, the CPT has also taken into consideration the regime offered to prisoners when assessing cell sizes in light of its standards (see paragraph 21 below).

The CPT’s minimum standard for personal living space

9. The CPT developed in the 1990s a basic “rule of thumb” standard for the minimum amount of living space that a prisoner should be afforded in a cell.

- 6m² of living space for a single-occupancy cell
- 4m² of living space per prisoner in a multiple-occupancy cell

10. As the CPT has made clear in recent years, the minimum standard of living space should exclude the sanitary facilities within a cell. Consequently, a single-occupancy cell should measure 6m² plus the space required for a sanitary annexe (usually 1m² to 2m²). Equally, the space taken up by the sanitary annexe should be excluded from the calculation of 4m² per person in multiple-occupancy cells. Further, in any cell accommodating more than one prisoner, the sanitary annexe should be fully partitioned.

11. Additionally, the CPT considers that any cell used for prisoner accommodation should measure at least 2m between the walls of the cell and 2.5m between the floor and the ceiling.

³ For example, when visiting a prison in Romania in 1995, the CPT found that 88 prisoners were being held in a dormitory of some 80m²; in 2009, the CPT visited a colony in Ukraine where a dormitory measuring 200m² was equipped with 114 beds.

⁴ CPT/Inf (2001) 16, paragraph 29.

⁵ See, for example, the report on the 2013 visit to Greece where such a state of affairs was observed in two prisons (CPT/Inf (2014) 26, paragraphs 105 and 106).

⁶ See, for example, the report on the 2009 visit to Ukraine (CPT/Inf. (2011) 29, paragraph 113).

Promoting higher standards

12. Rule 18.5 of the European Prison Rules (2006) states that “*Prisoners shall normally be accommodated during the night in individual cells except where it is preferable for them to share sleeping accommodation.*” Indeed, in many Council of Europe countries, prisoners are provided with an individual cell, often measuring between 7.5m² and 9.5m². The CPT has consistently stated that single-occupancy cells of less than 6m² (excluding the sanitary annexe) should be either withdrawn from service or enlarged in order to provide adequate living space for one inmate.

13. When devising the standard of 4m² of living space, the CPT had in mind on the one hand the trend observed in a number of western European countries of doubling up 8 to 9m² cells that were originally designed for single occupancy, and on the other hand the existence of large-capacity dormitories in prison establishments (colonies) in various central and eastern European countries.

14. Although the CPT has never explicitly defined “multiple-occupancy”, an analysis of visit reports indicates that cells for two to four inmates implicitly fall under this notion.⁷ Consequently, the CPT has regularly implied that cells measuring 8m² were acceptable for two inmates, cells of 12m² for three, and cells measuring 16m² were adequate for four inmates. However, in a non-negligible number of cases, the CPT has also stated that cells of 8m² (or 8 to 9m²) should “preferably” (Slovenia, 2006; Hungary, 2013) or “*idéalement*” (Belgium, 2009) accommodate only one prisoner; or should be “used to accommodate no more than one prisoner save in exceptional cases when it would be inadvisable for a prisoner to be left alone” (UK, 2003). In the report on its 2011 visit to the Netherlands, the Committee stated that accommodation in double cells measuring between 8 and 10m² was “not without discomfort” to the prisoners, and in the report on the 2011 visit to Ireland, it recommended that “efforts be made to avoid as far as possible placing two prisoners in 8m² cells”.

15. Clearly, the aforementioned examples suggest that the 4m² per prisoner standard may still lead to cramped conditions when it comes to cells for a low number of inmates. Indeed, given that 6m² is the minimum amount of living space to be afforded to a prisoner accommodated in a single-occupancy cell, it is not self-evident that a cell of 8m² will provide satisfactory living space for two prisoners. In the CPT’s view, it is appropriate at least to strive for more living space than this. The 4m² standard is, after all, a *minimum* standard.

16. For these reasons, the CPT has decided to promote a *desirable* standard regarding multiple-occupancy cells of up to four inmates by adding 4m² per additional inmate to the minimum living space of 6m² of living space for a single-occupancy cell:

- 2 prisoners: at least 10m² (6m² + 4m²) of living space + sanitary annexe
- 3 prisoners: at least 14m² (6m² + 8m²) of living space + sanitary annexe
- 4 prisoners: at least 18 m² (6m² + 12m²) of living space + sanitary annexe

17. In other words, it would be desirable for a cell of 8 to 9m² to hold no more than one prisoner, and a cell of 12m² no more than two prisoners.

18. The CPT encourages all Council of Europe member states to apply these higher standards, in particular when constructing new prisons.

⁷ See, for example, the report on the 2013 visit to Poland (CPT/Inf. (2014) 21, paragraph 49).

Minimum standards vs. inhuman and degrading treatment: the need to differentiate

19. The European Court of Human Rights is approached with an ever-increasing number of complaints from prisoners who allege that they are detained in inhuman or degrading conditions, having to share cells with large numbers of fellow-inmates, which leaves them with very little living space. The Court, in its judgments, is obliged to decide whether or not the holding of prisoners in cells offering a very limited living space per person (usually less than 4m²) constitutes a violation of Article 3 of the ECHR.

20. The role of the CPT, as a preventive monitoring body, is different. Its responsibility does not entail pronouncing on whether a certain situation amounts to inhuman or degrading treatment or punishment within the meaning of Article 3 of the ECHR.⁸ However, in the course of its visits the Committee has been confronted with prison conditions that beggared belief and were, as described in one visit report, an “affront to a civilised society”. Hence, in a number of visit reports it has stated that the conditions observed in grossly overcrowded prisons could be considered as amounting to “inhuman and degrading treatment”.

21. The CPT has never considered that its cell-size standards should be regarded as absolute. In other words, it does not automatically hold the view that a minor deviation from its minimum standards may in itself be considered as amounting to inhuman and degrading treatment of the prisoner(s) concerned, as long as other, alleviating, factors can be found, such as, in particular, the fact that inmates are able to spend a considerable amount of time each day outside their cells (in workshops, classes or other activities). Nevertheless, even in such cases, the CPT would still recommend that the minimum standard be adhered to.

22. On the other hand, for the Committee to say that conditions of detention could be considered as amounting to inhuman and degrading treatment, the cells either have to be extremely overcrowded or, as in most cases, combine a number of negative elements, such as an insufficient number of beds for all inmates, poor hygiene, infestation with vermin, insufficient ventilation, heating or light, lack of in-cell sanitation and in consequence the use of buckets or bottles for the needs of nature. In fact, the likelihood that a place of detention is very overcrowded but at the same time well ventilated, clean and equipped with a sufficient number of beds is extremely low. Thus, it is not surprising that the CPT often enumerates the factors that constitute appalling detention conditions, rather than just referring to inadequate living space. In addition – but by no means in every case – other factors not directly related to the conditions are taken into account by the CPT when assessing a particular situation. These factors include little out-of-cell time and generally a poor regime; reduced outdoor exercise; deprivation of contacts with relatives for several years, etc.

23. The Appendix to this document contains a non-exhaustive list of factors (other than the amount of living space per prisoner) to be taken into consideration when assessing detention conditions in prison.

⁸ See in this regard Article 17 (2) of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT).

Conclusion

24. This document seeks to provide guidelines to practitioners and other interested parties, by clearly stating the CPT's minimum standards regarding living space for prisoner(s) in a given cell. Ultimately, it is for the courts to decide whether a particular person has experienced suffering that has reached the threshold of inhuman or degrading treatment within the meaning of Article 3 of the ECHR, taking into account all kinds of factors, including the individual's personal constitution. The number of square metres available per person is but one factor, albeit often a very significant or even decisive one.

25. Conditions where inmates are left with less than 4m² per person in multiple-occupancy cells, or single cells measuring less than 6m² (both excluding a sanitary annexe) have consistently been criticised by the CPT, and authorities have regularly been called upon to enlarge (or withdraw from service) single cells or reduce the number of inmates in multiple-occupancy cells. The CPT expects that these minimum living space standards will be systematically applied in all prison establishments in Council of Europe member states, and hopes that more and more countries will strive to meet the CPT's "desirable" standards for multiple-occupancy cells.

APPENDIX

Examples of other factors to be taken into consideration when assessing detention conditions in prison

State of repair and cleanliness

- Cells, including furniture, should be in a decent state of repair and every effort should be made to keep the living areas clean and hygienic.
- Any infestation with vermin needs to be tackled vigorously.
- Inmates should be provided with the necessary personal hygiene products and cleaning materials.

Access to natural light, ventilation and heating

- All living accommodation for prisoners (both single- and multiple-occupancy cells) should have access to natural light as well as to artificial lighting which is sufficient for reading purposes.
- Equally, there needs to be sufficient ventilation to ensure a constant renewal of the air inside the cells.
- Cells should be adequately heated.

Sanitary facilities

- Each cell should possess a toilet and a washbasin as a minimum. In multiple-occupancy cells the sanitary facilities should be fully partitioned (i.e. up to the ceiling).
- In those few prisons where no in-cell sanitary facilities are available, the authorities must ensure that prisoners have ready access to the toilet whenever needed. Today, no prisoner in Europe should be obliged to “slop out”, a practice that is degrading both for the prisoners and for the staff members who have to supervise such a procedure.

Outdoor exercise

- The CPT considers that every prisoner should be offered a minimum of one hour of outdoor exercise every day. Outdoor exercise yards should be spacious and suitably equipped to give inmates a real opportunity to exert themselves physically (e.g., to practise sports); they should also be equipped with a means of rest (e.g., a bench) and a shelter against inclement weather.

Purposeful activities

- The CPT has long recommended that prisoners should be offered a range of varied purposeful activities (work, vocation, education, sport and recreation). To this end, the CPT has stated since the 1990s that the aim should be for prisoners – both sentenced and on remand – to spend eight hours or more a day outside their cells engaged in such activities, and that for sentenced prisoners the regime should be even more favourable.