



ADMINISTRATIVE DETENTION OF MIGRANTS AND ASYLUM SEEKERS

Guide for practitioners

COUNCIL OF EUROPE



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ADMINISTRATIVE DETENTION OF MIGRANTS AND ASYLUM SEEKERS

Guide for practitioners

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*Rétention administrative des migrants et des
demandeurs d'asile – Guide pour les praticiens*

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PREFACE

For centuries, our countries have notably been shaped by migration flows. Migration has contributed to the rich fabric of our societies. Unfortunately, the stigmatisation of migrants in populist rhetoric is not new either and is currently evident in too many of our countries. Such discourse brings the risk of a shift in the way the administrative detention of migrants and asylum seekers is perceived – from a temporary situation while their right to stay is examined to a punishment.

At no time should one lose sight of the fact that all migrants and asylum seekers have left their countries of origin, and uprooted themselves, for reasons that range from conflict to persecution and poverty. Migrants and asylum seekers all come with their own life stories. However, they have in common their hope for a brighter future, an aspiration shared by all humans. In leaving their countries, they left behind loved ones, sometimes all their possessions, and they have travelled at great risk, often falling prey to traffickers and smugglers. Those journeys are often a deeply traumatic experience. Many of them are still children, which makes the situation even more harrowing.

Migrants and asylum seekers are human right bearers – as we all are. This basic premise should define the way they are treated by the countries where they arrive. This guide has been drafted with the chief aim of bringing together existing standards governing administrative detention in order to ensure that migrants and asylum seekers are treated humanely and with dignity. It is based primarily on the European Convention on Human Rights, as interpreted by the European Court of Human Rights, and other relevant legal sources. In other words, this guide does not attempt to create new standards but simply to emphasise those that need to be upheld, and to present them in way that will make them easy to use for practitioners. Ultimately, the way our countries treat migrants and asylum seekers in administrative detention says a great deal about the resilience of our democratic societies.

Christos Giakoumopoulos
Director General of Human Rights and Rule of Law

INTRODUCTION

Managing migration movements is a prerogative of member states to be exercised¹ while fully respecting the human rights of asylum seekers and migrants and continues to present a significant challenge for member states.² Against this backdrop, immigration detention remains one of the most pressing issues in Europe and before the European Court of Human Rights (the “Court”).

The Council of Europe continues to provide further legal guidance and support to member states to navigate these issues.³ With an ever-changing immigration landscape, there remains a significant need to bring together existing minimum standards and guidelines concerning immigration detention conditions.⁴

This guide was designed to fulfil this purpose. It serves to assist member states to implement their duties and obligations towards asylum seekers and migrants in this context by acting as a reference point for a wide range of practitioners in the immigration detention field.

The starting point for this guide is to remember that deprivation of liberty in the immigration context is not the same as detention or imprisonment in criminal cases. It can only be used as an administrative measure pending removal from the country and should only be imposed as a measure of last resort in the absence of any alternative; it should be judicially authorised/reviewed, be necessary for legitimate purposes and operate for the shortest time possible.⁵

It is also important to remember there are situations when a person will not be suitable for immigration detention because of specific vulnerabilities (for example if they are pregnant, a child, a victim of torture or human trafficking, or have mental or physical health conditions).⁶ All detained persons should be treated with respect for their dignity and human rights, and authorities should take action to avoid any form of discrimination against them.⁷ Member states have a considerable burden in this regard.

Purpose of the guide

This guide⁸ was developed by the European Committee on Legal Co-operation (CDCJ) for professionals working in the field of migration as a practical tool that will contribute to improving their capacity to effectively and adequately prevent any risks and forms of abuse or violations of the rights of persons deprived of liberty, and to reinforce the respect of their dignity and fundamental rights, in line with existing international and European standards.

Who is this guide for?

This practical guide is designed to help and assist a broad range of professionals and other stakeholders working in the field of migration. It is addressed to, among others:

- ▶ personnel responsible for making initial detention decisions and decisions to maintain detention or release;
- ▶ border guards;
- ▶ healthcare professionals;
- ▶ detention facility personnel;
- ▶ interpreters;
- ▶ legal professionals;
- ▶ non-governmental organisations (NGOs) and any other volunteers assisting detained persons or co-operating with authorities dealing with immigration detention.

Scope of the guide

The guide covers all situations in which persons are deprived of their liberty in application of laws relating to migration and asylum; notably, in regulating the entry, stay, status and removal of non-nationals, as well as legislation concerning refugees, asylum and other forms of international protection. Persons who have been detained on remand pending criminal proceedings or following sentencing after a criminal conviction do not fall under this guide.

The guide is intended to apply to any kind of detention facility where a person is deprived of liberty, either based on a formal decision taken by a competent authority, or as a result of a situation amounting to a *de facto* deprivation of liberty.

Criteria for the distinction between a restriction on freedom of movement and deprivation of liberty

To determine whether someone has been “deprived of his or her freedom of movement” within the meaning of Article 5 of the European Convention on Human Rights (the “Convention”), the starting point must be his or her concrete situation. In addition, account must be taken of a whole range of criteria such as:⁹

- ▶ the type;
- ▶ duration;
- ▶ effects;
- ▶ manner of implementation of the measure in question.¹⁰

In determining the distinction between a restriction on freedom of movement and a deprivation of liberty in airport transit zones and reception facilities for the identification and registration of persons, the factors taken into consideration by the Court may be summarised as follows:

- ▶ the situation and choices of the persons concerned;
- ▶ the applicable legal regime of the relevant country;
- ▶ the relevant duration, purpose of the measures and the procedural protection enjoyed by the persons concerned; and
- ▶ the nature and degree of the actual restrictions imposed on the persons concerned.

How to use the guide

The guide has been designed in a way that enables professionals to refer separately to each of its eight chapters as a stand-alone chapter covering a specific aspect of immigration detention. Users will find at the end of each chapter useful tools, including summarised guidance and a toolbox, where additional useful reading material and documentation are referenced. At the end of the guide, users will find checklists for medical practitioners and lawyers.

This guide is based on international and European legal standards, including the case law of the European Court of Human Rights and the Court of Justice of the European Union (CJEU).¹¹ International and domestic developments regarding immigration detention should therefore regularly be taken into consideration in the interpretation and use of the guide.

Terminology used and definitions¹²

For the purposes of the guide, the most commonly used terms are to be understood as follows.

Administrative detention of migrants or **immigration detention** is all situations in which a person is deprived of liberty or held in situations amounting *de facto* to a deprivation of liberty, with or without a formal decision by a competent authority, in application of laws relating to migration and asylum.¹³

Detained person is any migrant, asylum seeker, refugee or any foreign national detained in application of laws relating to migration and asylum.

Detention facility is a place where a person is held in application of laws relating to migration and asylum, such as detention centres, reception centres, airport international zones, transit zones, etc.

Competent authority is any organ, whether judicial or administrative, authorised by domestic law to order or decide upon a situation amounting to the deprivation of liberty of a person in application of laws relating to migration and asylum. It also includes private entities contracted to administer the placement of such persons and to manage detention facilities.

Child is any human being below the age of 18 years.¹⁴

Unaccompanied child is a child who has been separated from both parents and other relatives and is not being cared for by an adult who, by law or custom, is responsible for doing so.

Separated child is a child who has been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. This may, therefore, include children accompanied by other adult family members.

Personnel are those persons employed or commissioned in a detention facility who carry out duties concerning detention conditions or the welfare of a person in immigration detention. This involves, among other things, staff members working in a range of roles, including security, detention officers, and supervisors and managers, whether they are employed directly by the state or whether their services have been procured through outsourcing arrangements.

Health practitioners are medical doctors, dentists, psychologists, psychiatrists, appropriately trained paramedics or nursing personnel admitted to practice according to domestic professional standards.

Vulnerable person is a person found to have special needs after an individual evaluation of their situation and who is entitled to call on a state's obligation to provide special protection and assistance in the context of migration and asylum.¹⁵

Removal is the voluntary return or forced removal of a person from the host state and includes deportation.

Non-governmental organisations are local, regional, national or international non-profit organisations that are competent in the field, independent from government and are accredited or recognised by host states.

Abbreviations

For the purposes of the guide and its ends notes, the most commonly used abbreviations are the following.

APT	Association for the Prevention of Torture
CDDH	Council of Europe Steering Committee for Human Rights
CJEU	Court of Justice of the European Union
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
FRA	European Union Agency for Fundamental Rights
GC	Grand Chamber of the European Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
IDC	International Detention Coalition
IOM	International Organization for Migration
NGO	Non-governmental organisation
OHCHR	Office of the UN High Commissioner for Human Rights
UNHCR	United Nations High Commissioner for Refugees

Chapter 1

ADMINISTRATIVE DETENTION

Given the paramount importance of the protection of human rights in Europe, immigration detention must be in accordance with the European Convention on Human Rights and other relevant human rights conventions,¹⁶ the case law of the Court and standards developed by relevant monitoring bodies such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Accordingly:

- ▶ first and foremost, any administrative detention must be permissible as such; that is, the decision to detain must be in conformity with the right to liberty and security pursuant to Article 5.1 of the Convention and Article 9.1 of the International Covenant on Civil and Political Rights (ICCPR). This aspect is further elaborated under this chapter, which recalls the fundamental principles to bear in mind before placing a person in immigration detention;
- ▶ second, detention is only in conformity with human rights when the legality of the detention itself and its conditions comply with human rights standards. This second notion of “conditions” will be detailed in subsequent chapters.

1.1. When can immigration detention be justified?

Under Article 5.1.f of the Convention, national authorities may deprive a person of their liberty in an immigration context only for the following aims:

- ▶ to prevent unauthorised entry into the country;
- ▶ pending removal or extradition of the person.

Any deprivation of liberty which does not pursue these aims will be in breach of Article 5.1.f of the Convention. For instance, a person should not be detained for the sole reason of having made an application for international protection.¹⁷

For asylum seekers, more restrictive standards apply and administrative detention can only be used in more limited circumstances.¹⁸

EU legislation authorises immigration detention, among others, in the following cases:¹⁹

- ▶ to determine and verify the applicant's identity or nationality;
- ▶ to examine elements of the asylum application that could not be determined in the absence of detention, in particular where there is a risk of absconding;
- ▶ to decide on the applicant's right to enter the territory;
- ▶ to address an applicant's refusal to co-operate with their removal;
- ▶ when the protection of national security or public order so requires;
- ▶ to secure transfer procedures under the Dublin Regulation.

In addition, to be compatible with the overall purpose and requirement enshrined in Article 5.1.f of the Convention, all procedures relating to the detention of a person must:

- ▶ not be arbitrary;
- ▶ be prescribed by law;
- ▶ be necessary and proportionate to the legitimate aim.

i. "Arbitrary detention"

Decisions or orders to detain should be made by competent authorities and only taken on an individual basis, in accordance with the law, and after consideration of all relevant facts pertaining to the person concerned.²⁰ When determining whether a decision to detain has been taken in an arbitrary manner or not, the Court takes into account the following key relevant factors:²¹

- ▶ whether the detention is carried out in good faith and is based on legal grounds;²²
- ▶ whether it is closely connected to the purpose of preventing unauthorised entry of the person to the country or for the purpose of removal;
- ▶ whether the detention facility and conditions of detention were appropriate;²³
- ▶ whether the length of the detention exceeds what is reasonably required for the purpose pursued.

ii. “Lawful detention”

All procedures relating to immigration detention should be prescribed by national law. The purpose of this requirement is to avoid any risk of arbitrariness by the authorities. This requirement means at a minimum that the legal basis (national law) is accessible to the public.

Relevant case law of the Court

In the case of *Amuur v. France*, for example, the detention of the applicant in the transit zone of the Paris-Orly airport was based on two acts that were not made public. The Court found that none of these texts constituted a “law” of sufficient “quality” such as to offer adequate legal protection in domestic law against arbitrary interferences by public authorities.²⁴

In *Mathloom v. Greece*, the Court also underlined that for the domestic law to be Convention compliant, the period of detention should be always reasonable for the purpose of the deprivation of liberty measure.²⁵

In *Suso Musa v. Malta*, the authorities had authorised by law the entry or stay of migrants pending an asylum application. The subsequent detention of the applicant for the purpose of preventing unauthorised entry raised a question of the lawfulness of detention.²⁶

In *Nabil and others v. Hungary*, the Court stressed that when the authorities decide to prolong the initial detention period, they should not simply reiterate the arguments upon which the initial detention period of the asylum seeker was decided.²⁷

iii. “Necessity of detention and proportionality to the legitimate aim”

Detention, on account of its largely intrusive nature, should be applied only as a measure of last resort when absolutely necessary and for the shortest time possible and after it has been established by full and careful consideration that less coercive alternative measures will be ineffective in the specific case.

The most appropriate alternative to detention will be the measure that, in the particular circumstances of the person concerned, can be applied effectively and provides the least restriction of liberty for that person and the highest level of protection for his or her rights and interests.

Alternatives to detention might be – but not limited to – the following:²⁸

- ▶ reporting to the police or immigration authorities at regular intervals;
- ▶ surrendering a passport or travel document;

- ▶ temporary authorisation to remain in the territory;
- ▶ family-based care for unaccompanied children and separated children;²⁹
- ▶ residential facilities provided by the authorities;
- ▶ open or semi-open centres for migrants and asylum seekers;
- ▶ assigned residence during a given period;
- ▶ bail with or without guarantees;
- ▶ guarantor requirements;
- ▶ case management or case worker support;
- ▶ electronic monitoring, such as tagging.³⁰

Keep in mind

When depriving a person of his or her liberty at any point, whether upon their arrival or pending their removal, national authorities should keep in mind that:

- ▶ any deprivation of liberty will be justified only for as long as removal proceedings are in progress. If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible under Article 5.1.f of the Convention;
- ▶ detention with a view to removal should not be punitive in nature and should be accompanied by appropriate safeguards;
- ▶ it should be considered whether removal is a realistic prospect and whether detention with a view to removal is, from the outset, or continues to be, justified;
- ▶ there should be procedural safeguards in place capable of preventing the risk of arbitrary detention pending expulsion. Such safeguards may include reasonable time limits for the detention, legal advice, availability of judicial review, etc.

1.2. Who can decide on the placement in detention and what should this decision or order contain?

Decisions or orders to detain should be made by judicial or relevant administrative authorities. This requires that national law designates competent authorities for this purpose and establishes the procedure to be followed.

1.3. For how long can a detention be justified?

Detention should be imposed for the shortest time possible³¹ and under no circumstance should immigration detention be for an unlimited period of time. As highlighted by the Court, immigration detention is permissible only for so long as the procedures justifying the detention are pursued with due diligence.³² Detained persons should be released as soon as the reasons for their detention cease to apply.

In addition to the legitimate aim, the length of the detention is closely scrutinised by the Court in light of the particular circumstances and vulnerabilities of the detained person³³ and his or her detention conditions.³⁴ Depending on the circumstances, even two hours in detention may, in some cases, be considered as a deprivation of liberty within the meaning of Article 5.1 of the Convention.³⁵

Relevant case law of the Court

In *Louled Massoud v. Malta*, the applicant was placed in a detention facility for more than 18 months with a view to deportation. Following the rejection of his asylum claim, the probable lack of a realistic prospect of his deportation for such a long period made the detention of the applicant unlawful.³⁶

1.4. What additional safeguards should there be for vulnerable persons?

It has been confirmed on many occasions that vulnerability is inherent to the situation of migrants.³⁷ Before a decision or order to detain is made, the specific situation or health status of the person should be screened to assess whether the placement in detention would put them in a situation of particular vulnerability or at risk and whether they require specific care, attention or assistance.³⁸

The detention of a vulnerable person will not be in conformity with Article 5.1.f of the Convention if the aim pursued by the detention can be achieved by other less coercive measures. This requires that competent authorities consider alternatives to detention in light of the specific circumstances of the person's case. The lack of active steps and delays in conducting this vulnerability assessment may be a factor in raising serious doubts as to the authorities' good faith.³⁹ In addition to Article 5.1.f of the Convention, immigration detention of vulnerable persons can raise issues under Article 3 of the Convention, with

particular attention being paid to the conditions of detention, its duration, the person's particular vulnerabilities and the impact of the detention on them.

Vulnerability can arise due to a person's physical state, health situation or past experiences: the manifestations of and obligations to address vulnerability may thus vary considerably. Based on the Court's case law, the following examples can be mentioned:⁴⁰

- ▶ Children;⁴¹
- ▶ Unaccompanied and separated children;⁴²
- ▶ Pregnant women and nursing mothers;⁴³
- ▶ Older persons;
- ▶ Single parents with children;⁴⁴
- ▶ Persons with disabilities or with serious illnesses;⁴⁵
- ▶ LGBTI persons;⁴⁶
- ▶ Victims of human trafficking;⁴⁷
- ▶ Victims of torture, ill-treatment, sexual and gender-based violence or domestic violence, of a physical or psychological nature.⁴⁸

Relevant case law of the Court

In the case of *Rahimi v. Greece*, the conditions of detention of an unaccompanied child in a detention facility, particularly with regard to the accommodation, hygiene and infrastructure, had been so bad that they undermined the very meaning of human dignity. Moreover, the applicant, on account of his age and personal circumstances, had been in an extremely vulnerable position and the authorities had given no consideration to his individual circumstances when placing him in detention. Accordingly, even allowing for the fact that the detention had lasted for only two days, the applicant's conditions of detention had in themselves amounted to degrading treatment in breach of Article 3 of the Convention. Owing to his youth, the irregularity of his administrative situation in a country he did not know and the fact that he was unaccompanied and therefore left to fend for himself clearly qualified him as a highly vulnerable person. As a result, the Court recalled the Greek authorities were under the obligation to protect and take care of him by taking appropriate measures in the light of its positive obligations under Article 3 of the Convention.⁴⁹

1.5. Procedural guarantees in cases of detention

When detained, persons continue to enjoy a set of procedural rights related to their detention. Under Article 5.2 of the Convention, they have the right to be informed, in a language they understand,⁵⁰ of the reasons for their deprivation of liberty.⁵¹ This would allow them to challenge before a court the procedural and substantive conditions which are essential for the “lawfulness” of their deprivation of liberty to be compliant with Article 5.1 of the Convention. Domestic courts should examine and decide on the lawfulness of the persons’ detention “speedily” and order their release if the detention is not lawful.

Under Article 13 of the Convention, detained persons also have the right to an effective remedy in relation to complaints related to the conditions of their detention.⁵² To be considered effective, such remedies must offer the possibility of improvement of the material conditions of the detention and the right to an enforceable compensation for the violation that had already occurred because of such conditions.⁵³

Keep in mind

When considering whether a decision to detain should be taken, competent authorities should bear in mind the following.

- ▶ Does the detention have a legal basis in national law and is the latter sufficiently clear and predicable to everyone?
- ▶ Is the decision being taken by an authority competent for taking a detention measure under national law?
- ▶ Is the detention necessary and proportionate to the aim pursued?
- ▶ Is the person in a vulnerable situation?
- ▶ Are there any other alternatives to detention to achieve the same intended results described above? Is it reasonable to exclude these alternatives?
- ▶ Have the legal basis and the reasons for the decision to detain been duly explained to the person concerned in a manner and language he/she understands?
- ▶ Has the person concerned been informed of the possible duration of the detention?
- ▶ Has the person been informed about the procedures for challenging their detention and their treatment in detention?
- ▶ Does the person have access to pursue and fully exhaust such remedies?

Toolbox/further reading

- ▶ HELP online courses [Asylum and Human Rights](#)
- ▶ HELP online courses, [Alternatives to Immigration Detention](#)
- ▶ Steering Committee for Human Rights (CDDH), [Alternatives to immigration detention: fostering effective results](#), Practical Guide, June 2019
- ▶ Collection of CPT visit reports, public statements and standards
- ▶ UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012

Chapter 2

PROCEDURES ON ARRIVAL AT THE DETENTION FACILITY

The notion of arrival refers to the moment of arrival at a detention facility. Persons newly entering the facility include those arriving for the first time in the facility and those being transferred from one facility to another. Every person placed in immigration detention has to be searched and registered upon arrival in the detention facility and informed about the internal rules of the facility and his or her rights and duties during his or her detention. Moreover, a medical screening of all newly arrived detained persons entering an administrative detention facility should be offered as soon as possible, ideally within 24 hours of their arrival.⁵⁴

In cases where the procedures on arrival are not followed by the competent authorities, the latter will bear the burden of proof for the respect of the detained person's rights.⁵⁵

2.1. Searches

Authorities responsible for operating and managing places of detention need to ensure that all health and safety risks, including threats to life, are mitigated against.⁵⁶ This is in line with the obligation of the authority under Article 2 of the Convention to protect and promote the health and well-being of detained persons and staff, especially in cases where danger is foreseeable.⁵⁷

This requires authorities to take basic and necessary precautions to address any identified health and safety risks and to prevent situations of danger to life or limb.⁵⁸ On arrival in places of detention, it is important that authorities initially search individuals in conditions that respect and promote the dignity and privacy of the individual so that any items prohibited by law, such as illegal weapons, are identified and confiscated.

2.2. Registration

The Court has repeatedly stressed the importance of recording accurate information of persons deprived of their liberty for the detention to be lawful under Article 5.1 of the Convention and to respect the person's right to review the lawfulness of detention under Article 5.4 of the Convention.⁵⁹ Therefore, accurate registration is an important safeguard against arbitrary detention and incommunicado detention.⁶⁰

Registration records should cover information about, but not be limited to:

- ▶ the person's identity (the full name, sex, date of birth and the nationality or country of origin or stateless status of the person identified from documents or the person's declaration) and other relevant information (language spoken, faith, eating habits, etc.);
- ▶ whether the person has applied for international protection/asylum;
- ▶ the date, time and place where the person was deprived of his or her liberty and the identity of the authority responsible;
- ▶ the authority that ordered the detention (the administrative or judicial national authority that has issued the detention order);
- ▶ the reasons (ground for detention and the relevant legal basis in domestic law);
- ▶ the place of detention, the date and time of admission to the facility and the authority responsible for the detention facility;
- ▶ possible elements relating to the state of health of the person concerned, and whether he or she has specific needs;
- ▶ an inventory of the person's belongings (the person's possessions when entering the detention facility, in particular any valuables, electronic devices, baggage items, medication or cash), and whether those items are left in the possession of the person concerned or stored by the authorities),⁶¹
- ▶ where relevant, the transfer to or from another facility (including the originating place of detention and the authority responsible for the transfer);
- ▶ where relevant, information about relatives or children of the person concerned, especially if more than one member of a family group is detained.⁶²

The assistance of an interpreter who can communicate in a language/dialect that the detained person can understand should be offered if needed to complete the registration record. This service can be provided in person or remotely by telephone and extends to other situations where an interpreter is needed, for example in healthcare or legal advice scenarios.

The person concerned should have access to the record.⁶³ Access can be secured by providing the person with a copy of the record or by giving them physical access to the record at their request.

Access to the record by third parties with a legitimate interest established by national law, such as relatives of the detained persons, their representatives, lawyers and civil society organisations authorised to access such register when applicable, should be guaranteed, subject to protection of the right to private life and to protection of the personal data of the persons concerned.

2.3. Information on arrival

Information about the internal rules of the detention facility together with the rights and duties of the person concerned should be provided without delay after the arrival in the detention facility, that is within the shortest time possible.

2.4. Medical screening

From the moment persons are placed in detention, competent authorities are responsible for any ill-treatment they might be subject to.⁶⁴ Therefore, they should offer an individual medical screening for both physical and mental health to detained persons as soon as possible after arrival in the detention facility.⁶⁵

The aims of the medical screening are:

- ▶ to screen the person concerned to detect any transmissible diseases in order to protect public health (for instance, Covid-19) and, in particular, the health of other detained persons, personnel and civil society representatives interacting with them;
- ▶ to identify medical needs and vulnerabilities that require particular medical care and attention, in particular impairments, disabilities, pregnancy or other issues related to reproductive health, substance addiction, age, trauma or risk of self-harm;⁶⁶
- ▶ to assess and advise on whether the detention is, or continues to be, appropriate from a medical point of view.⁶⁷

This medical screening should be carried out by a doctor or a fully qualified nurse reporting to a doctor as soon as possible after the admission. The medical screening should not unduly interfere with the fundamental rights of the person concerned.

The results of the medical screening should be fully recorded. The medical record should at least entail information about visible injuries or statements about prior ill-treatment, evidence of sexual abuse or other forms of violence, including gender-based violence, that occurred prior to admission, transmissible diseases, such as Covid-19, tuberculosis, scabies, measles, hepatitis or HIV, chronic diseases, like diabetes or epilepsy, or any other information voluntarily provided by the detained person.⁶⁸ Authorities should keep in mind that persons might not wish to share their trauma at first contact during the medical screening. Follow-up healthcare should be made available and provided for issues identified through screening.

Information on injuries and allegations that are consistent with such injuries, indicative of ill-treatment, abuse, sexual violence or other violence, should immediately and systematically be brought to the attention of the relevant national authorities, regardless of the wishes of the person concerned.⁶⁹

Keep in mind

It is important that the well-being and safety of all detained persons are respected from the point of arrival at the place of detention by collecting and registering relevant information and undergoing necessary procedures, such as:

- ▶ conducting a lawful search of the person to identify any illegal items;
- ▶ explaining their rights to them in a language they understand;
- ▶ explaining the rules and procedures of the place of detention to them in a language they understand;
- ▶ registering key information such as their identity, health needs, religious needs and individual case details;
- ▶ implementing a comprehensive medical screening within 24 hours of arrival using culturally sensitive assessments and taking into account the possibility of torture or trauma history.

Toolbox/further reading

- ▶ Collection of [CPT visit reports, public statements and standards](#)
- ▶ UN High Commissioner for Refugees (UNHCR), [Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012](#)
- ▶ UNHCR, [International detention Coalition: Vulnerability Screening Tool – a tool for asylum and migration systems, 2016](#)
- ▶ World Health Organization: [Addressing the health challenges in immigration detention, and alternatives to detention: a country implementation guide, 2022](#)

Chapter 3

INFORMATION DISSEMINATION AND COMMUNICATION

Access to communication with the outside world is part of the human rights standards applicable to any situation of deprivation of liberty and should be considered as one of the elements at stake to assess the immigration detention conditions.⁷⁰

3.1. Information dissemination to detained persons

Detained persons should be aware of their legal situation and detention conditions, including the subjective rights they enjoy and duties while detained.⁷¹

i. Information upon deprivation of liberty

From the very first moment a decision is taken to deprive a person of his or her liberty, national authorities should inform the person concerned, in a language which he or she understands, of the reasons for their arrest and the relevant legal basis.

The information on the grounds for which the person is detained should be as detailed as possible.⁷² The information therefore should refer to the concrete individual situation of the person concerned and should at least include:

- ▶ why he or she is being arrested or detained;
- ▶ on what grounds he or she is being detained;
- ▶ who decided on his or her detention;
- ▶ the possible duration of his or her detention;
- ▶ the place of detention.

In addition to the grounds for detention, the person being detained should also be informed of his or her procedural rights, in particular:

- ▶ the right to legal assistance and representation;
- ▶ the right to seek asylum or other forms of international or national protection and protection against removal;

- ▶ the right to contact consular authorities and/or a person of his or her choice;
- ▶ the right to have access to an interpreter;
- ▶ the right to be heard and effectively challenge the decision or order to detain before an independent authority or a court.

ii. Information on arrival in the detention facility

Detained persons should be informed about the internal rules, both orally and in writing. The internal house rules should primarily be informative in nature and address the widest range of issues, rights and duties that are relevant to daily life in detention.⁷³

Information provided on internal rules should cover, but not be limited to, the following:

- ▶ use of public facilities, such as recreational rooms, libraries, open air spaces, smoking areas, cafeterias, kitchens or sanitary facilities;
- ▶ meals schedules;
- ▶ personal items that can be taken and stored by the administration for security reasons;
- ▶ disciplinary procedures and emergency measures;
- ▶ role of personnel members (recreational activities, cleaning, administration, etc.);
- ▶ regime for external visits.

Detained persons should be aware of their rights and duties within the detention facility, notably:

- ▶ the right to receive information and to communicate with the outside world, for example with their relatives, representatives and lawyers;
- ▶ the right to receive visits;
- ▶ the right to access adequate healthcare, including access to psychological or psychiatric care;
- ▶ the right to complain about ill-treatment or any issue relating to their detention conditions, including specific forms of gender-based violence and discrimination;
- ▶ the duty to respect the internal rules;
- ▶ the duty to refrain from any form of violence against other detained persons, personnel or third parties;
- ▶ the duty to respect the privacy of other detained persons.

Detained persons should be provided with the contact details of the appropriate interlocutors and services available.

iii. Information during detention

During their detention, detained persons should be duly informed of the advancement of the procedure, notably:

- ▶ the review of the lawfulness and/or conditions of detention;
- ▶ the advancement of their asylum or international protection application;
- ▶ the review of the lawfulness of any removal and of its details;
- ▶ the progress of any removal procedure;
- ▶ their possible reunification with other family members.

iv. Information upon release

Upon release, authorities are encouraged to provide persons with practical information sheets about the host country (for example, emergency phone numbers and contact details of shelters and relevant NGOs, representatives, lawyers, etc.).

3.2. How to keep detained persons informed

Detained persons can be kept informed through general means of information provision and through individual means of information provision. The effective use of both these means should allow the detained person to understand their situation.

i. General means of information provision within the detention facility

Provision of information through general means can be achieved by distributing leaflets to all detained persons at the moment of their arrival within the detention facility and by displaying information publicly within the detention facility at all times.

Information provided through general means should be available in widely spoken languages, such as English, French, Arab, Russian, Chinese, Spanish, Urdu or Farsi. Nonetheless, the authorities are better placed to decide on the use of other languages for general information in the specific detention facilities concerned.

ii. Individual means of information provision

In addition to the general means of information provision described above, the authorities should provide individual information to all detained persons. This obligation is especially acute when the person concerned has reading, linguistic or understanding difficulties, is a victim of violence or human trafficking or is vulnerable or has mental disabilities. In the case of children, the information should be conveyed in a manner adapted to their age and maturity, in a language they can understand, and which is gender and culturally sensitive.⁷⁴ Interpretation should be ensured while providing the relevant information, as appropriate.

All decisions, including interim ones, taken in relation to the detention or release, conditions of detention, the asylum application and other proceedings, as well as the modalities for the execution of such decisions, should be communicated individually to the person concerned, whether such proceedings have been initiated by this person on their own behalf or on behalf of persons under their responsibility.⁷⁵

3.3. External communication and contact

Detained persons' ability to communicate with the outside world is essential. Competent authorities should do their best to facilitate such communication by putting in place all practical measures necessary to achieve this objective. Such communication would limit some of the negative impacts induced by detention.

With whom can detained persons communicate?

Detained persons should be allowed to communicate on a regular basis with anyone outside the facility.

How should they be able to communicate?

Competent authorities are better placed to identify the most efficient means for guaranteeing the communication of the detained persons with the outside world. These may include:

- ▶ access to telephone booths (with the possibility to purchase telephone cards);
- ▶ access to landline telephones (in dedicated rooms);
- ▶ use of mobile phones⁷⁶ (including internet calls);⁷⁷
- ▶ internet connection access (wi-fi) or access to a computer room;
- ▶ delivery of letters without delay as well as the provision of paper and pencils.

Communication with the outside should not be monitored or altered in any shape or form (censored), respecting the privacy of detained persons (for instance, no recording of visits or of telephone calls, absolute prohibition on reading e-mails or letters and other intrusive measures). However, competent authorities can limit the possibility of detained persons to communicate where there are compelling reasons relevant to safety and good order. Such limitations might include a set maximum time for using the internet or computer for each person in order to allow equal access to such types of communication for all detained persons, checks on communications with regard to prohibited items (drugs, guns, etc.) or blocking access to prohibited websites. In any event, limitations should not be applied as a disciplinary measure or in a way that undermines or renders ineffective the enjoyment of the right to communicate.

i. Visits

Detained persons should be allowed to receive visits from any person of their choice. The detention facility should be reasonably accessible to allow regular visits from family members (marital, extra-marital or *de facto* relationships),⁷⁸ friends, community support groups and lawyers.⁷⁹ Persons should be offered the possibility to receive visits several times per week.

Persons should be informed that they are free to refuse visits. Visitors, in particular family members, should not automatically be allowed to visit without prior consent of the person detained. This is particularly important in relation to people who have suffered gender-based or domestic violence.⁸⁰

Visiting conditions should respect privacy and take place under open conditions (glass partitions and screens, for example, should not be used).⁸¹ Visiting arrangements and procedures should further encourage a conducive visiting environment (using a round table for respecting privacy, for example). Such measures should take the best interests of any child into account and be adjusted accordingly;⁸² for example, visiting rooms may include a play area for children.

Limitations might be necessary for safety and good order reasons. For example, the number of visits or visitors might be limited, or visits only allowed at certain hours. Limitations may also be imposed for public health reasons (such as Covid-19 prevention measures) or public order necessities. Visits can be subject to authorisation. Any restrictions on the visitation rights of a particular person should be exceptional, if considered necessary, and decided on the basis of an individual assessment.⁸³ Such restrictions should not be applied as disciplinary measures or in a way that undermines the substance of the right to receive visits.

ii. Contacting third parties

Detained persons have the right to contact without undue restrictions:

- ▶ their lawyer or other suitably qualified person;
- ▶ their national authorities for consular assistance (upon request);
- ▶ national organisations and bodies (national human rights institutions, ombudspersons, commissioners);
- ▶ monitoring bodies (such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) or national preventive mechanisms);
- ▶ international organisations such as the International Committee of the Red Cross (ICRC) or representatives from the United Nations High Commissioner for Refugees (UNHCR), including organisations which have been mandated by the UNHCR pursuant to an agreement and are working on the territory of the state on behalf of the UNHCR;
- ▶ relevant non-governmental organisations competent in the field and accredited by the host state.

Such access includes free communication and visits from these bodies and organisations.

Moreover, every detained person has the right to submit an individual application before the European Court of Human Rights, including seeking interim measures. This right to application should not be obstructed or hindered in any way. Any obstruction of communication or any form of pressure to withdraw or modify the person's complaint violates the right to an effective exercise of the right to submit an application.⁸⁴

Competent authorities should ensure that access to means of submitting an application is effective, for example:

- ▶ all letters should be forwarded promptly without opening;⁸⁵
- ▶ assistance should be offered to obtain access and copies of relevant documents;⁸⁶
- ▶ all necessary medical examinations should be facilitated.⁸⁷

In the context of the detention of migrants, lodging an urgent request for interim measures is particularly important when the removal of a person is already pending (planned or scheduled). In these situations, the applicant will often face a real risk of serious, irreversible harm should the interim measures not be decided upon and respected.

Keep in mind

To ensure that the detained persons are fully aware of their legal situation and rights, it is important to provide key information to them about these matters both on arrival at detention and thereafter when applicable or on request, such as:

- ▶ access to a lawyer;
- ▶ right to legal representation;
- ▶ free access to an interpreter;
- ▶ the reasons for detention and refusal of immigration bail;
- ▶ the right to challenge the decision to detain or maintain detention;
- ▶ updates as to their substantive immigration case;
- ▶ the right to free contact with consular authorities;
- ▶ the right to communicate with the outside world and information on telephone facilities;
- ▶ health and safety procedures;
- ▶ the rules of the place of detention;
- ▶ disciplinary and emergency measures;
- ▶ the role of personnel and independent monitoring bodies;
- ▶ the regime for visits;
- ▶ complaints mechanisms;
- ▶ meal schedules;
- ▶ use of outdoor spaces, libraries, smoking areas and kitchens;
- ▶ the available educational and recreational activities;
- ▶ use of sanitary facilities.

To ensure detained persons have effective access to communication with the outside, competent authorities are encouraged to:

- ▶ facilitate access to free wi-fi connections at least in common areas of the detention facilities;
- ▶ provide the possibility for detained persons to buy mobile phone cards without restrictions;
- ▶ indicate in clear and visible ways the postal address of the detention facility where postal services can be addressed;

- ▶ indicate in clear and visible ways the contact details (address, e-mail, phone numbers) of competent legal services, including Bar associations, of relevant NGOs providing social, psychological and legal support to detained persons and of consular services of the countries of origin of the persons concerned;
- ▶ ensure the distribution of letters within the detention facility in the most efficient manner;
- ▶ make sure interpreters are available;
- ▶ distribute and display translations of the house rules, etc;
- ▶ provide paper and pencils.

Toolbox/further reading

- ▶ Committee of Ministers of the Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*, November 2010
- ▶ Collection of CPT visit reports, public statements and standards
- ▶ Council of Europe, *How to convey child-friendly information to children in migration: A handbook for frontline professionals*, 2018
- ▶ HELP Online course on Refugee and Migrant Children

Chapter 4

DETENTION CONDITIONS AND TREATMENT OF DETAINED PERSONS

The European Court of Human Rights has confirmed in its case law that the conditions of administrative detention must not breach Article 3 of the Convention.⁸⁸ This provides that states must not under any circumstance subject any individual to torture and inhuman or degrading treatment or punishment, and must protect the physical and mental well-being of detained persons.⁸⁹ In order to comply with member states' obligations deriving from the Convention, it is important for competent authorities to ensure that the conditions of immigration detention meet minimum standards.⁹⁰ As mentioned previously, detention conditions might render the detention unjustified under Article 5.1 of the Convention.

Detention conditions refer to a broad range of matters including healthcare, sanitation and hygiene, food and drinking water, clothing and bedding, leisure and recreational activities.

Since immigration detention does not have the same purpose as imprisonment under criminal justice, persons detained should enjoy some form of freedom inside the detention facility under an open regime. This implies that detention facilities should have sufficient space for persons to move around freely and safely and by avoiding the imposition of restrictions on their movement unless justified for order and security reasons based on a fair risk assessment undertaken in line with national and international law.⁹¹

4.1. Suitable premises

i. Detention centres

Detention facilities should be secure and hygienic⁹² and should protect detained persons from undignified and inhuman treatment. To promote and observe these standards, the following should be guaranteed:

- ▶ a safe and suitable structural design with a layout that is not carceral or prison-like⁹³ (for example, rooms should not be cell-like with heavy doors, personnel should not carry instruments of physical restraint, food should not be distributed through a food slot, high walls should be avoided, etc.);
- ▶ an open regime⁹⁴ and avoidance of restrictions on movement unless justified by the need to maintain good order and security;
- ▶ avoidance of overcrowding by having and observing a limit on the number of the persons able to be hosted by a detention centre at the same time;⁹⁵
- ▶ during the night, the ability to turn artificial light off or block natural light out, and sleep without unreasonable noise levels;
- ▶ accommodate women separately to men with the privacy of both groups guaranteed;⁹⁶
- ▶ provide secure facilities to store clothing, cash and other personal possessions, such as lockable personal spaces (lockers);⁹⁷
- ▶ ability to receive and store their private documents and correspondence safely and securely⁹⁸ (it is crucial to remember that detained persons may be seeking legal advice or going through legal proceedings. It is expected therefore that they will be in correspondence with their legal representatives. Such correspondence, including letters and documents sent to and received from lawyers, is subject to legal privilege and cannot be searched or seized);⁹⁹
- ▶ adequate furnishing,¹⁰⁰ lighting (including natural light), heating, cooling, circulation of fresh air and ventilation systems;¹⁰¹
- ▶ adequate and sufficiently available facilities for rest and the needs of nature;¹⁰²
- ▶ sanitised living spaces that are in a good state of repair;¹⁰³
- ▶ prompt identification of and response to disrepair;¹⁰⁴
- ▶ sufficient room to exercise, including outdoors,¹⁰⁵ with spaces being properly equipped and adapted for such exercise purposes;¹⁰⁶

- ▶ place couples together where both persons consent;¹⁰⁷
- ▶ the principle of family unity should be respected unless it is not in the interests of the member of a family (for example, in cases of allegations/indications of domestic violence).¹⁰⁸

Relevant case law of the Court

In *Turdikhojaev v. Ukraine*,¹⁰⁹ the claimant alleged that the conditions of his imprisonment were such that there was poor ventilation and a lack of personal space. The Court found a violation of Article 3 of the Convention stemming from the holding of the claimant in a cell that provided less than 2 m² of personal space.

In *Dougoz v. Greece*,¹¹⁰ the Court found that the detention of an individual in conditions of overcrowding, with no sleeping facilities and an inordinate length of detention violated Article 3 of the Convention.

ii. Other places of detention

Where persons are detained in any facility that is not specifically designed for that purpose, for reasons beyond the control of the authorities, all steps should be taken to ensure that the period of detention is kept to the absolute minimum.

For as long as the detention continues, detained persons should be provided with:

- ▶ meals and drinking water;
- ▶ adequate healthcare;
- ▶ suitable means for sleeping;
- ▶ suitably equipped sanitary and washing facilities;
- ▶ access to open air;
- ▶ access to his or her luggage and other personal possessions, except for reasons of public safety and security.

Prisons

Prisons are not suitable places for persons detained under immigration powers¹¹¹ as they are designed for the accommodation of people charged with or convicted of criminal offences.¹¹² As such, prisons are secure, oppressive and punitive settings. Persons in administrative detention may be held in an ordinary prison only when there are compelling reasons for the protection of

national security, the protection of safety or the protection of other persons in administrative detention. Such detention should only be decided upon careful consideration of all the aspects of a case. Anyone detained in a prison should be held for the shortest time possible and in line with the principle of separation from the general prison population and exemption from the general prison regime.¹¹³

Police station

Police stations and headquarters are also inadequate facilities for immigration detention, unless used for the shortest time possible, such as at the very beginning (after the deprivation of liberty of a person) or at the very end of the detention period (immediately before removal).¹¹⁴

Transit zones

Similarly, transit zones, airport reception centres and point-of-entry holding facilities are unsuitable facilities for immigration detention when they are used without review¹¹⁵ and authorisation in law.¹¹⁶

Emergency facilities

This covers in particular situations where within a short period of time an exceptionally sharp increase in migratory flows occurs, which creates organisational, logistical and structural difficulties for the receiving state.¹¹⁷ These exceptional circumstances may arise on the basis of unforeseeable factors and therefore be out of the control of the authorities. Thus, a lack of financial resources alone is not a sufficient reason for detaining persons in such emergency facilities.

Places not specifically designed for the purpose of administrative detention might include school buildings or sports halls, exhibition halls, military quarters, hospitals, hotels or ships. Nevertheless, such places should never be used for persons in a situation of vulnerability.

Transportation

When transferring or transporting detained persons from one place to another, it is important to ensure that the material conditions are safe and secure.¹¹⁸ This can be achieved by implementing the following measures:¹¹⁹

- ▶ ensure all journeys of whatever length are always monitored by qualified personnel;¹²⁰
- ▶ use vehicles that are suitably designed for the specific journey,¹²¹ equipped with the necessary safety devices, such as seatbelts¹²² and emergency locking mechanisms,¹²³ and that have compartments or

cubicles of a reasonable height¹²⁴ and size considering the length of the journey¹²⁵ to allow for sufficient personal space;¹²⁶

- ▶ provide persons with free sanitary facilities on long journeys;¹²⁷
- ▶ allow persons to satisfy their needs of nature and with privacy, hygiene and dignity;
- ▶ provide free fresh and clean drinking water as required and food at appropriate intervals for long journeys;
- ▶ cater for any medical conditions and/or vulnerabilities a person has;¹²⁸
- ▶ protect persons against any ill-treatment, including gender-based violence, theft, assaults or harassment.¹²⁹

4.2. Food, drinking water, clothing and bedding

i. Food and drinking water

Since detained persons are under the exclusive control of the authorities throughout their detention, the authorities are responsible for meeting their basic nutritional and subsistence needs.¹³⁰ This can be achieved by implementing the following measures, which are not intended as an exhaustive list:

- ▶ always have available fresh and clean drinking water throughout the detention facility, including overnight;¹³¹
- ▶ provide at least three free good-quality meals,¹³² every day at adequate intervals, and in sufficient portions with at least one meal served warm;¹³³
- ▶ menus should be reviewed and approved by qualified dietitians. Food served to the detained persons should not be monotonous and the menus should be changed at reasonable intervals;
- ▶ prepare and serve meals hygienically, by cleaning kitchen areas every day and frequently deep cleaning them, training food handling staff in basic food hygiene measures in line with national standards;
- ▶ allow detained persons to buy extra food and drink at fair prices which are no more than those in the outside community; for example, by providing cafeterias, shops offering food and basic non-food items, or vending machines;
- ▶ make all efforts to prepare and serve meals in accordance with special dietary requirements, for example for reasons relating to health, age,¹³⁴ religion,¹³⁵ vegan and vegetarian diets or other dietary needs (for example, nursing mothers or diabetics might need to eat different meals or children should have the opportunity to have snacks in between mealtimes);¹³⁶

- ▶ provide adequate catering facilities,¹³⁷ with regular distribution of clean and individual cutlery for every person;¹³⁸
- ▶ provide sufficient space for detained persons to eat,¹³⁹ with enough tables and chairs for the number of detained persons in the given scenario.¹⁴⁰

Relevant case law of the Court

The case *R.R. and Others v. Hungary* concerned a number of alleged human rights violations against an Iranian/Afghan family, one of which concerned the provision of food. One of the applicants argued that the burden was placed on him to feed himself, meaning that during his detention in a transit zone, he had to take food from his family, beg others for food and look for leftovers in bins to survive. In respect of this allegation, the Court found a violation of Article 3 of the Convention for failure to provide the applicant with food during his detention in the transit zone and without assessing his needs.

ii. Clothing and bedding

Detained persons need access to other household items such as adequate clothing, footwear and bedding to ensure their dignity and well-being.¹⁴¹ Wearing and choosing their own clothes, including underwear and footwear, preserves their personal autonomy and identity and may avoid the feeling of incarceration. It is important for this reason that people are allowed to wear, retain and clean their own clothing and footwear during their detention, subject to justified and legitimate order and security reasons. These conditions can be encouraged by taking the following considerations and measures:

- ▶ providing detained persons, when necessary, with a range of suitable clothing and footwear which is sufficient in supply, taking into account their needs according to the length of their detention;¹⁴² suitable clothing should be capable of being used for sleep, exercise, attending hearings and for daily use suitable to the climatic conditions;
- ▶ providing adequate storage for detained persons to store their clothing and footwear;
- ▶ frequently providing necessary resources such as laundry facilities to wash and dry clothes at reasonable intervals, as well as replacing clothes when necessary;¹⁴³
- ▶ offering appropriate rest and food and the opportunity to wash and change clothes to detained persons following a long journey to appear before a court.¹⁴⁴

In addition to the above, it is important to consider that some detained persons may not have the means to buy clothing, or clothing that is suitable for the weather conditions and climate. Cases like this might be identified through a detained person's self-declaration, but personnel should consider that a detained person may not raise such a complaint themselves, so it is important that personnel make reasonable inquiries if they suspect a detained person does not have access to adequate clothing.

The ability to rest and sleep for sufficient hours without disturbance is crucial to the welfare of detained persons and in particular their physical and psychological health. To ensure they have adequate resources to rest and sleep every day, it is important to provide every detained person with the following for free:¹⁴⁵

- ▶ sufficient space to sleep and rest, including separate and safe sleeping areas for single women, with or without children;¹⁴⁶
- ▶ separate beds and mattresses in good condition;
- ▶ a separate plinth in good condition if the duration of detention is under 24 hours;
- ▶ clean sheets and linen at frequent and reasonable intervals (once a week, for instance) during their detention.

4.3. Freedom of thought, conscience, religion and beliefs

Every detained person has the right to practise their religious and non-religious beliefs,¹⁴⁷ whether in private or public.¹⁴⁸ This includes their personal and moral convictions.¹⁴⁹ The risks of unjustly interfering with this right can be mitigated by allowing, and if needed facilitating, the practice of their belief.¹⁵⁰ The list below provides a non-exhaustive list of how a person may practise their belief:¹⁵¹

- ▶ holding and changing a belief;¹⁵²
- ▶ worship, prayer or meditation;¹⁵³
- ▶ observing a specific dietary requirement;¹⁵⁴
- ▶ celebrating and observing key fasts, festivals or holy periods.

It is helpful to demonstrate how those operating places of detention may be able to facilitate persons' ability to practise their beliefs, subject to legally justified interferences¹⁵⁵ (for example, if their behaviour amounts to harassment, threats or other criminalised acts¹⁵⁶):

- ▶ ensure detained persons can register their faith so personnel are aware of their specific beliefs and needs;
- ▶ respect and facilitate detained persons' specific faith requirements regarding their dress and diet;¹⁵⁷

- ▶ protect religious objects and/or artefacts from destruction or removal;¹⁵⁸
- ▶ allow the performance of religious rites, worship, prayer and meditation in accordance with the said belief,¹⁵⁹ and facilitate ritual washing where required by the belief;
- ▶ provide suitable spaces for worship, prayer and meditation;¹⁶⁰
- ▶ allow the organisation of or participation in religious services or ceremonies;¹⁶¹
- ▶ where regimes in the place of detention (such as legal or family visits, events or educational services) coincide with worship, prayer, meditation or key fasts and holy periods, make suitable arrangements to ensure such activities can still take place alongside the practices;¹⁶²
- ▶ protect detained persons from assault, humiliation or threats, including religious, racial, gender-based or sexually motivated abuse or violence.¹⁶³

4.4. Leisure and recreational activities

To protect and promote the well-being of detained persons, it is important to ensure they have the opportunity and facilities to engage in leisure and recreational activities for free.¹⁶⁴ This will enable detained persons to keep busy, develop their skills and knowledge, exercise and improve their fitness, and socialise.

These activities should be made available regardless of the length of a person's detention, noting that the longer the period of detention, the more developed the activities should be.¹⁶⁵ There is a wide range of activities and facilities that may be offered to detained persons, for example:

- ▶ sports (gym, indoor and outdoor exercise, group sports, etc.);
- ▶ socio-cultural pursuits (arts and crafts, music, reading, drama, etc.);
- ▶ use of outdoor spaces with fresh air, natural light¹⁶⁶ and adequate means of shelter for persons to shield from bad weather or seek shade from the sun;¹⁶⁷
- ▶ board games and cards;
- ▶ access to purposeful activities such as language classes, IT/computer classes, gardening, arts and crafts, music, cookery skills and "cultural kitchens", or reading lessons;
- ▶ access to a television,¹⁶⁸ radio,¹⁶⁹ computer and, where possible, the internet,¹⁷⁰ newspapers and books;¹⁷¹
- ▶ access to a personal mobile phone in line with good order and security considerations, and the provision of a sufficient number of community

phones commensurate with the number of detained persons, with compatible charging devices to allow those in detention to communicate with whom they choose.

4.5. Sanitation and hygiene

To ensure that all persons in detention are treated humanely and with dignity and their welfare is not undermined, it is important to guarantee their access to basic personal and dental hygiene.¹⁷² To achieve this, detained persons should be provided with basic toiletries on a regular basis for free,¹⁷³ so they have the resources to maintain their personal hygiene and sanitation.¹⁷⁴

If a person is detained for over 24 hours, providing them with a basic sanitary kit for free, and at adequate intervals to ensure depleted items are restocked, will help to ensure that their access to such resources is consistently maintained.¹⁷⁵ Depending on the gender, age or individual needs of a detained person, a kit should include adequate quantities of sanitary items, such as:¹⁷⁶

- ▶ toilet paper or access to water according to the context and cultural considerations;
- ▶ soap;
- ▶ shampoo;
- ▶ toothpaste and a toothbrush;
- ▶ sanitary towels;
- ▶ shaving utensils (in line with any justified order and security reasons);
- ▶ clean and dry towels.

To maintain their daily hygiene and sanitation, detained persons will also need to have free and regular access to adequate sanitary facilities (shower, sink and toilet). This can be guaranteed by ensuring the provision of:

- ▶ free and regular access to showers;¹⁷⁷
- ▶ free access to toilets at any time,¹⁷⁸ including during the night,¹⁷⁹ and without undue delay;¹⁸⁰
- ▶ washing facilities with hot and cold water;¹⁸¹
- ▶ sanitary facilities in a good state of repair,¹⁸² and safe to use,¹⁸³ for example, wash basins, sinks, taps, etc;
- ▶ separate showers¹⁸⁴ and toilets with doors for privacy,¹⁸⁵ which are separate for men and women;
- ▶ individual showers and enough space to change in private out of sight of other people;

- ▶ toilets built with adequate plumbing;¹⁸⁶
- ▶ a sufficient number of toilets, showers and wash basins commensurate with the number of detained persons sharing the facility;¹⁸⁷
- ▶ sanitary facilities that take into account the specific needs and vulnerabilities of people, being wheelchair accessible, for example.

In addition to the measures above, detained persons require additional resources and services to keep their living environments clean and sanitised. At a minimum, these needs can be met by taking the following steps:

- ▶ providing persons with basic equipment and items to wash and dry their clothes;¹⁸⁸
- ▶ providing persons with the necessary products and equipment to keep their accommodation clean;
- ▶ disposing of rubbish and other waste materials regularly and safely;¹⁸⁹
- ▶ fumigating cells, bedding and food storage spaces when necessary and in accordance with national regulations.

4.6. Specific cases

As a rule, individuals with vulnerabilities should not be detained. In exceptional circumstances where vulnerable persons are detained as a matter of last resort, where there is no suitable alternative to detention and the legal test for detention is met taking into account all of the circumstances of the vulnerable individual, the detention facilities need to be adequately adapted to meet their specific needs so their well-being can be protected and promoted.¹⁹⁰

Conditions should take into account the particular needs and circumstances of the person concerned and appropriate solutions should be sought for each particular case. In cases where the detention conditions do not take into account the particular needs and circumstances of the person concerned, the Court has often considered detention conditions for persons in situations of vulnerability to have met the minimum level of severity required to reach the threshold of Article 3 of the Convention.¹⁹¹ The examples below do not provide an exhaustive list of all such individuals but demonstrate key examples of specific cases.

i. Children

In the specific context of administrative detention, international standards provide that, as a rule, the detention of children, whether separated or travelling with their family, should be avoided. This is because detaining a child

solely because of their lack of immigration or residence status does not protect or promote their best interests,¹⁹² which need to be treated as a primary consideration in any decision making.¹⁹³

Children have specific needs and rights compared to adults. For example, every child is entitled to the rights provided for by the UN Convention on the Rights of the Child, even if they are deprived of their liberty.¹⁹⁴ If a child is identified in a detention facility, this will trigger the need for specific considerations and actions. This is why it is crucial that personnel members identify children as quickly as possible and take immediate steps to safeguard them and prepare their transfer to an appropriate accommodation facility for children. This can be achieved by taking the following steps:

- ▶ if a person's age is uncertain but there is any reason to believe they are a child, they need to be presumed to be a child,¹⁹⁵ and afforded with the specific protections and rights children are entitled to, until they are found to be an adult through an age assessment procedure;¹⁹⁶
- ▶ when there are reasonable doubts about the age of a person, an age assessment needs to be arranged without delay, with the person's informed consent. Such age assessment needs to follow the correct procedure under national law, using a multidisciplinary approach, grounded in evidence-based knowledge, methods and practice, and which is child-centred;¹⁹⁷
- ▶ notify the person assessed as soon as possible, in a child-friendly manner, of the legal and evidence-based factual reasons for the age assessment decision;¹⁹⁸
- ▶ inform the person of their right to challenge the results of an age assessment, any time limits applicable and how to access those remedies.¹⁹⁹

To ensure that the child's welfare is being protected and promoted, it is important that the following guarantees are provided to the child pending an immediate review of their detention and safeguarding:

- ▶ a comprehensive assessment of children's needs should be carried out, specifically to understand if there are urgent needs, such as whether the child has been a victim of any form of exploitation, whether sexual, labour or criminal;
- ▶ child-friendly accommodation adapted to children's needs and age, separated from non-related adults, with appropriate conditions that ensure the protection of children;
- ▶ regular contact with and visits from the child's competent guardians²⁰⁰ and/or social workers;²⁰¹

- ▶ in accompanied child cases, avoid the separation of families unless it is in the child's best interests;²⁰²
- ▶ take steps to seek suitable non-custodial care arrangement alternatives.²⁰³

Further specific considerations and actions are needed in cases involving unaccompanied or separated children, including:

- ▶ taking prompt and appropriate steps to trace the child's family and reunite them,²⁰⁴
- ▶ avoiding the detention of the child in the adult population,²⁰⁵ and protecting them from any form of ill-treatment or abuse, including gender-based violence, human trafficking and contemporary forms of slavery;²⁰⁶
- ▶ avoiding the separation of siblings;
- ▶ conducting an initial well-being interview and assessment with a qualified professional in a language the child understands;
- ▶ providing prompt and free access to legal representation,²⁰⁷ and a competent guardian,²⁰⁸ who can promote their best interests;
- ▶ providing effective and accessible complaints mechanisms for children (through ombudspersons, for instance).

If a child is identified in detention, pending an immediate review of their detention and safeguarding, it is crucial to the child's well-being and development to ensure that during their detention they have free and unrestricted access to age-appropriate activities.²⁰⁹ These include providing adequate indoor and outdoor spaces and safely installed play equipment.²¹⁰

In addition, it is important to remember that the child's right to education needs to be guaranteed at all times so further risks to their development and welfare are mitigated.²¹¹ This can be most effectively promoted by guaranteeing the following basic safeguards:

- ▶ ensuring the child can continue their respective level of age-appropriate education,²¹²
- ▶ providing qualified teaching personnel to deliver educational services covering all necessary curriculums;²¹³
- ▶ providing free and adequate resources and facilities required for the child to continue their compulsory education (for example, stationery, a suitable learning and study space, study guides, books and an appropriately resourced children's library).

Toolbox/further reading

- ▶ HELP online courses [Refugee and Migrant Children](#)
- ▶ HELP online courses [Combating Trafficking in Human Beings](#)
- ▶ Council of Europe, “Promoting child-friendly approaches in the area of migration – Standards, guidance and current practices”, 2020
- ▶ Council of Europe, “How to convey child-friendly information to children in migration – A handbook for frontline professionals”, 2018
- ▶ EASO, All you need to know about age assessment, EUAA, 2022
- ▶ EASO Practical guide on family tracing, 2016
- ▶ UNHCR, 2021 UNHCR Best Interests Procedure Guidelines: Assessing and Determining the Best Interests of the Child, May 2021
- ▶ UNHCR, IOM, UNICEF, “Safety and dignity for refugee and migrant children: Recommendations for alternatives to detention and appropriate care arrangements in Europe”, July 2022
- ▶ Collection of CPT visit reports, public statements and standards

ii. Pregnant women and nursing mothers

As a rule, the detention of pregnant women and nursing mothers should be avoided.²¹⁴ Where a pregnant woman is identified in detention, their pre-natal and post-natal needs should be provided for while their detention is immediately reviewed.²¹⁵ For example, a pregnant woman will generally require, subject to a medical professional and licensed dietician’s specific advice:

- ▶ a balanced diet that includes high levels of protein, grains, fresh fruit and vegetables;²¹⁶
- ▶ non-food items as required (appropriate bedding and resting facilities, morning sickness remedies, maternity clothing, etc.);
- ▶ regular and ongoing access to a qualified medical practitioner to monitor and address their health and pregnancy needs.²¹⁷

If a pregnant woman wishes to seek an abortion, it is important that she has prompt access to adequate reproductive healthcare advice and treatment according to domestic legislation.²¹⁸

iii. Victims of human trafficking and contemporary forms of slavery

As a rule, administrative detention of victims of human trafficking and contemporary forms of slavery should be avoided,²¹⁹ noting the obligation of member states to respect the principle of non-punishment of such victims.²²⁰ The authorities need to identify and take reasonable steps to protect victims of human trafficking and contemporary forms of slavery (which include sexual, criminal and labour exploitation).²²¹ This applies at the point when the responsible body knows or should know that such a victim is in their jurisdiction. The responsible body needs to follow the respective policies and laws it is governed by to identify and refer the potential victim to the body responsible for assessing their situation and providing them with any eligible support and protection. The indicators that a person has been victimised vary, but may include some of the following:²²²

- ▶ a lack of travel and/or identity documents;
- ▶ physical injuries inconsistent with the claimed cause;²²³
- ▶ receipt of excessive phone calls and/or text messages;
- ▶ a reluctance to engage with authorities;
- ▶ a history of unexplained missing periods;
- ▶ a criminal history, including offences relating to theft, fraud, production, possession and/or supply of drugs, and offensive weapons;
- ▶ persons found in conditions of domestic servitude or forced marriage, brothels or forced prostitution, as well as undocumented workers.

Victims of human trafficking and contemporary forms of slavery should only be detained following an active consideration of alternatives to detention and if the legal test for lawful detention is satisfied. If such a victim is identified in a detention facility,²²⁴ personnel should ensure that their specific physical, psychological and welfare needs are protected pending a review of the decision or an order to detain.²²⁵ To this end, it is important that the following steps are taken in each and every case:

- ▶ prompt referral to the state's relevant and designated authority responsible for formally identifying victims of human trafficking, implementing a period of recovery and reflection, and providing assistance and protection to victims, taking into account their specific needs;²²⁶

- ▶ prompt assessment of any physical and/or mental health needs²²⁷ and appropriate provision of healthcare;²²⁸
- ▶ appropriate and secure accommodation and material assistance;²²⁹
- ▶ information about available support and, subject to the detained person's consent, prompt referral to accredited NGOs and support services.

iv. Victims of torture and ill-treatment and violence based on gender or sexual orientation

Places of administrative detention are likely to receive victims of torture and other ill-treatment and it is important that authorities and staff are aware of their obligations towards such individuals.²³⁰ Torture and ill-treatment include a wide range of acts which can involve physical, psychological and sexual abuse, for example:

- ▶ rape and sexual assault;²³¹
- ▶ female genital mutilation;²³²
- ▶ forced sterilisation/abortion;²³³
- ▶ violence committed in the name of "honour".²³⁴

If a potential victim of torture or other ill-treatment is identified, pending an immediate review of their suitability for detention, it is crucial that they are promptly assessed for any physical and/or mental health needs and provided with the appropriate treatment and support their identified condition requires.

v. Persons with disabilities

Because of the particular hardship for persons with disabilities (long-term physical, mental, intellectual or sensory impairments), living in a detention facility is, in general, difficult. Detention conditions should ensure the enjoyment or exercise of rights on an equal basis with others.²³⁵

The specific needs of detained persons with a disability might be the accessibility of outdoor and day rooms as well as sanitary facilities by wheelchair and adapted beds for persons in wheelchairs,²³⁶ the possibility to communicate with sign language²³⁷ and the possibility to move around for persons who are visually impaired.

Adaptations to detention facilities and assistance are warranted to ensure that persons with disabilities are on an equal basis with others, their autonomy is facilitated and their well-being and dignity is ensured.²³⁸ For example, the

ability for persons to move freely within the detention facility by wheelchair contributes to their autonomy, and in particular the ability to use the sanitary facilities independently ensures their dignity.²³⁹ Persons should not have to rely on other detained persons, but rather receive assistance, particularly in cases of emergency, provided by staff or qualified personnel.²⁴⁰ Moreover, particular attention should be paid to ensure that information about the detention, the internal rules and procedures is accessible for persons with disabilities.

Keep in mind

Authorities need to be able to identify and immediately respond to the needs of vulnerable individuals in detention. A non-exhaustive list of vulnerable detained persons includes:

- ▶ unaccompanied children, separated children, families with children, single parents with children;
- ▶ pregnant women or nursing mothers;
- ▶ victims of human trafficking and contemporary forms of slavery;
- ▶ victims of gender-based violence;
- ▶ victims of torture or other ill-treatment;
- ▶ older persons;
- ▶ individuals with physical or mental disabilities or illnesses;
- ▶ LGBTI persons.

It is crucial that when a vulnerable individual has been identified, pending an immediate review of their detention, the authorities:

- ▶ follow the relevant safeguarding and criminal investigation referral procedures as required by domestic and international law for the specific situation;
- ▶ medically examine the individual for any specific physical or mental healthcare needs and provide any required treatment and/or support.

Toolbox/further reading

- ▶ [EASO guidance on reception conditions: operational standards and indicators, 2016](#)
- ▶ [Human trafficking indicators, UN Office on Drugs and Crime](#)
- ▶ [General recommendation No. 38 \(2020\) on trafficking in women and girls in the context of global migration, United Nations Human Rights Office of the High Commissioner](#)
- ▶ [Guidance note on preventing and combatting trafficking in human beings for the purpose of labour exploitation, GRETA, 2021](#)
- ▶ [Assistance to victims of human trafficking, GRETA, 2019](#)
- ▶ [Trafficking in children, GRETA, 2018](#)
- ▶ [UN High Commissioner for Refugees \(UNHCR\), IOM-UNHCR, Framework document on developing standard operating procedures to facilitate the identification and protection of victims of trafficking, June 2020](#)

Chapter 5

HEALTHCARE

Every detained person has the right to the highest attainable standard of physical and mental health. Being in detention places a duty of care upon the state, which should address the health concerns of the detained person as part of their right to health. This requires not only that adequate healthcare services are provided, but also that the minimum standards of hygiene and sanitation are met, to avoid the spread of diseases, infections and other illnesses.

Detained persons rely on those operating the facility to look after their medical and healthcare needs. Healthcare refers to services which relate to the assessment, treatment and care of a person's mental and/or physical health.

Under the principle of equivalence of care, detained persons are entitled to medical treatment in conditions comparable to those enjoyed by patients in the outside community and without discrimination on grounds of their legal situation.²⁴¹

5.1. Access to adequate healthcare

Access to adequate healthcare entails prompt and accurate diagnosis and care, defined on a case-by-case basis under regular and systematic supervision,²⁴² a comprehensive therapeutic strategy and continuous treatment aimed at curing a person's disease or, where there is no cure, preventing their deterioration and stabilising and supporting their condition, rather than addressing them on a symptomatic basis.²⁴³ To guarantee persons' access to "adequate" healthcare,²⁴⁴ the competent authorities are encouraged to ensure the following minimum services for all detained persons free of charge:²⁴⁵

- ▶ medical screening upon arrival, conducted by medical practitioners,²⁴⁶ to detect and treat any health or mental illnesses or conditions, as well as injuries that may have been sustained during arrest or detention, or to identify any risks of contagious or transmissible diseases;

- ▶ medical screening whenever necessary during detention, and at the point of release or return;
- ▶ appropriate and good-quality medical care should be available, accessible and acceptable following the medical screening, including providing any related information necessary for the person concerned;
- ▶ emergency healthcare and necessary treatment for physical and psychological illnesses by medical practitioners;²⁴⁷
- ▶ access to appointments, assessments and treatments for conditions and/or symptoms that are not immediately life-threatening, such as sexual health issues, common colds, infections, insomnia, anxiety, etc;²⁴⁸
- ▶ access to qualified dentists, opticians and gynaecologists;²⁴⁹
- ▶ availability of medical aids, such as wheelchairs, crutches or white sticks;
- ▶ whenever required during screening for a medical complaint, appointment, assessment or treatment; a qualified free and impartial interpreter speaking a language the detained person understands.²⁵⁰

5.2. Healthcare services

The healthcare services in detention should always align with the general health administration of the state.²⁵¹ This requires that all the necessary medical services, including timely surgical procedures,²⁵² psychiatric healthcare²⁵³ and any necessary specialist treatments, are provided to detained persons²⁵⁴ to an appropriate and proper standard and, where necessary, at specialist hospitals.²⁵⁵

It is important for health practitioners to address the following:

- ▶ during medical examinations, all existing physical or mental illnesses and/or injuries, which include the suffering of withdrawal symptoms following drug or alcohol use and injuries relating to gender-based violence,²⁵⁶ and stress or illness resulting from the deprivation of liberty, need to be diagnosed;
- ▶ diagnoses need to be as prompt and as accurate as possible;²⁵⁷
- ▶ following a diagnosis, healthcare practitioners need to take all necessary steps to treat the identified illness and/or injury,²⁵⁸ aid recovery and/or prevent any avoidable deterioration;²⁵⁹
- ▶ treatment and recovery require consistent and competent implementation of a suitable treatment plan followed by an appropriate medical aftercare plan;²⁶⁰
- ▶ existing medical treatments need to continue to an adequate standard as needed;

- ▶ the medical file of a detained person should be available to medical practitioners in case of transfer;
- ▶ healthcare services should be provided in conditions that respect and maintain the decency, privacy, dignity and patient confidentiality of detained persons.

It is vital that detained persons are provided with the findings and/or results of their consultation, in a manner and language they understand, as should their lawyers, provided that the detained person fully consents to such a disclosure.²⁶¹ Where healthcare practitioners are concerned that a person is unable to fully communicate because of language barriers, a qualified interpreter or translator should be provided without undue delay.

Full information about medical treatment requires full and comprehensive information about the diagnosis and the purpose and nature of the proposed treatment as well as its potential consequences and the possible risks and side effects of undertaking that treatment or refusing it. The information should be sufficiently clear and understandable for the person concerned to fully assess the necessity of the treatment offered and to consent freely.²⁶² The person concerned should equally be able to refuse his or her consent to the proposed treatment freely, in the absence of any pressure from anyone.

Consent may take various forms; it may be express (verbal or written) or implied.

Exceptionally, in emergency situations, if the appropriate consent cannot be obtained for life-saving treatment, necessary medical treatment should be carried out irrespective of the person's will for the benefit of his or her health.²⁶³ Medical treatment in such situations is limited to medically necessary interventions which cannot be delayed and do not extend to non-emergency situations, such as those relating to reproductive health.²⁶⁴

To ensure that healthcare is provided in a transparent manner which will allow for practices and services to be properly monitored and reviewed, it is crucial that medical practitioners produce a contemporaneous and accurate note after every consultation, examination and course of treatment.²⁶⁵ This can be achieved by ensuring that the following factors are addressed in records:

- ▶ a complete account of objective medical findings following a competent and thorough examination;²⁶⁶
- ▶ an accurate account of the patient's complaints;
- ▶ the proposed treatment plan following the assessment;
- ▶ provision of consent forms.

5.3. Healthcare providers

An effective healthcare service in a detention facility can only be provided if the facility is staffed with a sufficient number of qualified medical practitioners. The duration and frequency of the presence of medical doctors can vary according to the number and needs of persons in detention and the frequency of new arrivals. If they are able to provide the necessary treatment, the presence of paramedics or nursing personnel can be sufficient. If healthcare is provided by paramedics or nursing personnel, regular oversight by medical doctors should be guaranteed. For cases of emergency, health practitioners should be available at any time of the day and night; otherwise, regular medical consultations can be limited to certain regular consultation hours.

Healthcare services can be provided by public or private bodies, such as private companies or non-governmental or international organisations. The important point is that health practitioners are professionally and deontologically independent (whether or not they are employees of the detention facilities) and base their decisions on the health needs of the persons in administrative detention.²⁶⁷ The independence of health practitioners needs to be respected and their recommendations be complied with by other personnel in the detention facility. It is important to ensure they are not held responsible for considering the financial and practical implications of necessary medical services as this could pose a conflict of interest.²⁶⁸

Therefore, it is important to consider the following necessary actions:

- ▶ employ at least one qualified general practitioner, and suitably trained healthcare personnel, to work in the detention facility;
- ▶ allow, where possible, persons to receive the assistance of a doctor of their own choosing, bearing in mind that in this situation the persons themselves may be required to incur the costs of this;²⁶⁹
- ▶ ensure access to a qualified medical practitioner at any time without delay for medical emergencies;²⁷⁰
- ▶ ensure any hospital or healthcare department in the detention facility is always adequately staffed and resourced to provide all patients with adequate and appropriate attention and treatment, including psychological treatment.

If a person requires specialist medical assessment, diagnostics²⁷¹ and/or treatment, they will need to be referred and/or transferred to a specialist or civilian hospital if the equivalent is unavailable in detention.²⁷² To this end, detention facilities need to be adequately staffed to ensure necessary transfers to hospitals can take place without delay.²⁷³

5.4. Addressing specific situations and needs

In detention facilities, some persons may present special health needs or specific vulnerabilities. Where such individuals are identified, pending an immediate review of their detention, their needs should be a primary concern and will require:²⁷⁴

- ▶ consideration of whether adequate medical care can be provided for a person with specific health needs in detention;²⁷⁵
- ▶ the provision of healthcare to be appropriate to any gender-specific needs. For example, same-sex healthcare personnel should be made available, if possible, at a detained person's request;²⁷⁶
- ▶ regular monitoring;
- ▶ a guarantee that adequate medical support meets the particular vulnerability needs of the detained person.²⁷⁷

i. Persons with disabilities

If a person with a disability is identified in detention, the priority should be to immediately review their suitability for detention in light of their health needs.²⁷⁸ In the interim period, the following measures should be provided to ensure compliance with international minimum standards in the context of healthcare in a detention facility:

- ▶ providing appropriate care and medical treatment;²⁷⁹
- ▶ ensuring persons undergo prompt medical screening and assessment upon arrival at the detention facility,²⁸⁰ with regular check-ups as required thereafter;
- ▶ ensuring that the special measures in place and the daily provision of support are only provided by medical practitioners and not by fellow detained persons or unqualified personnel.²⁸¹

Persons with mental health needs or disabilities²⁸² and those with self-harm and/or suicidal tendencies need to receive prompt and consistent specialist medical attention,²⁸³ and have their access to adequate counselling services guaranteed,²⁸⁴ pending a review of their detention. The healthcare of persons with mental health needs and self-harm and/suicidal tendencies²⁸⁵ can be improved by considering the following questions.

- ▶ Are there sufficient numbers of staff trained in mental health, including issues related to gender-based violence?
- ▶ Are the systems and procedures for assessing, identifying and monitoring persons with these specific needs sufficient?²⁸⁶

- ▶ Where detained persons with mental health needs are not able to explain their symptoms and feelings coherently, are personnel trained to identify and appropriately respond to such situations?²⁸⁷
- ▶ Is there continuity of care where the person was previously being treated in the outside community?
- ▶ Are persons receiving adequate support, attention and medical assistance?
- ▶ Is there a suicide prevention and self-harm management strategy?
- ▶ Are persons given free access to counselling and in-person and/or telephone support lines?
- ▶ Are emergency response kits available throughout the detention facility and is there an adequate supply? Do personnel know how to use this equipment through training?
- ▶ Is there a multidisciplinary approach worked out for the detained persons? (Co-ordination between different teams: social, psychological, medical, security, management, etc.).
- ▶ Do detained persons have access to specialist treatment, such as psychiatric treatment, if required, in specialist institutions or civilian hospitals, as appropriate?

ii. Older persons

Older persons are likely to present with specific health needs, which renders them even more vulnerable in a detention facility. Pending an immediate review of their detention based on their vulnerability, persons of advanced age require appropriate and gender-sensitive healthcare services considering their age and associated medical needs.²⁸⁸

iii. Children

Children should have access to specific healthcare services that take into account the specific needs of children, their age and gender. Provision of child-specific healthcare services entails access to paediatricians, health specialists and specialists in social work and the development of children. Children should be informed in a child-friendly and age-appropriate manner about any diagnosis and proposed treatment. They should be able to give informed consent before any treatment. If they are not competent to provide informed consent, arrangements should be made for consent to be obtained by their parents, or in the case of separated or unaccompanied children, by a legal guardian.²⁸⁹

iv. Pregnant and breastfeeding women

Pregnant and breastfeeding women need access to adequate and specialist healthcare services such as appropriate and adequate pre-natal and post-natal healthcare provided and monitored by qualified health practitioners (midwives, general practitioners, obstetricians, paediatricians, sonographers, neonatal nurses, etc.).²⁹⁰ These services need to be comprehensive and should provide sufficient advice on women's overall health, including their dietary needs.²⁹¹

v. Victims of sexual or gender-based violence, torture or other ill-treatment

Victims of sexual or gender-based violence, torture or other forms of ill-treatment – all of which can include both male and female victims – need access to appropriate specialist health services pending an immediate review of their detention. These may include:

- ▶ treatment of any psychological and/or physical injury,²⁹² including sexually transmitted infections and/or diseases, and sexual healthcare;
- ▶ prompt forensic medical assessment and evidence gathering in cases of alleged sexual violence, pending an immediate review of detention;
- ▶ trauma treatment and mental health counselling;²⁹³
- ▶ suicide and self-harm prevention.

vi. Victims of human trafficking and contemporary forms of slavery

Victims of human trafficking and contemporary forms of slavery may present with specific health needs which require additional healthcare considerations pending an immediate review of their detention. These may include:

- ▶ prompt assessment of any physical and/or mental health needs;²⁹⁴
- ▶ appropriate provision of healthcare,²⁹⁵ including mental healthcare, trauma care, sexual and reproductive healthcare, immediate medical support and the collection of forensic medical evidence in cases of rape and sexual assault, counselling and advice.²⁹⁶

vii. Persons in prolonged detention

Persons detained for a prolonged period²⁹⁷ are particularly vulnerable to developing physical and/or psychological health problems or to the exacerbation of any pre-existing illnesses.²⁹⁸ The healthcare provided should take into account the particular situation of the detained persons and be appropriate to their respective needs.

viii. Persons in medical isolation and quarantine

With the aim of preventing the transmission of communicable or contagious diseases (such as Covid-19) to other detained persons, competent authorities may consider physical separation of the following persons:

- ▶ those who have confirmed communicable or contagious diseases (medical isolation);
- ▶ those who are suspected of or are at risk of having communicable or contagious diseases either because of contact with persons who have such diseases or because of the general health situation (quarantine).

A detained person can be placed in medical isolation when the communicable or contagious disease that he/she suffers or might suffer from is confirmed by a health practitioner. A person can be placed in quarantine either upon their arrival in the detention facility (because of the general health situation in a particular territory) or while continuing detention (in case of close contact with persons who have or are suspected to have communicable or contagious diseases).

In both cases, competent authorities should keep in mind that unlike isolation used as a discipline measure, medical isolation and quarantine are not of a punitive nature and should serve the sole purpose of protecting a person's health. When medical isolation and quarantine applies, affected persons should receive comprehensive information on their purpose and duration, in a language they understand. Only rights whose enjoyment is incompatible with the nature of a disease can be limited in relation to the persons held in isolation or quarantine (such as family visits).

While it is legitimate and reasonable to suspend non-essential activities, the fundamental rights of detained persons who are in isolation or in quarantine should be fully respected. Further, any restrictions on contact with the outside world, including visits, should be compensated for by increased access to alternative means of communication (such as telephone or internet communication).²⁹⁹

It is of paramount importance that the duration of the medical isolation and quarantine does not exceed the time frames inherent for respective diseases. It should be borne in mind that:

- ▶ a person held in medical isolation should be released immediately after their full recovery is confirmed by a qualified medical practitioner;
- ▶ a person held in quarantine should be released if he/she does not develop relevant symptoms in a respective period specific to a suspected disease.

While being held in medical isolation or quarantine, persons should be subject to regular medical and psychological checks with the aim of determining their health conditions. In cases where a person in quarantine develops symptoms of a communicable or contagious disease, he/she should be placed in isolation without undue delay.

Depending on the nature of a disease, isolated persons may be kept in solitary confinement, whereas this might not always be the case in relation to quarantine. When persons in quarantine are held together, authorities should ensure that:

- ▶ housing spaces are well ventilated and sufficiently separated from non-quarantine spaces;
- ▶ entrance to a quarantine space is limited to authorised personnel and accompanied by relevant safeguards (such as the wearing of masks, gloves or special suits);
- ▶ housing spaces are not overcrowded and respect social distancing.

Persons in isolation or quarantine might be subject to compulsory tests before their release depending on the nature of the confirmed or suspected disease.

ix. Persons on hunger strike

Hunger strike is a common phenomenon in a situation where people are deprived of their liberty. Hunger strikes can be used by the persons deprived of their liberty for achieving various goals, such as release or protesting against the actions or decisions of competent authorities.

Competent authorities have a duty of care with respect to persons in their custody. This duty of care includes the protection of a detained person's life, including the prevention of suicide and of any other act by the person concerned likely to cause death or irreversible physical damage. A detained person who has started a hunger strike should be informed of their rights and the possible consequences of the hunger strike for their health and should be subject to regular medical and psychological checks with the aim of determining their health condition.

A decision to feed against the will of a detained person on hunger strike can in principle be justified in order to prevent the person from suffering irreversible physical damage or death.³⁰⁰ Intervention in case of hunger strikes, particularly in the form of force-feeding, should not aim at discouraging the striker from continuing their protest. The management of detained persons on hunger (or thirst) strike and the issue of force-feeding are very sensitive issues that raise many fundamental questions, in particular of a legal, medical, deontological

and ethical nature.³⁰¹ Accordingly, personnel dealing with persons deprived of their liberty should have the know-how and skills to deal with hunger strikes.

Force-feeding when legally justified should be provided in a manner which fully respects human dignity and with the presence of a doctor or other medical expert. The methods used to execute force-feeding should not be unnecessarily painful and should be applied with skill and minimum force. More generally, force-feeding should infringe the physical integrity of the hunger striker as little as possible. Any resort to physical constraint should be strictly limited to that which is necessary to ensure the execution of the force-feeding. Such constraint should be handled as a medical matter.³⁰² Methods such as handcuffing the striker or causing severe pain to administer food should be unambiguously avoided.

Placing a person on hunger (or thirst) strike in a segregation or isolation cell should not be systematic and should never be decided as a punitive measure. Any such placement should only be envisaged with the clear purpose of better monitoring the person concerned³⁰³ and should not be accompanied by measures of a punitive character (such as placing the person in a cell devoid of any furniture or equipment or heating or forcing them to wear rip-proof clothing). The person should benefit from a daily regime as normal as possible (including access to shower facilities, outdoor exercise and recreation).³⁰⁴

5.5. Health records and confidentiality

Medical confidentiality plays a vital role in the delivery of competent healthcare services. All medical patients have a right to have their medical consultations, assessments and treatments in private and in full confidence. This standard applies in detention facilities, requiring that all persons in detention have their medical confidentiality respected³⁰⁵ in a manner consistent with patients in the community.³⁰⁶ Steps need to be taken to ensure that all patients have their medical confidentiality observed. These include the following.

- ▶ Non-healthcare professionals should not be present or within hearing or seeing distance during a medical consultation and/or examination.
- ▶ If, for exceptional reasons, the presence of a staff member is needed, for example for security, that staff member should be of the same sex and the process at all times needs to ensure the patient's medical confidentiality, privacy and dignity (it may take place within sight of a member of security staff, but out of earshot).

- ▶ Translators and interpreters may be present during the consultation or examination only upon the request of the health practitioners or the patient.
- ▶ Patients' digital and/or physical medical files need to be stored in a safe and secure place and should not be accessible by non-healthcare personnel.³⁰⁷
- ▶ Patients should have access upon request to their medical files.
- ▶ Patients' medical files can only be sent to a third party with their full and informed consent.³⁰⁸
- ▶ In case of a medical emergency (and imminent threat of harm), non-healthcare personnel can be allowed to access medical files (for example, in cases concerning epilepsy or haemophilia) while respecting confidentiality.
- ▶ In cases where a person is transferred to another detention facility, medical confidentiality should be upheld.
- ▶ Upon release or the execution of a removal order, the person concerned should be given a copy of a record of his or her medical file.
- ▶ International, European and national public health recommendations per any specific epidemic/pandemic are to be followed.

5.6. Documenting and reporting allegations, suspicions and medical evidence of ill-treatment

Healthcare professionals in detention facilities are very likely to encounter persons who have suffered from ill-treatment of some sort. This may include human trafficking and contemporary forms of slavery, gender or sexual-based violence, or ill-treatment and/or torture, whether before or during their detention.³⁰⁹ In these situations, it is very important and in the patient's best interests that medical professionals identify any indicators of ill-treatment, whether they deem them to have occurred before or during a person's administrative detention.

Personnel should remember that sometimes a person may not even know they are a victim of ill-treatment – or they may be in denial about being a victim. This might be because of gender-related, societal, cultural and/or religious factors which might affect the person's attitude to considering themselves a victim, or because of their fears of the potential harm they may be at risk of if they report or complain about their circumstances.

By giving serious consideration to whether any indicators of torture and/or other ill-treatment are present, medical professionals can increase their likelihood of identifying victims. Indicators of these vulnerabilities might include:

- ▶ self-declaration;
- ▶ physical injury, including old and healed scars and marks;
- ▶ physical injury that does not correspond with the person's explanation;
- ▶ appearance of distress, anxiety, reservations or fear;
- ▶ mental health presentations;
- ▶ self-harm and/or suicide attempts;
- ▶ tendencies to self-harm and/or attempt suicide;
- ▶ reluctance to engage with healthcare professionals or explain their presentation – denial of torture and/or ill-treatment may in some instances also be a positive indicator;
- ▶ history of unexplained missing periods;
- ▶ history of criminal offences relating to theft, identity documents, drugs or carrying offensive weapons.

If a health practitioner has concerns that their patient may be a victim of ill-treatment of any kind, they need to ensure that this is promptly, fully and accurately recorded and reported to the relevant authorities so that all appropriate steps are taken without delay to safeguard the detained person.³¹⁰

5.7. Public health

During an epidemic or pandemic, healthcare in detention needs to be tailored to ensure that the spread of infectious diseases and/or illness is stopped, contained and mitigated and that the risk of a further spread is prevented.³¹¹ It is key that any measures that are taken to meet these obligations are justified in law and applied in a non-discriminatory way.³¹² Subject to the specific needs of the public health situation in question, suitable measures and resources supplied free of charge might include:

- ▶ equal access to information;³¹³
- ▶ personal protection equipment;³¹⁴
- ▶ hygiene products such as soap, detergents and washing powder;³¹⁵
- ▶ screening processes and regular testing with the consent of the detained persons or in compliance with domestic legislation and in respect of their medical confidentiality;³¹⁶

- ▶ isolation of persons, in conditions that meet international law standards,³¹⁷ suspected of carrying infectious and/or contagious conditions for the period of infection;
- ▶ prompt, adequate and free treatment of such persons by qualified medical professionals;
- ▶ available approved vaccines to any person wishing to be vaccinated, prioritising those identified by healthcare personnel as being most at risk;³¹⁸
- ▶ sufficient space to observe any social distancing rules.³¹⁹

In such situations, detained persons who are particularly vulnerable to a medical condition, for example due to their age or a pre-existing illness or disease, should be adequately shielded from contraction.³²⁰ They will need access to prompt and adequate healthcare in the event they contract the condition.³²¹

Where competent authorities resort to isolating persons in response to a public health situation such as an epidemic or pandemic, and with justification in law,³²² it is important that minimum international standards of detention are observed and their detention does not, in effect, become solitary confinement or constitute any form of ill-treatment.³²³ In this context, it is vital to note that a person should not be isolated merely because they carry HIV.

Keep in mind

Competent authorities should perform medical examinations in accordance with a clear procedure, established in advance, and all health practitioners should be duly trained therein. Some of the critical points concerning such examinations are:

- ▶ the medical examinations should be carried out by health practitioners;
- ▶ where possible, female doctors/nurses should be available for women;
- ▶ the persons concerned should be duly informed about the procedure, the methods and the reasons for the medical examination;
- ▶ the person concerned should have the right to express their opinions and views on any aspect related to the medical examination;
- ▶ the medical examination should adopt the least intrusive methods for obtaining the necessary medical information;
- ▶ the methods for medical examination should be respectful of the particular gender and sex-related, age, ethnic, cultural, religious or other characteristics of the person undergoing the examination;

- ▶ the result of the medical examination should be submitted to the person concerned as soon as possible; the result may also be submitted to the competent authority only if there is a legitimate reason to do so or with the consent of the detained person;
- ▶ the data obtained through the medical examination should be preserved, considered as confidential information and duly protected;
- ▶ the persons concerned should have the right to an effective remedy for any claim they might have in relation to the medical examination, and they should be duly informed of such a right;
- ▶ medical examinations should be free of charge; however, if the concerned individual requests supplementary examinations from an external medical practitioner, these might be at his or her own cost.

Toolbox/further reading

- ▶ Office of the United Nations High Commissioner for Human Rights (OHCHR), [Detention Guidance: Administrative Detention of Migrants](#), 2006
- ▶ UN High Commissioner for Refugees (UNHCR), [Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention](#), 2012
- ▶ UNHCR, [International Detention Coalition: Vulnerability Screening Tool: a tool for asylum and migration systems](#), 2016
- ▶ Office of the United Nations High Commissioner for Human Rights (OHCHR), [COVID-19 Guidance: OHCHR and COVID-19](#)
- ▶ [Collection of CPT visit reports, public statements and standards](#)
- ▶ World Health Organization: [Addressing the health challenges in immigration detention, and alternatives to detention: a country implementation guide](#), 2022

Chapter 6

PERSONNEL

The efficacy and professionalism of personnel should be improved and ensured through operating fair, transparent and consistent recruitment processes, training schedules and disciplinary and complaint systems.

Personnel should be allowed to communicate any concerns or needs they have about work pressures to their employer without risking their job security. This may be achieved by implementing a suitable monitoring and evaluation policy addressing personnel well-being issues; setting indicators and providing for appropriate procedures such as regular personnel appraisals, feedback opportunities during employment, exit interviews at the end of employment and having in place support and/or referral services where needed, for example following an occupational health review.

6.1. Personnel and training

i. Recruitment and selection

All personnel working in detention facilities need to be selected carefully and in adequate numbers, so they are individually and collectively able to operate the facility in accordance with the international minimum standards on administrative detention conditions and the treatment of detained persons.³²⁴

Personnel working in administrative detention facilities should be carefully selected bearing in mind the specific context of their work in a non-custodial and non-punitive environment. Having criteria for candidates in selection processes will help to ensure that a consistent and appropriate assessment standard is always applied so that the most suitable candidates are recruited.³²⁵

These criteria may include, but are not limited to:

- ▶ no criminal record and demonstration of integrity;
- ▶ language skills (being able to communicate effectively with other personnel members);³²⁶
- ▶ interpersonal skills and appropriate personality;³²⁷
- ▶ culturally sensitive communication skills;³²⁸
- ▶ experience of working with people from diverse cultural or religious backgrounds;
- ▶ ability to work effectively in pressurised environments;
- ▶ balance in the representation of male and female candidates;³²⁹
- ▶ availability of same-sex personnel with an appropriate gender ratio of personnel to the detained population.

Sufficient personnel should be working at all times (including at night) to properly ensure the rights of detained persons. Depending on whether there are men and women detained at the detention facility, male and female personnel should be, where possible, present at all times (including at night) in a sufficient number in order to meet the specific needs of all persons in administrative detention.³³⁰

ii. Training

To ensure that all personnel are fully aware of and able to discharge all their duties while working in a detention facility, it is important that they undergo training continuously throughout their employment to be familiarised on the following subject matters:

- ▶ an overview of the national and international instruments relevant to their role, detention conditions and the treatment of detained persons;³³¹
- ▶ code of conduct;
- ▶ duties of all personnel members, including respect for human rights in the detention context;
- ▶ data and information protection laws,³³² including confidentiality rules;³³³
- ▶ first aid;
- ▶ health and safety procedures;
- ▶ crisis management strategies, including emergency procedures;
- ▶ whistleblowing, complaints and personnel grievance procedures;

- ▶ detection of possible symptoms of stress, physical and/or mental health, and risks of self-harm and suicide; and the necessary follow-up actions, such as referrals to specialists and other support services;³³⁴
- ▶ specific needs of vulnerable groups;
- ▶ cultural awareness, religious tolerance and sensitivity;
- ▶ interpersonal³³⁵ and intercultural communication;³³⁶
- ▶ policies and rules relating to maintaining good order, security, discipline and means of restraint; including the consequences of non-compliance with such rules or policies;³³⁷
- ▶ understanding of diversity issues, including social, cultural, linguistic and religious diversity, matters related to violence against women, trafficking in human beings, gender equality and intercultural issues,³³⁸ and the special needs of vulnerable people.

To ensure that the knowledge and skills of the personnel are updated and refreshed, it is important to provide them with free non-mandatory training courses as regularly as possible. Relevant personnel, in particular first-line personnel in direct contact with detained persons, healthcare personnel and personnel with specific duties and responsibilities in relation to vulnerable persons, should also receive training on how to screen and identify vulnerable persons and their needs, and on referring them to appropriate assistance services. Other personnel, such as persons not in direct contact with detained persons, do not necessarily need to receive specific training on identifying vulnerable groups and may attend such training courses on a voluntary basis.

iii. Professional obligations

The duties, codes of conduct and functions of personnel members in detention facilities will vary according to their specific posts and any professional and/or regulatory obligations they may bear. In addition to any other applicable professional, regulatory and/or contractual obligations personnel members will already be subject to, all members need to ensure they meet the following uniform minimum standards:³³⁹

- ▶ providing a duty of care to all detained persons;
- ▶ fully protecting, promoting and respecting all detained persons' human rights – requiring that detention conditions and the treatment of persons align with international minimum standards;³⁴⁰
- ▶ treating all detained persons with respect;³⁴¹
- ▶ neither directly nor indirectly promoting, inflicting or tolerating torture or ill-treatment or gender-based violence of any kind against any detained

person by any person, whether a personnel member or a fellow detained person, under any circumstances,³⁴² and challenging and reporting to the authorities any such behaviour;³⁴³

- ▶ respecting plurality and diversity, not discriminating against any detained person based on any protected characteristic they may possess,³⁴⁴ and challenging and reporting to the authorities any such behaviour;³⁴⁵
- ▶ taking full account of the need to challenge and combat all forms of intolerance (racism, sexism, religious intolerance, xenophobia, homophobia and transphobia) as well as promoting gender sensitivity and preventing sexual and gender-based violence; in conformity with the confidentiality rules enshrined either in national legislation or deriving from international standards, maintaining the confidentiality of the information they obtain owing to their official capacity;
- ▶ not engaging in any inappropriate personnel-detainee relationships or dynamics, for example, sexual relations, exploitation of any kind or manipulative or abusive behaviours.

If a member of personnel has reason to believe that a detained person has been, or is about to be, the victim of an act of torture or other forms of ill-treatment, or of any other forms of violence, the matter should be immediately reported to the competent authorities. For the authorities to investigate allegations, personnel should be encouraged to report suspected matters immediately. A legal and administrative framework should be set up for personnel to report relevant incidents. Personnel should be able to report incidents and have the confidentiality of their identity maintained.

Competent authorities should ensure that codes of conduct are published and available to all personnel members and that they are read and understood prior to the commencement of any role. Competent authorities should require that all personnel contracts and/or letters of engagement include terms that require compliance with all the above duties and codes of conduct.³⁴⁶

6.2. Emergency management

In accordance with Article 2 of the Convention and other relevant international instruments, competent authorities are under obligation to protect the lives of persons within their exclusive control as in the case of detained persons. To discharge the obligation, states must ensure the safety of detained persons in the event of an emergency. To that end, appropriate procedures should be in place to handle emergency cases. Detention facilities and the personnel responsible for their daily management and operation need to be

fully able and resourced to deal with all types of emergencies at any given time. There are different types of emergencies which should be anticipated and planned for. The different types of emergencies, which will present with different levels, include:

- ▶ severe weather;
- ▶ fire and explosions;
- ▶ hazardous materials;
- ▶ pandemic/epidemic/identification of infectious disease;
- ▶ disorder/riots;
- ▶ hostage-taking;
- ▶ accidents to personnel or detained persons;
- ▶ suicide attempts;
- ▶ injurious incidents;
- ▶ deaths.

Implementing emergency procedures in line with national and international laws will help to promote the safety and security of all persons, for example by:

- ▶ planning and reviewing operational and contingency plans appropriate to the type and level of the emergency, in consultation with relevant professionals;
- ▶ providing all persons with the opportunity to report an emergency incident at any time during their detention;³⁴⁷
- ▶ ensuring all persons are informed about how they can report incidents, and have the resources to do so;³⁴⁸
- ▶ conducting risk assessments in line with domestic and international law;
- ▶ ensuring personnel trained in first aid are clearly identifiable as such (by wearing first aid badges or displaying photographs and names of first aid-qualified personnel throughout the detention facility);
- ▶ ensuring first aid kits are available in sufficient numbers in all populated areas;
- ▶ ensuring fire safety equipment is safely installed, in working order and regularly checked and, where needed, promptly serviced (checking of smoke/heat sensors and alarms, fire extinguishers and sprinklers);
- ▶ ensuring emergency exit routes and evacuation areas are adequately indicated;
- ▶ ensuring security measure registers are completed and updated.

Keep in mind

It is important to ensure that people working in environments where there are detained persons are fully trained in their respective duties and responsibilities, health and safety and safeguarding procedures, for example by:

- ▶ fair and appropriate employment and contracting-out selection processes to ensure the most suitable candidates with relevant skills, experience and knowledge are chosen for the specific role;
- ▶ completion of all relevant compulsory training and continued development specific to the individual's role and responsibilities;
- ▶ encouragement of non-compulsory training on an ongoing basis where possible.

Toolbox/further reading

- ▶ [EASO guidance on contingency planning in the context of reception, 2018](#)
- ▶ [Practical guide on the welfare of asylum and reception staff](#)
- ▶ [Monitoring Immigration Detention – Practical Manual](#)
- ▶ [Collection of CPT visit reports, public statements and standards](#)

Chapter 7

MAINTENANCE OF GOOD ORDER

Drawing on the main international and European standards, this section proposes key principles, benchmarks, practical considerations and general guidance on specific aspects related to maintenance of good order in immigration detention facilities. This chapter is targeted at all personnel working closely with persons held in detention facilities.

7.1. Security, discipline, isolation and means of restraint

Detention facilities need to operate in such a way that protects and promotes the safety and security of all detained persons.³⁴⁹ This requires that a system of good order is maintained through guaranteeing minimum standards of detention conditions that respect human rights and dignity,³⁵⁰ regular and effective risk assessments, safety and security reporting procedures that are freely accessible to detained persons and personnel at any time³⁵¹ and, where necessary, proportionate security and disciplinary measures based on risk assessments.³⁵²

i. Security and discipline

Disciplinary rules should have as their sole purpose the maintenance of good order within the detention facility and the protection of the safety of the persons in administrative detention as well as the personnel in the detention facility and third persons.³⁵³ Non-compliance with these rules should be resolved in the first instance by conciliation or mediation, as appropriate. For the purposes of the guide, disciplinary rules should be understood as rules concerning the conduct of persons in administrative detention and imposing certain measures in response to any violation of such disciplinary rules. The disciplinary rules should be clear and laid down in writing, precisely defining all disciplinary offences and the possible consequences as well as the procedure for imposing disciplinary measures.

International minimum standards require that any security and/or disciplinary measures applied are only used as a last resort, and for the minimum period necessary to ensure safety and security within a detention facility.³⁵⁴

Detained persons should be informed about any security and/or disciplinary rules orally and handed a written copy of the rules in a language and manner the person concerned understands.³⁵⁵ It should be clear and foreseeable for detained persons what conduct may lead to security and/or disciplinary measures and what rights the person concerned has in a procedure to impose disciplinary measures.

Any detained person subject to a disciplinary process is entitled to a due process as provided for under international law. To ensure this right is not undermined, the following safeguards are needed.

- ▶ The disciplinary measures and procedures for their application should be clearly established.³⁵⁶ All disciplinary procedures should be prescribed by law;³⁵⁷ this includes the types and lengths of any disciplinary measures, the responsible decision maker and relevant review and/or appellate processes.³⁵⁸
- ▶ All detained persons accused of a disciplinary offence should be informed, in a language and manner they understand, and in detail, of the relevant charge and reasons for it, and should be offered the appropriate and necessary safeguards to prepare and present their defence should they so wish.³⁵⁹
- ▶ Any disciplinary measure imposed should be proportionate to the disciplinary offence considering all of the circumstances of the case, including the detained person's personal circumstances. Proportionality of a disciplinary measure means that the measure imposed is a direct consequence of the breach of the disciplinary rules and is commensurate with the breach committed.³⁶⁰
- ▶ Disciplinary measures should never be arbitrary or excessive both in terms of length and scope.³⁶¹
- ▶ Disciplinary measures should never constitute any form of torture or ill-treatment.
- ▶ Detained persons should be afforded the right to lodge a complaint and the right to appeal against disciplinary measures to a competent and independent authority.³⁶² The authority should be personally and institutionally independent, and in a position to overturn the measure.

ii. Isolation

Generally, the use of isolation and solitary confinement should be avoided,³⁶³ unless strictly necessary as a last resort.³⁶⁴ The duration of any such isolation or solitary confinement should be time-specific³⁶⁵ and for the shortest period deemed necessary³⁶⁶ to achieve a legitimate safety or security aim, while ensuring that the conditions never meet a situation of complete sensory and social isolation.³⁶⁷

Detained persons should never be subject to this oppressive and punitive measure unless it is justified on order and security grounds after a risk assessment and carried out in accordance with international law standards. Where such a measure is used, minimum safeguards should be in place to ensure the well-being of the detained person.³⁶⁸ These guarantees include:³⁶⁹

- ▶ keeping a prompt, full and accurate record of isolation and/or solitary confinement, including the legal basis, conditions, duration and personnel involved;³⁷⁰
- ▶ the availability of a doctor and other medical practitioners who can monitor the physical and mental conditions and provide adequate medical assessment and treatment, without delay;³⁷¹
- ▶ medical examinations before, during and after the isolation period;³⁷²
- ▶ at least one hour of outdoor exercise a day;³⁷³
- ▶ free and confidential access to internal and external complaints mechanisms.³⁷⁴

iii. Means of restraint

Force should not be used on detained persons except where necessary³⁷⁵ for self-defence or for lawful order purposes.³⁷⁶ The following principles and measures would help to mitigate against the risks of departing from this standard:

- ▶ any application of force and/or restraint needs to be carried out in a manner that respects the detained person's human rights and dignity;³⁷⁷
- ▶ only the minimum level of proportionate force or means of restraint should be used;
- ▶ the use of force and/or means of restraint should be for the shortest time necessary to achieve a lawful purpose;³⁷⁸
- ▶ the use of force or restraint should never be used as a method of punishment;
- ▶ chains or irons should never be used against restrained persons.

Detailed rules should be in place which govern the use of such methods, and personnel should be fully trained on these before carrying out any such method. The rules should cover, at a minimum, the following:

- ▶ permitted means of force and/or restraint, and equipment;
- ▶ authorities and ranks of authorities permitted to carry out all permitted methods;
- ▶ processes and techniques for all permitted methods;
- ▶ procedures for reporting and notification following any use of force and/or restraint;
- ▶ consequences of breaching such rules.

7.2. Searches

The protection and promotion of detained persons' dignity and humane treatment in detention facilities require that searches are not carried out on their person or property unless it is necessary and proportionate to a legitimate aim.³⁷⁹

Searches should entail minimum guarantees under national and international law for the person concerned³⁸⁰ and should adhere to the following.

- ▶ All searches should be in line with the legal procedures governing such searches.
- ▶ Body searches should be carried out by same-sex personnel.
- ▶ Searches should last for the shortest period necessary.
- ▶ Searches should show due consideration and full respect for the detained person's human rights,³⁸¹ including their right to privacy³⁸² and enjoyment of property.
- ▶ Only personnel with the lawful authority to search should conduct the procedure.
- ▶ If in an exceptional case a strip search is needed, this can only be done by a same-sex member of staff with the lawful authority to conduct the procedure³⁸³ and in a manner that fully respects the detained person's dignity³⁸⁴ and privacy.³⁸⁵
- ▶ A prompt, full and accurate record of the search should be made and kept.

Keep in mind

Authorities are responsible for the health and safety of all detained persons. The maintenance of good order in a manner that fully respects persons' human rights can be achieved by ensuring that:

- ▶ any security and/or disciplinary measure used is prescribed by law, is proportionate to the offence and is only used as a last resort for the minimum time necessary to ensure safety and security;
- ▶ detained persons subject to such measures are informed of the charge(s) and evidence against them, are able to respond to the charge(s) and can appeal against any adverse decision to a competent, independent and impartial authority established by law with access to legal representation in any disciplinary proceedings;
- ▶ detained persons are able to complain about the detention facility and/or its staff using internal complaints mechanisms that operate fairly, effectively and transparently with no repercussions for the safety and security of the person making the complaint;
- ▶ there is full observance of the rights of the detained persons under Article 2 and Article 3 of the Convention during disciplinary proceedings and/or in the application of sanctions.

Toolbox/further reading

- ▶ The collection of [CPT visit reports, public statements and standards](#)

Chapter 8

COMPLAINT MECHANISMS AND INDEPENDENT MONITORING

Every person has the right to complain about any abuse they face in detention and to have such complaints effectively investigated without unreasonable delay.³⁸⁶ For complaint mechanisms and monitoring processes to be accessible and effective, it is important to ensure that procedures are free to use and operate independently and transparently without reprisals against the person making the complaint. The presence and work of independent monitoring bodies in places of detention adds a further important layer of protection to the safety and well-being of detainees. This chapter brings together existing standards and guidance on these issues.

8.1. Complaint mechanisms

Competent authorities should ensure that detained persons can complain about the conditions of their detention or their treatment in detention,³⁸⁷ and seek redress and/or remedies through a fair, independent and transparent complaints and investigations procedure.³⁸⁸

Complaints received may also trigger the need for a referral to other law-enforcement agencies, for example the police, in cases where issues of torture and/or ill-treatment are raised.³⁸⁹

Complaint mechanisms should provide some minimum guarantees to ensure that they operate fairly and effectively.³⁹⁰ These include the following.

- ▶ The complaints system should be freely accessible to all detained persons.
- ▶ All detained persons should be informed of their right to complain and the procedure for making such complaints.

- ▶ Where necessary, interpreters should be secured to enable the detained person to engage meaningfully and fully in the complaints process.
- ▶ The complaints procedure should operate confidentially and any detained person who makes a complaint of any kind should be free from reprisals.
- ▶ All complaints should be fully and accurately recorded – a duplicate copy of the complaint needs to be supplied to the complainant and/or anyone they authorise on their behalf (for instance, legal representatives, doctors or consular authorities).
- ▶ The detained person should be kept updated on the progress of their complaint and provided with a copy of the decision with an oral explanation if requested.
- ▶ There should be a fair, independent and transparent system of review in place for the detained person to challenge any decision that is made following a complaint, and any applicable time limit for seeking a review should be notified in good time to the person concerned in writing.

Relevant case law of the Court

Gjini v. Serbia (2019). Although the prisoner did not make a formal complaint about inter-prisoner violence, the authorities who must have noticed the ill-treatment breached Article 3 of the Convention by not informing the relevant authorities.³⁹¹

8.2. Independent monitoring

To promote and guarantee that detention conditions meet international minimum standards, all detention facilities should be subject to regular independent monitoring³⁹² conducted by independent monitoring bodies and trained personnel.³⁹³ “Independent bodies” means bodies that have the competence to monitor places of detention according to national law or based on the international obligations of the state. The degree of independence must be according to their mandate, and competent authorities should ensure that monitoring bodies have full and unhindered access to all places and facilities as well as to all detained persons and personnel on the premises.

Independent monitoring may deter and prevent any deviation from minimum standards in relation to immigration detention, as those responsible for maintaining and operating detention facilities know that unannounced and unsupervised visits to the facility can happen at any time. These bodies can also promote dialogue between authorities by providing recommendations

as to how systems and processes could be improved to ensure that minimum standards of detention are respected in every case.

Monitoring bodies, whether internal or external, should be founded on the principles of independence from the authorities, integrity, objectivity, visibility and transparency.³⁹⁴ Their work should be carried out fearlessly, with scrupulous honesty, and impartially, and should be in conformity with codified rules and procedures that are not subject to state regulation or governance.³⁹⁵ All monitoring bodies should, during their visits, pay specific attention to whether the following services and conditions align with international and national minimum standards:

- ▶ treatment of all detained persons;
- ▶ complaints and complaint procedures;
- ▶ use of force and restraint measures;
- ▶ disciplinary proceedings and measures;
- ▶ specific treatment of vulnerable detained persons;
- ▶ food and water provision;
- ▶ clothing, bedding and other non-food items;
- ▶ education and leisure activities;
- ▶ contact with family members;
- ▶ access to legal assistance, legal representation and judicial remedies;
- ▶ healthcare services;
- ▶ hygiene and sanitation;
- ▶ detention facilities, including lighting, ventilation, heating, plumbing, toilets and showers;
- ▶ emergency responses.

Internal monitoring bodies should be permitted to make unannounced and unsupervised visits and/or inspections to the detention facilities, with the freedom to inspect any site or document there and to speak to any detained person in confidence.³⁹⁶ Their function should be to monitor the compliance of personnel with internal and national laws, regulations and policies governing detention conditions and the treatment of all detained persons. Free from any personal or other conflicts of interests, internal monitors should report on any concerns they identify to the authorities and implement follow-up procedures to monitor the progress of any remedial actions recommended or required.

In line with their respective mandates, external independent monitors and/or inspectors should make regular unsupervised and unannounced visits to

detention facilities. The members of monitoring boards should be suitably qualified and experienced, and appointed by a competent public authority independent of those responsible for the maintenance and operation of the detention facility.³⁹⁷ External independent monitoring bodies may consist of national and/or international bodies, and a mixture of both is good practice. Such bodies may include, for instance:

- ▶ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT);
- ▶ Office of the United Nations High Commissioner for Refugees;
- ▶ Commissioner for Human Rights of the Council of Europe;
- ▶ Committee Against Torture;
- ▶ International Committee of the Red Cross;
- ▶ National preventive mechanisms;
- ▶ National ombudsman institutions;
- ▶ National inspectorates or monitors;
- ▶ National parliamentarians;
- ▶ National human rights non-governmental organisations accredited by the host state.

To ensure their functions are carried out effectively and meaningfully, the following should be guaranteed:

- ▶ visits, including follow-up visits, should also be unannounced and unsupervised;³⁹⁸
- ▶ monitors should be guaranteed access to any site and any document unless it is covered by medical or professional confidentiality or is classified;
- ▶ access should be granted without delay;
- ▶ detained persons should be permitted to communicate freely and in full confidence with monitors without fear of any reprisals and with an interpreter if needed;
- ▶ authorities should provide organisational support for the communication between the monitors and interviewees, such as setting aside a room for interviews in private, or making sure detained persons and personnel are available for interviews (informing them about any requests from monitoring bodies for interviews or providing the monitoring body with appropriate contact details);
- ▶ monitors should be permitted to observe any disciplinary proceedings;

- ▶ monitors should make a full and accurate record of their visits and any concerns they identify, and report them to the authorities without delay; ensuring that follow-up visits and checks are promptly scheduled to monitor the resolution of any identified concerns;
- ▶ monitors should frequently report on detention conditions;
- ▶ monitors should always be concerned with the principles of “do no harm” and confidentiality, ensuring that they do not make the detained persons’ situation worse through breaching their confidentiality or placing them at risk.

No authority or official should take, permit or tolerate any intimidatory or retaliatory action against any person or organisation for seeking to communicate or having communicated information to the CPT or any other preventive or monitoring body, and no such person or organisation should be otherwise prejudiced in any way. The confidentiality of any communication with persons held within the scope of the rules governing these bodies should be fully respected.

Keep in mind

It is vital that persons in detention have access to effective complaints mechanisms and independent monitors, to identify, record and address any issues concerning their treatment. This can be achieved by ensuring:

- ▶ complaint mechanisms are free to use, independent, impartial and transparent;
- ▶ individuals are informed about how they can complain;
- ▶ individuals are protected from any fear or threat of reprisals in response to a complaint;
- ▶ individuals are provided with updates on their complaint outcome at reasonable intervals;
- ▶ complaints are resolved without undue delay and individuals are informed of the decision and the reasons for it;
- ▶ authorised independent monitors can make unsupervised and unannounced visits at any time;
- ▶ authorised independent monitors can inspect and record their findings on any location or document in a place of detention and speak to any individual in private.

Toolbox/further reading

- ▶ APT, IDC and UNHCR: Monitoring Immigration Detention. Practical manual
- ▶ FRA: Establishing national independent mechanisms to monitor fundamental rights compliance at EU external borders
- ▶ IOM: International migration law information note
- ▶ UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-seekers and Alternatives to Detention, 2012.

Appendix 1

CHECKLIST FOR LAWYERS

This checklist does not seek to supersede, replace or add to professional codes of conduct and national and international laws that govern and regulate the practice of lawyers.

Crucially, this checklist does not address questions of law pertaining to the legality of detention, or any other legal claims, whether under civil, criminal or public law.

Instead, this checklist aims to provide some practical guidance for all lawyers working with persons in administrative detention to assist them to identify any vulnerabilities their client may have.

This checklist covers some of the basic considerations that ought to be made in every case by a lawyer. The degree to which these are considered will vary case by case depending on the specific needs of the client and on the case issues. Therefore, this checklist is indicative and does not provide an exhaustive list of all the considerations a lawyer should make when working with persons in administrative detention, as the full list of considerations that are needed will always be case-specific.

1. Taking instructions from a client

- ▶ Can you speak to your client in private in an environment suitable for taking instructions and providing confidential advice?
- ▶ If needed, is a qualified interpreter in the language needed freely available for the purposes of providing legal services and representation?
- ▶ Have you obtained as much information as possible from your client about their personal, immigration, family and any other relevant circumstances, such as any criminal history?
- ▶ Is your client presenting prima facie signs of vulnerability, such as being a child, being pregnant, being a victim of human trafficking and contemporary forms of slavery, or displaying signs of torture or ill-treatment, mental health issues or health issues?

2. Vulnerabilities

i. Age

- ▶ How old does your client say he/she is?
- ▶ If they do not know how old they are, do they have an identity document with a birth date?
- ▶ If their age has not been verified and they are presumed to be a minor, are they being treated as such?
- ▶ If they are a child, are steps being taken immediately to secure an alternative to detention?
- ▶ If they are an accompanied child, are steps being taken immediately to ensure they are not separated from their family unless it is in their best interests?
- ▶ If they are an unaccompanied child, do they have free access to a guardian and/or social worker and to their legal representative? Are all steps being taken to seek a family reunion where that is in the child's best interests?
- ▶ Are their specific health, educational, recreational and subsistence needs as a child being met?

ii. Pregnancy

- ▶ Does your client declare they might be pregnant? If so, does she have free access to a pregnancy test to make this determination? Remember, religious, cultural and/or societal factors might make some women reluctant to disclose a potential pregnancy.
- ▶ If pregnant, are steps being taken immediately to seek an alternative to detention?
- ▶ If pregnant, are her specific health, sanitary and subsistence needs as a pregnant woman being met?

iii. Victims of human trafficking and contemporary forms of slavery

- ▶ Is there a self-declaration of human trafficking and/or contemporary forms of slavery? Remember, some people may not even know they are a victim or what human trafficking or contemporary forms of slavery are.
- ▶ Some may not trust any figure of authority to make a disclosure and some people may deny being a victim out of fear for their or their family's personal safety and security (women may need the presence of female

personnel to be able to disclose their experience of human trafficking as well as separate interviews in the absence of family members/children).

- ▶ Does their immigration history raise any indicators?
 - How did they travel to the current location? Did they pay anyone to smuggle them?
 - Do they have any ID documents? Where are they? Is someone holding them, a smuggler or an “employer”, for example?
 - Where were they apprehended by the authorities if that is how they came to be in detention?
- ▶ Does their criminal history, if there is one, raise any indicators? Consider that in some cases, victims of trafficking and/or contemporary forms of slavery may have been criminally exploited, sometimes but not always through debt bondage. There are various criminal offences that might raise some issues; these include but are not limited to:
 - possession, production or sale of illegal drugs;
 - possession of an offensive weapon;
 - production, sale or use of false identity documents;
 - theft.
- ▶ Does their “work” history, if there is one, raise any indicators?
 - What were the conditions of their work?
 - Did they receive any wages?
 - Did they have an employment contract?
 - Did they have a work permit?
 - How much were they paid for their work?
 - What were the terms of their work agreement?
 - How did their “employer” treat them?
 - Were they able to take breaks? If so, for how long?
 - Were they given time off work? If so, how often?
- ▶ Are there any other indicators?
 - Injuries or scars consistent with credible explanation?
 - Unexplained injuries or scars?
 - Reserved, distressed or anxious?
 - Reluctance to engage in discussion?
 - Excessive phone calls?
 - Unexplained missing periods?

- Rape and/or sexual assault victim?
- ▶ If adults, do they consent to you disclosing these indicators to the authorities?

iv. Torture/other ill-treatment including gender-based/sexual violence

- ▶ Do they understand what torture and/or ill-treatment and gender-based and sexual violence mean?
- ▶ Have they declared they have been harmed in one of these ways? Consider that for religious, cultural and societal reasons, or for reasons of fear for their or their family's safety and security, some may not wish to complain of any ill-treatment. Also consider that women may need the presence of female personnel to disclose their experience of gender-based violence and separate interviews in the absence of any family members; the requirement of the presence of same-sex personnel applies to any sexual violence victim.
- ▶ Do their medical records indicate any injuries being suffered before or during their detention?
- ▶ Do they have visible injuries and/or old or new scars or marks?
- ▶ Is there any suspicion of gender-based violence, such as rape, sexual assault, female genital mutilation, forced sterilisation or forced abortion?
- ▶ Is there any suspicion of forced or child marriage?

v. Mental health and physical health

- ▶ Have they declared they have any physical and/or mental health needs? Consider that for religious, cultural and societal reasons, some may not wish to disclose any health concerns.
- ▶ Does your client consent to you receiving their medical records? Do immigration, detention and/or community medical records show any health issues?
- ▶ Questions to consider asking to assist clients to speak about any health conditions they may have and about how they are being treated in detention:
 - Have they ever been diagnosed with any serious physical or psychological illnesses?
 - Are they experiencing any physical pain? If so, where and what is the pain level?

- Are they experiencing low mood, poor sleep, flashbacks, thoughts about or attempting self-harm and/or committing suicide? Have they ever presented with these symptoms, even before detention?
- Have they informed personnel in their detention facility? If so, when? Who did they speak to? What, if any, follow-up assessment and/or treatment is planned?
- During any healthcare appointments, do they have privacy? How much time is spent with the medical practitioner? Does the medical practitioner take notes during the appointment? Does the medical practitioner listen to their complaints and ask questions or investigate them? Is any treatment plan explained and organised?
- What, if any, medication are they prescribed, and how is this affecting their condition? How often is their medication reviewed by healthcare personnel?
- How are the detention conditions impacting on how they are feeling?
- How is the length of their detention impacting on how they are feeling?

3. General detention conditions

Obtain detailed information on the following conditions.

i. Sleep

- ▶ What are their sleeping conditions?
- ▶ Do they feel safe in the sleeping spaces?
- ▶ Does he/she have a separate bed or, if it is a short stay, plinths?
- ▶ Are mattresses and sheets clean and washed at reasonable intervals for free?
- ▶ Are the noise volumes low through the night?
- ▶ Are the lights off through the night?
- ▶ Is the ventilation and/or heating adequate?
- ▶ What is the limit on the number of detained persons in one room and how many sleep in the same room in reality?

ii. Toilet and shower

- ▶ Is there easy access to a toilet whenever needed?
- ▶ Is there adequate access to a shower and hot running water?

- ▶ Are these facilities adequate in number for the number of detained persons?
- ▶ Are they in working order with adequate plumbing?
- ▶ Are all basic toiletries provided for free and topped up when depleted?
- ▶ Are there separate toilet and shower facilities for men, women and families?
- ▶ Do they feel safe in the toilet and shower spaces?

iii. Hygiene and sanitation

- ▶ Are sanitary kits and cleaning products, and top-ups when needed, provided for free?
- ▶ Is there deep cleaning, disinfection and fumigation of the living environment, bathrooms, toilets and beds at reasonable intervals?

iv. Food and drinking water

- ▶ Is there free access to three adequate meals per day and free access to fresh drinking water whenever needed?
- ▶ Is there sufficient space to eat?
- ▶ Is cutlery clean?
- ▶ Are food preparation and service in line with health and safety rules?
- ▶ Does the menu on offer cater for any religious or non-religious beliefs or health needs?

v. Clothing and other items

- ▶ Is your client able to wear his/her own clothes?
- ▶ Are washing and drying products and facilities provided for free and at reasonable intervals?
- ▶ Is suitable clothing provided for free when needed?

vi. Education and recreational activities

- ▶ Is free and equal access to any educational courses offered?
- ▶ Are educational courses offered in line with national curriculums?
- ▶ Are study and revision materials, including a well-resourced and accessible library and stationery, provided for free?
- ▶ Are suitable recreational activities available considering the needs of detained persons?

vii. Personnel

- ▶ How is your client or other detained person treated by detention personnel?
- ▶ Are there any complaints processes?
- ▶ Are independent monitors available?
- ▶ Are medical personnel available?

viii. Disciplinary measures applied to detained persons

- ▶ Are there procedures following any charge?
- ▶ Are sanctions applied?
- ▶ Are there any appeal processes?
- ▶ What is the length and nature of the measures and the conditions of application of these measures?
- ▶ Are there specific considerations for any cases of isolation?

ix. Mobile devices or access to telephone

- ▶ Does the client have access to their mobile devices freely or at specific times of the day or no access at all?
- ▶ Does he/she have access to a free phone in the detention facility?

Appendix 2

CHECKLIST FOR MEDICAL PRACTITIONERS

This checklist aims to provide some practical guidance for all medical practitioners working with persons in administrative detention to assist them to identify any vulnerabilities their patient may have.³⁹⁹ This checklist covers some of the basic considerations that ought to be made upon arrival, during their presence at the detention facility and upon departure. The degree to which these are considered will vary case by case depending on the specific needs of the person concerned and on the case issues.

Therefore, this checklist is indicative and does not provide an exhaustive list of all the considerations a medical practitioner should make when working with persons in administrative detention, as the full list of considerations that are needed will always be case-specific.

1. Upon arrival of the person in the detention facility

- ▶ At the outset, ask the detained person if he/she has any particular complaint(s) about their health.
- ▶ Ask the detained person if he/she has been suffering from any kind of disease prior to the detention.
- ▶ Ask the detained person if he/she has ever received in-patient or lengthy treatment prior to the detention and for what reasons.
- ▶ Ask the detained person if he/she uses any medicine on a regular basis; if yes, for what reasons and how frequently? If it is revealed that a detained person uses any medicine on a regular basis, take reasonable and necessary steps to provide them with the necessary medicine.
- ▶ Ask the detained person if he/she has ever received psychological and/or psychiatric treatment, and if yes, when and for what reasons?
- ▶ Perform a medical check on the detained person on arrival to make sure he/she has not been a victim of ill-treatment or disease.
- ▶ Check whether the person being interviewed is a victim of violence against women, such as domestic violence or female genital mutilation,

or of prejudicial health practices in the country of origin of the person concerned, such as sterilisation.

- ▶ Register the health conditions of the detained person at the moment of arrival, specifying, at the minimum, their full name, date of birth, sex, and medical information obtained through the interview and the medical check.
- ▶ Note the date and time of the medical interview and every medical check performed on the detained person.
- ▶ Inform detained persons about how they can contact the medical services in case of medical need.
- ▶ Prepare and update information at the detention facility in cases of pandemics or infectious diseases, including on measures to be adopted by the authorities and by the detained persons during such periods.

2. Upon departure of the person from the detention facility

- ▶ Ask the detained person if he/she has sustained an injury during the detention?
- ▶ In cases where any signs of injury are detected, ask the detained person in what circumstances they were sustained.
- ▶ Perform a medical check on the detained person at the moment of departure to make sure he/she has not been a victim of ill-treatment or disease.
- ▶ Register the health conditions of the detained person at the moment of departure from the detention facility, based on the information obtained through the interview and the medical check.

3. Throughout the entire detention period

All questions/issues listed at the moment of arrival/departure should be also asked/dealt with by the medical practitioners throughout the entire detention/reception period. In addition, throughout the detention period the following indicative measures could help medical practitioners to better perform their mission and efficiently protect the human rights of detained persons.

- ▶ Prepare and disseminate information concerning hygiene and sanitary measures to be respected and followed by everyone in detention.
- ▶ Make sure that detention premises are regularly cleaned and sanitised by professional personnel.

- ▶ All medical personnel should display symbols that clearly indicate they belong to medical services. Those symbols should be of a non-discriminatory nature in religious and cultural terms.
- ▶ Update the medical equipment at each specific detention facility.
- ▶ Provide, as much as is possible, medical personnel with experience in paediatrics and gynaecology/obstetrics.
- ▶ Consider the possibility of establishing and maintaining a pan-European medical register of detained persons, to include the generalities of the persons concerned and their medical data obtained by the authorities of each specific state.
- ▶ Make sure that the medical data of detained asylum seekers are duly protected by the authorities and medical personnel in the same way as the medical data of member state nationals.
- ▶ Note the name of the medical practitioner performing the medical check on the detained person.
- ▶ Keep in good order the register of the health conditions of the detained persons and update the register as needed with updated information on medical conditions.
- ▶ Take all appropriate measures to guarantee confidentiality during medical examinations and of all files containing personal and medical data.

This list is not exhaustive and additional questions may be asked from the detained persons depending on personal or family circumstances and/or the particular situation in the specific detention facility.

ENDNOTES

“Court” means here “European Court of Human Rights”.

The case numbers refer to the numbers of the applications filed with the Court.

1. Court, *A.A. and Others v. North Macedonia*, Nos. 55798/16 and four others § 115, 5 July 2022; *M.S.S. v. Belgium and Greece* [GC], No. 30696/09, § 223, 21 January 2011; *Hirsi Jamaa and Others v. Italy* [GC], No. 27765/09, § 122, 23 February 2012.
2. As the Court stressed, such an obligation can be engaged under the European Convention on Human Rights when the rights under Articles 3, 5, 8 and 13, and under Article 4 of Protocol No. 4, are at stake. See, for example, Court, *Hirsi Jamaa and Others v. Italy* [GC], No. 27765/09, §§ 139-140, 23 February 2012.
3. See the Council of Europe’s Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025).
4. Feasibility Study on European Immigration Detention Rules (2013) (English only).
5. Parliamentary Assembly of the Council of Europe Resolution 1509 (2006) on the human rights of irregular migrants.
6. See, for example, Court, *N.D. and N.T. v. Spain* [GC], Nos. 8675/15 and 8697/15, § 167, 13 February 2020; *Chahal v. the United Kingdom*, 15 November 1996, § 73, Reports of Judgments and Decisions 1996-V; and *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 102, Series A No. 215.
7. Court, *M.S.S. v. Belgium and Greece* [GC], No. 30696/09, § 221, 21 January 2011.
8. This guide is not binding; it serves as a practical tool for professionals working in the field of migration.
9. See, for example, Court, *Khlaifia and Others v. Italy* [GC], No. 16483/12, § 71, 15 December 2016; *Ilias and Ahmed v. Hungary* [GC], No. 47287/15, § 217, 21 November 2019; *Z.A. and Others v. Russia* [GC], Nos. 61411/15 and three others, § 138, 21 November 2019; *R.R. and Others v. Hungary*, No. 36037/17, § 74, 2 March 2021.
10. Court, *De Tommaso v. Italy* [GC], No. 43395/09, § 80, 23 February 2017; *Guzzardi v. Italy*, 6 November 1980, § 92, Series A No. 39; *Medvedyev and Others v. France* [GC], No. 3394/03, § 73, 29 March 2010; *Creangă v. Romania* [GC], No. 29226/03, § 91, 23 February 2012.
11. See Article 53 of the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union, Article 53. See also Article 4 of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) and Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in member states for returning illegally staying third-country nationals.
12. The definitions used in this guide especially take into account the definitions formulated in Article 2 of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), and in Article 2 of Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.

13. The UNHCR has defined immigration detention as “the deprivation of liberty or confinement in a closed place which an asylum-seeker is not permitted to leave at will, including, though not limited to, prisons or purpose-built detention, closed reception or holding centres or facilities”. UNHCR, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, § 5. At European Union level, it is defined as “confinement of an applicant by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement”; Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), Article 2.h.
14. United Nations Convention on the Rights of the Child.
15. Council of Europe Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025).
16. These include, but are not limited to, the universal core conventions such as the two UN covenants (International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR)), the United Nations Convention of the Rights of the Child (CRC), the United Nations Convention against Torture (CAT) and its Optional Protocol, the United Nations Convention on the Elimination of Discrimination Against Women (CEDAW) and the United Nations International Convention for the Protection of All Persons from Enforced Disappearance (ICED) and the United Nations Convention relating to the Status of Refugees (CRSR), as well as Council of Europe treaties, in particular the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Council of Europe Convention on Action against Trafficking in Human Beings and the Convention on Preventing and Combating Violence against Women and Domestic Violence.
17. United Nations Universal Declaration of Human Rights (UDHR), 1948, Article 14; the Charter of Fundamental Rights of the European Union, Article 18; United Nations Convention relating to the Status of Refugees, 1951, Article 31.
18. United Nations Convention relating to the Status of Refugees, 1951, Article 31.1; UNHCR, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012. See also paragraph 22 below.
19. Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast); Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in member states for returning illegally staying third-country nationals; Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the member State responsible for examining an application for international protection lodged in one of the member states by a third-country national or a stateless person (recast).
20. Court, *Amuur v. France*, 25 June 1996, Reports of Judgments and Decisions 1996-III.
21. Court, *Saadi v. the United Kingdom* [GC], No. 13229/03, § 74, 29 January 2008.
22. See below, Chapter 4.
23. Court, *M.S.S. v. Belgium and Greece* [GC], No. 30696/09, §§ 205-234, 21 January 2011.
24. Court, *Amuur v. France*, 25 June 1996, § 53, Reports of Judgments and Decisions 1996-III; *Nolan and K. v. Russia*, No. 2512/04, 12 February 2009.
25. Court, *Mathloom v. Greece*, No. 48883/07, §§ 60-71, 24 April 2012.
26. Court, *Suso Musa v. Malta*, No. 42337/12, 23 July 2013.
27. Court, *Nabil and Others v. Hungary*, No. 62116/12, §§ 39-44, 22 September 2015.
28. For a developed analysis, see “[Alternatives to immigration detention: fostering effective results](#)”, Practical Guide, adopted by the CDDH at its 91st meeting (18-21 June 2019).
29. CDDH, [Guide on family-based care for unaccompanied and separated children](#), 2021.

30. It should be noted that electronic monitoring is primarily used in the context of criminal law, and some considered that its use was particularly inappropriate in the context of migration, given that it is the most intrusive of the various alternative measures. Some considered it to be a form of *de facto* detention and not a valid alternative to detention.
31. Article 28.3 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the member State responsible for examining an application for international protection lodged in one of the member states by a third-country national or a stateless person (recast), Article 15.1 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in member states for returning illegally staying third-country nationals; and Article 9.1 of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast); UNHCR, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, Guideline 6, p. 26.
32. Court, *A. and Others v. the United Kingdom* [GC], No. 3455/05, § 164, 19 February 2009; *Auad v. Bulgaria*, No. 46390/10, § 128, 11 October 2011; and Court of Justice of the European Union, *Said Shamilovich Kadzoev (Huchbarov)*, C-357/09 PPU § 60, 30 November 2009.
33. On the detention of unaccompanied children see Court, *Rahimi v. Greece*, No. 8687/08, 5 April 2011; on detention of children detained in unsuitable facilities see *Muskhadzhiyeva and Others v. Belgium*, No. 41442/07, 19 January 2010; on detention of families with children see *Tarakhel v. Switzerland* [GC], No. 29217/12, 4 November 2014 (extracts); for stateless individuals, see *Auad v. Bulgaria*, No. 46390/10, § 128, 11 October 2011.
34. Court, *M.S.S. v. Belgium and Greece* [GC], No. 30696/09, 21 January 2011; *R.R. and Others v. Hungary*, No. 36037/17, 2 March 2021.
35. Court, *Rantsev v. Cyprus and Russia*, No. 25965/04, 7 January 2010 (extracts).
36. Court, *Louled Massoud v. Malta*, No. 24340/08, 27 July 2010. See also *Al Husin v. Bosnia and Herzegovina (no. 2)*, No. 10112/16, 25 June 2019.
37. Court, *N.D. and N.T. v. Spain* [GC], Nos. 8675/15 and 8697/15, § 167, 13 February 2020; *Chahal v. the United Kingdom*, 15 November 1996, § 73, Reports of Judgments and Decisions 1996-V; and *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 102, Series A no. 215.
38. UNHCR, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, Guidelines 4 and 9.
39. Court, *Abdullahi Elmi and Aweys Abubakar v. Malta*, Nos. 25794/13 and 28151/13, 22 November 2016; *Abdi Mahamud v. Malta*, No. 56796/13, 3 May 2016.
40. Article 21 of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast).
41. Court, *A.B. and Others v. France*, No. 11593/12, § 115, 12 July 2016; *Popov v. France*, Nos. 39472/07 and 39474/07, 19 January 2012; *Abdullahi Elmi and Aweys Abubakar v. Malta*, Nos. 25794/13 and 28151/13, 22 November 2016; *Rahimi v. Greece*, No. 8687/08, 5 April 2011; *Moustahi v. France*, No. 9347/14, 25 June 2020.
42. Court, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, No. 13178/03, ECHR 2006-XI.
43. Court, *Mahmundi and Others v. Greece*, No. 14902/10, § 70, 31 July 2012.
44. Article 21 of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast).
45. See Court, *Asalya v. Turkey*, No. 43875/09, § 50, 15 April 2014.
46. Court, *O.M. v. Hungary*, No. 9912/15, § 53, 5 July 2016.

47. Court, *Breukhoven v. the Czech Republic*, No. 44438/06, § 56, 21 July 2011. See also the Council of Europe Convention on Action Against Trafficking in Human Beings (16.V.2005, CETS No. 197), which requires in its Article 13 that when there are reasonable grounds to believe that a person is a victim of trafficking, each party to the convention shall provide in its internal law a recovery and reflection period of at least 30 days for the victim to escape. During such period no expulsion shall be ordered against the victim of trafficking.
48. Court, *Gisayev v. Russia*, No. 14811/04, § 116, 20 January 2011; *Opuz v. Turkey*, No. 33401/02, § 160, 2009.
49. Court, *Darboe and Camara v. Italy*, No. 5797/17, 21 July 2022.
50. Court, *Rahimi v. Greece*, No. 8687/08, § 120, 5 April 2011.
51. Court, *Khlaifia and Others v. Italy* [GC], No. 16483/12, § 132, 15 December 2016.
52. Court, *G.B. and Others v. Turkey*, No. 4633/15, §§ 125-138, 17 October 2019.
53. Court, *Sergey Babushkin v. Russia*, No. 5993/08, § 40, 28 November 2013.
54. CPT, Report on the 2015 visit to Sweden, CPT/Inf (2016)1, § 37.
55. Court, *Ananyev and Others v. Russia*, Nos. 42525/07 and 60800/08, § 123, 10 January 2012; *Al Nashiri v. Poland*, No. 28761/11, § 396, 24 July 2014.
56. European Convention on Human Rights, Article 2.
57. Court, *Daraibou v. Croatia*, No. 84523/17, 17 January 2023, §§ 88-89.
58. Ibid.
59. Court, *Çakıcı v. Turkey* [GC], No. 23657/94, § 105, ECHR 1999-IV; *Kurt v. Turkey*, 25 May 1998 § 125, Reports of Judgments and Decisions 1998-III; *El-Masri v. "the former Yugoslav Republic of Macedonia"* [GC], No. 39630/09, § 236, 2012.
60. United Nations International Convention for the Protection of All Persons from Enforced Disappearance, Article 17; Court, *El-Masri v. "the former Yugoslav Republic of Macedonia"* [GC], No. 39630/09, § 233, 2012; *Kurt v. Turkey*, 25 May 1998, § 124, Reports of Judgments and Decisions 1998-III.
61. United Nations International Convention for the Protection of All Persons from Enforced Disappearance, Article 17.3; Parliamentary Assembly of the Council of Europe Resolution 1707 (2010) on detention of asylum seekers and irregular migrants in Europe, § 9.2.4; Court, *Çakıcı v. Turkey* [GC], No. 23657/94, § 105, ECHR 1999-IV.
62. United Nations International Convention for the Protection of All Persons from Enforced Disappearance, Article 17.3; UNHCR, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, Guideline 8 § 48(iv); Court, *Çakıcı v. Turkey* [GC], No. 23657/94, § 105, ECHR 1999-IV.
63. United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 12.
64. See, for the responsibility of the state concerning the treatment of the applicant in detention, Court, *M.S.S. v. Belgium and Greece* [GC], No. 30696/09, §§ 223-234, 21 January 2011 and *Khlaifia and Others v. Italy* [GC], No. 16483/12, §§ 158-69 (169), 15 December 2016. Concerning the applicant's living conditions, see *M.S.S. v. Belgium and Greece* [GC], No. 30696/09, §§ 249-264, 21 January 2011 as well in *R.R. and Others v. Hungary*, No. 36037/17, §§ 37-39, 2 March 2021. In relation to the duty of the EU member states to provide reception conditions for asylum seekers, see also Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast).
65. CPT, **23rd General Report**, § 73; UNHCR, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, Guideline 8 § 48(vi) and CPT report on the 2017 visit to Poland, **CPT/Inf (2018)39**, § 44; Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast).

66. Recommendation Rec(2003)5 of the Committee of Ministers of the Council of Europe to member states on measures of detention of asylum seekers, § 12; Parliamentary Assembly of the Council of Europe Resolution 1707 (2010) on detention of asylum seekers and irregular migrants in Europe, § 9.2.4; Court, *Wenner v. Germany*, No. 62303/13, 1 September 2016.
67. Court, *Stawomir Musiał v. Poland*, No. 28300/06, § 88, 20 January 2009.
68. CPT, Report on the 2016 visit to Italy, [CPT/Inf \(2018\)13](#), §§ 25 ff. and 51 ff.
69. CPT, Report on the 2014 visit to Austria, [CPT/Inf \(2015\) 34](#), § 46.
70. Court, *Riad and Idiab v. Belgium*, Nos. 29787/03 and 29810/03, 24 January 2008.
71. See, for information on asylum applicants, Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, Article 14. For information on refugees and subsidiary protection status holders, see Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), Articles 26 and 27. See also Principle 14 of the United Nations General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 9 December 1988, A/RES/43/173.
72. See Principle 1, Deliberation No. 5, Annex II of the Annual Report of the Working Group on Arbitrary Detention, 28 December 1999, U.N. Doc. E/CN.4/2000/4.
73. CPT, [19th General Report](#), § 88.
74. References and good examples can be found in “[How to convey child-friendly information to children in migration: A handbook for frontline professionals](#)”, Council of Europe (2018). See also Section IV. A. 2 of the [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#), adopted by the Committee of Ministers of the Council of Europe on 17 November 2010.
75. See, for example, CJEU, *CIMADE, Groupe d'information et de soutien des immigrés (GISTI) v. Ministre de l'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'Immigration*, C-179/11, 27 September 2012, paragraphs 12 and 16.
76. CPT, Report on the 2014 visit to the Czech Republic, [CPT/Inf \(2015\)18](#), § 42.
77. CPT, Report on the 2017 visit to Poland, [CPT/Inf \(2018\)39](#), § 54; CPT, Report on the 2014 visit to Denmark, [CPT/Inf \(2014\)25](#), § 82; CPT, Report on the 2014 visit to “the former Yugoslav Republic of Macedonia”, [CPT/Inf \(2016\)8](#), § 133.
78. Court, *Kruskovic v. Croatia*, No. 46185/08, § 18, 21 June 2011.
79. United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 9 December 1988, A/RES/43/173, BPP, Principle 20.
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88. Court, *JA and Others v Italy*, No. 21329/18, 30 March 2023.
89. Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), Article 17.

90. Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, Articles 16-17. General Comment No. 30 of the Committee on the Elimination of Racial Discrimination. General Comment No. 15 of the Human Rights Committee; Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), Article 18; European Prison Rules, Rule 18.1; CPT, Report on the 2011 visit to Greece, [CPT/Inf \(2012\)1](#), § 32; CPT, Report on the 1993 visit to Belgium, [CPT/Inf \(94\)15 \(French only\)](#), § 253.
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92. See Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, Article 16.1, Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), Article 10(1).
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100. Twenty Guidelines on Forced Return, Guideline 10.2; European Prison Rules, Rules 19.1 and 19.2; CPT, Report on the 2014 visit to “the former Yugoslav Republic of Macedonia”, [CPT/Inf\(2016\)8](#), § 113.
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105. Court, *Muršić v. Croatia* [GC], No. 7334/13, 20 October 2016; *Monir Lotfy v. Cyprus*, No. 37139/13, § 165, 29 June 2021; *S.D. v. Greece*, No. 53541/07, § 49-54, 11 June 2009; *Riad and Idiab v. Belgium*, Nos. 29787/03 and 29810/03, 24 January 2008; *A.A. v. Greece*, No. 12186/08, 22 July 2010; *Khlaifia and Others v. Italy* [GC], No. 16483/12, § 142, 15 December 2016; *Monir Lotfy v. Cyprus*, No. 37139/13, § 165, 29 June 2021.
106. CPT, Report on the 2015 visit to Hungary, [CPT/Inf \(2016\)27](#), § 42; CPT, Report on the 2010 visit to France, [CPT/Inf \(2012\)13 \(French only\)](#), § 43; CPT, Report on the 2009 visit to Ukraine, [CPT/Inf \(2011\)29](#), § 62.
107. CPT, [Women deprived of their liberty](#), CPT/Inf (2000) 13-part, , Section 24; Directive 2013/33/ EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), Article 11.5.

108. See ExCom Conclusion No. 93, 2002 but also recent Court case law “the mutual enjoyment by parent and child of each other’s company constitutes a fundamental element of family life within the meaning of Article 8 ... and domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8” (Court, *Nikoghosyan and Others v. Poland*, No. 14743/17, § 84, 3 March 2022).
109. Court, *Turdikhojaev v. Ukraine*, No. 72510/12, 18 March 2021.
110. Court, *Dougoz v. Greece*, No. 40907/98, ECHR 2001-II.
111. CPT, [Immigration detention: Factsheet](#), March 2017, Section 3. See also, CPT, Report on the 2014 visit to Ireland, [CPT/Inf \(2015\)38](#), § 19.
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114. Court, *Abdolkhani and Karimnia v. Turkey (no. 2)*, No. 50213/08, 27 July 2010; *Charahili v. Turkey*, No. 46605/07, 13 April 2010; *R.U. v. Greece*, No. 2237/08, 7 June 2011.
115. Court, *Amuur v. France*, 25 June 1996, Reports of Judgments and Decisions 1996-III; *Riad and Idiab v. Belgium*, Nos. 29787/03 and 29810/03, 24 January 2008; CPT, [Immigration detention: Factsheet](#), March 2017, Section 3.
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117. Court, *J.R and Others v. Greece*, No. 22696/16, § 138; *Khlaifia and Others v. Italy*, No. 16483/12, § 179, 15 December 2016.
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121. CPT, Report on the 2000 visit to Lithuania, [CPT/Inf \(2001\)22](#), §§ 117 and 118.
122. CPT, Report on the 2016 visit to the Netherlands, [CPT/Inf \(2017\)1](#), § 29; CPT, Report on the 2012 visit to the United Kingdom (Scotland), [CPT/Inf \(2014\)11](#), § 88; CPT, Report on the 2011 visit to Andorra, [CPT/Inf \(2012\)28 \(French only\)](#), § 25; CPT, Report on the 2009 visit to Poland, [CPT/Inf \(2011\)20](#), § 80; CPT, Report on the 2001 visit to Slovenia, [CPT/Inf \(2002\)36](#), § 95; Court, *Engel v. Hungary*, No. 46857/06, § 28, 20 May 2010.
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124. *Ibid.*; Court, *Idalov v. Russia* [GC], No. 5826/03, § 103, 22 May 2012.
125. CPT, [Transport of Detainees: Factsheet](#), June 2018. Court, *Vlasov v. Russia*, No. 78146/01, §§ 92-99, 12 June 2008; *Retunsciaia v. Romania*, No. 25251/04, § 78, 8 January 2013; *Radzhab Magomedov v. Russia*, No. 20933/08, § 61, 20 December 2016.
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127. CPT, Report on the 2013 visit to Greece, [CPT/Inf \(2014\)26](#), § 150; CPT, Report on the 2009 visit to Greece, [CPT/Inf \(2010\)33](#), § 153; CPT, Report on the 2005 visit to the United Kingdom, [CPT/Inf \(2006\)28](#), § 23; CPT, Report on the 2000 visit to Lithuania, [CPT/Inf \(2001\)22](#), § 118.
128. CPT, Report on the 1991 visit to Spain, [CPT/Inf \(96\)9](#), § 150; Court, *Tarariyeva v. Russia*, No. 4353/03, § 112-117, ECHR 2006-XV (extracts).
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134. Court, *Ebedin Abi v. Turkey*, No. 10839/09, §§ 31-54, 13 March 2018.
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137. Court, *Riad and Idiab v. Belgium*, Nos. 29787/03 and 29810/03, 24 January 2008; *A.A. v. Greece*, No. 12186/08, 22 July 2010.
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139. Court, *Ananyev and Others v. Russia*, Nos. 42525/07 and 60800/08, 10 January 2012.
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145. Court, *Dougouz v. Greece*, No. 40907/98, ECHR 2001-II; *S.D. v. Greece*, No. 53541/07, §§ 49-54, 11 June 2009.
146. *Ibid.*; Recommendation CM/Rec(2022)17 of the Committee of Ministers to member States on protecting the rights of migrant, refugee and asylum-seeking women and girls, § 50.
147. Court, *Abdullah Yalçın v. Turkey (no. 2)*, No. 34417/10, 14 June 2022; *Hasan and Chaush v. Bulgaria* [GC], No. 30985/96, § 78, ECHR 2000-XI; *Metropolitan Church of Bessarabia and Others v. Moldova*, No. 45701/99, § 117, ECHR 2001-XII; and *Serif v. Greece*, No. 38178/97, § 52, ECHR 1999-IX.
148. European Convention on Human Rights, Article 9; Court, *Pichon and Sajous v. France (dec.)*, No. 49853/99, ECHR 2001-X.
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150. Court, *Svyato-Mykhaylivska Parafiya v. Ukraine*, No. 77703/01, § 116, 14 June 2007; *Eweida and Others v. the United Kingdom*, Nos. 48420/10 and three others, § 80, 2013 (extracts); *Nasirov and Others v. Azerbaijan*, No. 58717/10, § 60, 20 February 2020.
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163. Court, *Tsartsidze and Others v. Georgia*, No. 18766/04, § 27, 17 January 2017.
164. Court, *A.A. v. Greece*, No. 12186/08, §§ 57-65, 22 July 2010.
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176. *Ibid.*
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180. Court, *Khlaifia and Others v. Italy* [GC], No. 16483/12, § 146, 15 December 2016.
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183. Court, *Sili v. Ukraine*, No. 42903/14, 8 July 2021; *Khlaifia and Others v. Italy* [GC], No. 16483/12, § 171, 15 December 2016.
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195. Council of Europe Convention on Action Against Trafficking in Human Beings, Chapter 3, Article 10.3. See also CM/Rec(2022)22 of the Committee of Ministers to member States on human rights principles and guidelines on age assessment in the context of migration, Principle 2.
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200. United Nations Committee on the Rights of the Child, Treatment of unaccompanied and separated children outside their country of origin, General Comment No. 6 (2005), § 63.
201. CPT, [19th General Report](#), § 99.
202. Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), Article 11; CPT, Report on the 2005 visit to Germany, [CPT/Inf \(2007\)18](#), § 56; CPT, [19th General Report](#), § 87.
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217. Rule 48(1); Court, *Mahmundi and Others v. Greece*, No. 14902/10, § 70, 31 July 2012.
218. Court, *P. and S. v. Poland*, No. 57375/08, 30 October 2012; Recommendation CM/Rec(2022)17 of the Committee of Ministers to member States on protecting the rights of migrant, refugee and asylum-seeking women and girls, § 68, 20 May 2022.

219. Recommendation CM/Rec(2022)21 of the Committee of Ministers to member States on trafficking in human beings for the purpose of labour exploitation, adopted on 27 September 2022.
220. Council of Europe Convention on Action against Trafficking in Human Beings, Article 26.
221. [United Nations Office on Drugs and Crime](#): Defining Human Trafficking; Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210).
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223. Such injuries also include forms of gender-based violence such as sexual offences, female genital mutilation, forced abortions and forced sterilisations (identified by way of self-declarations or any relevant information known to the authorities giving rise to suspicion about these issues); Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, Articles 3, 18, 25 and 32-43.
224. OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, Guideline 2, § 6; Council of Europe Convention on Action against Trafficking in Human Beings, Chapter 3, Article 26; Human Rights and Human Trafficking, United Nations Human Rights Office of the High Commissioner, page 12; Council of Europe (GRETA), Guidance note on preventing and combating trafficking in human beings for the purpose of labour exploitation, 2021, §§ 82-84.
225. Recommendation CM/Rec(2022)17 of the Committee of Ministers to member States on protecting the rights of migrant, refugee and asylum-seeking women and girls, § 48.
226. Court, *Rantsev v. Cyprus and Russia*, No. 25965/04, 7 January 2010 (extracts); *T.I. and Others v. Greece*, 40311/10, 18 July 2019; *S.M. v. Croatia* [GC], No. 60561/14, 25 June 2020; *V.C.L. and A.N. v. the United Kingdom*, Nos. 77587/12 and 74603/12, 16 February 2021; *Zoletic and Others v. Azerbaijan*, No. 20116/12, 7 October 2021.
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399. For further details, please refer to CPT standards.

This guide for practitioners was prepared by the European Committee on Legal Co-operation (CDCJ) and adopted in June 2023.

It provides guidance on the way migrants and asylum seekers in administrative detention should be treated so that their dignity and their fundamental rights protected by the European Convention on Human Rights, as interpreted by the European Court of Human Rights, are fully respected. It also relies on the standards established through the years by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and other relevant sources.

This guide is designed as a practical tool for all professionals who are in contact with migrants and asylum seekers placed in administrative detention throughout the member states of the Council of Europe and beyond. For this purpose, it also includes checklists to assist lawyers and medical practitioners in navigating the various standards applicable to migrants and asylum seekers in administrative detention.



www.coe.int/cdcj

www.coe.int

The Council of Europe is the continent's leading human rights organisation. It comprises 46 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

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