

“Improvement and safeguards of health conditions of persons deprived of their liberty with substance use disorders”

Joint conference of the European NPM Forum and Pompidou Group

Draft Concept Note

Strasbourg, France (Council of Europe, Palais building)

24-25 September 2024

Aim of the joint Conference

Since 1993, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment (CPT) emphasises that prisoners have the right to receive an equivalent standard of medical care as individuals in the general community, and that “*an inadequate level of health care can lead rapidly to situations falling within the scope of the term "inhuman and degrading treatment"*”¹, thus violating Art. 3 of the European Convention on Human Rights (the Convention)². Additionally, the European Social Charter, under Art.11, affirms the right to protection of health placing the ultimate responsibility for its fulfilment on States, either directly or through the cooperation with public or private organisations³.

In the endeavour to establish treatment standards for People with Substance Use Disorders (PWSUD) in custodial settings, the Council of Europe underscores that individuals with SUD are experiencing a chronic health disorder⁴ and prisons do not constitute a favourable environment for their treatment. Not only all kinds of prevention and treatment of people with SUD which are available outside of the prison system should be available inside the prison system, but ideally, treatment should be used as an alternative to imprisonment.⁵ Nonetheless, the available – although often scarce – data show a different scenario.

Worldwide, it is estimated that of those in prison, 30 % of men and 51 % of women have a drug use disorder, whilst in Europe between 30 % and 75 % of people with problematic drug use have been in prison at some time in their life. According to the European Monitoring Centre for Drugs and Drug Addiction, studies conducted between 2004 and 2013 suggest that in Europe between 20 % and 45 % of people with experience of incarceration have used drugs *while in prison*.⁶ Incarceration for drug-related offences is equally high: in 2019, there were over 850 000 people in prison across Europe, of

¹ [Health care services in prisons, Extract from the 3rd General Report of the CPT \(1993\)](#)

² [European Convention on Human Rights](#)

³ [European Social Charter](#)

⁴ [Standards for treatment of people with drug use disorders in custodial settings, Pompidou Group \(2022\)](#)

⁵ [TREATNET, Quality Standards for Drug Dependence Treatment and Care Services, UNODC \(2012\)](#)

⁶ [Prison and drugs in Europe: current and future challenges, European Monitoring Centre for Drugs and Addiction \(2021\)](#)

which 18 % received a final sentence for offences related to the use, possession, or supply of illicit drugs.

The prevalence of drugs in custodial settings poses a significant problem in managing prison life. Today, the extensive presence of drugs in prisons is a well-documented phenomenon, both within and outside the Council of Europe region. This reality is further underscored by the notably higher incidence of infectious diseases, such as HIV, Hepatitis C, and active tuberculosis, among the prison population compared to the wider community⁷, largely linked with injecting drug use. Furthermore, the widespread drug presence in prisons has been consistently highlighted in various reports by the CPT, as for instance in Lithuania in 2021⁸, and in the United Kingdom in 2019⁹.

Overcrowding, multiple stigmatisations, and at times, inter-prison violence further intertwine with drug use, and aggravate the risk environment for PWSUD. Substances are often turned to as a means of escaping boredom and coping with the hardships of prison life. On average, it has been calculated that over 50% of the prison population regularly uses cannabis and up to 21% of detained people have started injecting drugs while in prison¹⁰.

Individuals deprived of liberty with SUD should receive dedicated medical attention, acknowledging that their condition necessitates treatment rather than punishment. In accordance with the minimum standards for material detention conditions enshrined in the 2022 EU Recommendation on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions, "Member States should ensure that special attention is paid to treatment for detainees with drug addiction, infectious diseases prevention and care, mental health and suicide prevention"¹¹. Due to the significant prevalence of mental health disorders among prison populations worldwide, the mental health of those incarcerated continues to be a public health concern, due to the risk of psychiatric comorbidity¹². Health and treatment interventions in prison may also play a key role upon release in facilitating the continuation of treatment and in preventing drug-related deaths. Comprehensive drug treatment systems in prisons provide a menu of options for people with drug use disorders that includes clinical treatment, harm reduction and different psychosocial support, tailored to their individual and complex health needs¹³. These interventions may have a significant impact on morbidity, mortality, public health and recidivism¹⁴.

⁷ [HIV Prevalence and Correlations in Prisons in Different Regions of the World: A Review Article, Golrokhi et. al, Open Aid Journal \(2018\)](#)

⁸ [Report to the Lithuanian Government on the periodic visit to Lithuania carried out by the CPT \(2021\)](#)

⁹ [Report to the United Kingdom Government on the visit to the United Kingdom carried out by the CPT from 13 to 23 May 2019](#)

¹⁰ [Mental Health and Addiction in Prisons, Written contributions, Pompidou Group \(2013\)](#)

¹¹ [EU Recommendation on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions, \(2022\)](#)

¹² Psychiatric comorbidity can be defined as the co-occurrence in the same person of two or more mental health disorders, usually a mental health disorder and a substance use disorder. Comorbidity particularly affects vulnerable groups, including prison populations.

EMCDDA (2015), Alternatives to punishment for drug-using offenders, EMCDDA Papers, Publications Office of the European Union, Luxembourg and European Monitoring Centre for Drugs and Drug Addiction (2022), Prison and drugs in Europe: current and future challenges, Publications Office of the European Union, Luxembourg, p. 36.

¹³ Guidance paper on developing strategies for raising standards on drug treatment in the criminal justice system, Pompidou Group (2022)

¹⁴ [Prison and drugs in Europe: current and future challenges, European Monitoring Centre for Drugs and Addiction \(2021\)](#)

As also envisaged by the Recommendation Ro. (98) 7 of the Committee of Ministers of the Council of Europe on the Ethical and Organisational Aspects of Health Care in Prisons, “A prison health care service should be able to provide medical, psychiatric and dental treatment and to implement programmes of hygiene and preventive medicine in conditions comparable to those enjoyed by the general public”¹⁵. Therefore, every detained person has the right to access drug treatment interventions that are comparable to those in the wider community. Medical treatment of PWSUD should be guaranteed upon arrival, for the whole period of detention and after release in line with the principle of continuity of care.

Drug addiction consultations and treatment should follow an initial health screening and be tailored according to the prisoner’s types of addiction and needs, with the aim of guaranteeing the highest possible health standards. All incarcerated people with substance use disorders should be offered consultations from the beginning of their incarceration; but, due to financial constraints, this is not always the case. In this regard, those who are addicted to opioids ought to be considered separately. The World Health Organisation (WHO) has reported that the most effective way to treat addiction, while minimising the risks of spreading HIV and Hepatitis C in detention facilities, is through Opioid Substitution/Agonist Therapy (OST/OAT)¹⁶, as also emphasised in the WHO guidelines on HIV infection and AIDS issued in 1993 and in line with Article 11 of the European Social Charter. Following the principle of equivalence of care, “in countries in which opioid substitution treatment is available to opiate dependent individuals in the community, this treatment should also be available in prisons”¹⁷. As presented by the European Court of Human Rights (the Court) in the case *Wenner vs. Germany*, refusing adequate treatment of prisoners with a history of dependency on opioid constitutes inhuman and degrading treatment, thus breaching Article 3 of the Convention¹⁸.

With a view to preventing recidivism, the aftercare of prisoners with SUD is also increasingly recognised as a critical determinant for treatment success, particularly during the pivotal transition from prison life to the wider community. Studies indicate that “in the week following release, prisoners are 37 times more likely to die of a drug overdose than other members of the public due to diminished opioid tolerance”¹⁹. Additionally, over half of injecting users experience relapses within the first three months after release²⁰. Despite these alarming statistics, many former prisoners encounter significant obstacles in accessing community care arrangements, both substantively and financially. Therefore, it is crucial to extend integrated medical and psychosocial services through interagency cooperation beyond the period of detention.

Given the heightened vulnerability of people with SUD within custodial settings, imprisonment of PWDUD should always be deemed a last resort measure, especially from a health standpoint²¹. According to the Pompidou Group, “legal provisions for non-custodial sanctions for offenders with DUD should be in place, such as diversion through warnings, mediations, fines, restorative justice, and referral to treatment. Organizational structures and resources for probation services and community sanctions should be established or strengthened. Sentencing practices for DUD offenders should make

¹⁵ [Recommendation No. R \(98\) 71 of the Committee of Ministers to Member States concerning the Ethical and Organisational Aspects of Health Care in Prison, 1998](#)

¹⁶ [WHO guidelines on HIV infection and AIDS in prisons, UNAIDS \(1993\); Opioid Agonist Treatment. Guiding principles for legislation and regulations \(2017\)](#)

¹⁷ [Ibidem](#)

¹⁸ [ECtHR, Case of Wenner vs. Germany, Application no. 62303/13 \(2016\)](#)

¹⁹ Pompidou Group, [Mental Health and Addiction in Prisons, Written contributions, \(2013\)](#)

²⁰ [Ibidem](#)

²¹ [Arbitrary detention relating to drug policies, Study of the Working Group on Arbitrary Detention, Human Rights Council \(2021\)](#)

extensive use of these structures, and similarly, the use of pre-trial detention should be minimized. This may require awareness raising and training for judges.”²²

The recent Recommendation C (2022) 8987 issued by the European Commission²³ emphasises the necessity to minimise the resort of the limitation of freedom, especially pre-trial detention when possible, reserving it solely for cases based on reasonable suspicion and established by case-to-case assessment. In general, diversion or the choice not to prosecute should be used for less serious violations, with imprisonment serving as a last alternative for drug-related acts²⁴. However, a trend has been noted in many countries, including in many member States of the Council of Europe, where a large and disproportionate increase of pre-trial detention is noted for almost the entirety of cases of people charged of drug-related offences. These excessive measures have not only often led to extensive and widespread violations of human rights, but also to prisons’ overcrowding.²⁵

National Preventive Mechanisms (NPMs) play a crucial role in monitoring the treatment of individuals with psychoactive substances addiction in institutions for the enforcement of penal sanctions. Through their diligent efforts, NPMs not only identify underlying structural weaknesses, but also highlight best practices within places of deprivation of liberty.

This Conference will attempt to outline the most important principles related to providing drug treatment in prisons, and highlight promising practices observed in the participating member States, as well as the shortcomings and the recommendations for improvement. Bearing in mind that people coping with addictions are an especially vulnerable group within the prison population, the Conference will emphasise a need for a specialised approach. It will also explore some of the most important public health challenges in the drugs field today and will provide practitioners and policymakers with timely and useful guidance for designing, targeting and implementing effective responses. Conference participants will discuss specifics of monitoring material detention conditions and treatment of people deprived of their liberty with a SUD, in an attempt to better monitor treatment conditions, improve implementation of human right standards in treatment of PWDUD and raise awareness of the needs of prison staff and administrations for providing quality treatment.

The Conference will be an opportunity for participants to engage and exchange views and promising practices, learn from each other and work together towards effective remedies aimed at improving living conditions of detainees with addiction to psychoactive substances.

Expected Outcomes

- Equip conference participants with enhanced knowledge, skills, and resources to effectively address the treatment of PWSUD in places of deprivation of liberty.
- Identify and articulate the specific challenges and shortcomings within the current systems that impact PWSUD in places of deprivation of liberty through open discussion, as well as challenges in monitoring and reporting on healthcare conditions for PWSUD;
- Raise awareness among policymakers regarding the urgent need for further development of legislative safeguards for PWSUD, the necessity to provide alternatives to detention and

²²[Standards for treatment of people with drug use disorders in custodial settings \(2022\) Pompidou Group](#)

²³ [EU Recommendation on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions](#)

²⁴ [Arbitrary detention relating to drug policies, Study of the Working Group on Arbitrary Detention, Human Rights Council \(2021\)](#)

²⁵ See for instance Lithuanian’s length of sentences for nonviolent drug-related offences, *Ibidem*.

potentially the review of drug laws with the aim to improve the material conditions of detention and, in turn, address the issue of overcrowding in custodial settings, which may constitute inhuman and degrading treatment.

Participants' profiles

Representatives of NPMs, decision and policy makers responsible for the design, implementation and monitoring of drug treatment interventions in custodial settings, practitioners working in detention, academia, International and Civil Society Organisations (CSOs), the Council of Europe, including CPT members, and other monitoring bodies.

Logistical information

The conference will be held in person, in Strasbourg at the Palais building. The exchanges will take place in English and no interpretation will be provided.

For additional information on the Conference, please contact the conference coordinators:

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For more information, please visit our webpage:

- Human Rights National Implementation Department: [Council of Europe Human Rights National Implementation website - Human Rights National Implementation \(coe.int\)](https://www.coe.int/en/web/human-rights-national-implementation)
- European NPM Forum: <https://help.elearning.ext.coe.int/course/view.php?id=5744>
- Pompidou Group: <https://www.coe.int/en/web/pompidou>

Background information

European NPM Forum

The joint Council of Europe/European Union project “Support to Council of Europe for EU network of prison monitoring bodies” aims at maintaining an EU network of independent prison monitoring bodies - the European NPM Forum.

The *overall objective* of this joint project is to facilitate and support judicial cooperation in criminal matters and increase mutual trust between EU Member States in their respective detention conditions.

The European NPM Forum consists of an interactive peer-to-peer network bringing together National Preventive Mechanisms (NPMs) from EU Member States. The Forum goes beyond and supports non-EU Member States, as well as non-Council of Europe member States, notably countries in the MENA region (Morocco and Tunisia). The Forum provides a platform for exchange and discussion to assist European NPMs, as key players in the protection of fundamental human rights of persons deprived of their liberty in all places of deprivation of liberty²⁶, in carrying out their mandate effectively and independently. Better monitoring by NPMs will ensure better protection of human rights of all persons deprived of their liberty. The quality of independent monitoring of places of deprivation of liberty is thus crucially important to ensuring a steady improvement of detention conditions. The latter aspect, in turn, contributes to enhancing the mutual trust in detention conditions in EU Member States and beyond. This project provides an opportunity for NPMs to regularly meet, notably by organising an annual Conference, tailored to the most current needs and challenges faced by NPMs.

The Council of Europe International Cooperation Group on Drugs and Addictions - Pompidou Group

The Pompidou Group²⁷ is the Council of Europe’s drug policy co-operation platform, maintaining a unique position to translate human rights standards, principles and recommendations into action in the drugs field. Its mission is to balance the interests of the community at large with protection of the individual’s fundamental rights in responding to drug use and illicit trafficking in drugs. The Pompidou Group provides tools that enable decision makers to implement effective measures to reduce drug trafficking, better treat substance use disorders and address the associated negative impacts in society. The Group currently consists of 41 member states, including two countries outside Europe.

Through its Criminal Justice and Health in Prison Programme (CJHP)²⁸, the Pompidou Group aims to provide a better protection for the human rights of people who are incarcerated and who cope with substance use disorders, and to reduce burden on the public health system through their treatment and rehabilitation, using the time of their imprisonment. Whilst recognising that prison is not the best place for treatment, the Programme supports prison administrations and staff working in custodial settings in implementing a comprehensive drug treatment approach. The Programme covers a regional network of 11 South-East European countries, as well as Georgia, the Republic of Moldova and Ukraine.

²⁶ According to OPCAT, the definition of “places where the persons are or may be deprived of their liberty” should be as extensive as possible in order to maximise the preventive impact of the work of NPMs, *Preventing Torture: The Role of National Preventive Mechanisms – A Practical Guide, January 2018*, https://www.ohchr.org/sites/default/files/Documents/Publications/NPM_Guide_EN.pdf

²⁷ <https://www.coe.int/en/web/pompidou/home>

²⁸ <https://www.coe.int/en/web/pompidou/activities/prisons>