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ADMINISTRATIVE DETENTION OF MIGRANTS AND ASYLUM SEEKERS

DRAFT GUIDE FOR PRACTITIONERS

(Version 4)

Table of contents

INTRODUCTION	5
Purpose of the Guide.....	5
Who is this Guide for?	5
Scope of the Guide.....	6
Distinction between limitation to freedom of movement and deprivation of liberty	6
How to use the Guide	7
Terminology used and definitions	7
 CHAPTER 1. ADMINISTRATIVE DETENTION	 9
1.1 When can immigration detention be justified?	9
<i>i. “Arbitrary detention”</i>	<i>10</i>
<i>ii. “Lawful detention”</i>	<i>10</i>
<i>iii. “Necessity of detention and proportionality to the legitimate aim”</i>	<i>11</i>
1.2 Who can decide the placement in detention and what should this decision or order contain?.....	12
1.3 For how long can a detention be justified?	12
1.4 What additional safeguards for vulnerable persons?	12
1.5 Procedural guarantees in case of detention	13
 CHAPTER 2. PROCEDURES ON ARRIVAL IN THE DETENTION FACILITY	 15
2.1 Searches	15
2.2 Registration.....	15
2.3 Information on arrival	16
2.4 Medical screening.....	16
 CHAPTER 3. INFORMATION DISSEMINATION AND COMMUNICATION	 19
3.1 Information dissemination to detained persons	19
<i>i. Information upon deprivation of liberty</i>	<i>19</i>
<i>ii. Information on arrival in the detention facility</i>	<i>19</i>
<i>iii. Information during detention</i>	<i>20</i>
<i>iv. Information upon release</i>	<i>20</i>
3.2 How to inform detained persons.....	21
<i>i. General means of information within the detention facility.....</i>	<i>21</i>
<i>ii. Individual means of information.....</i>	<i>21</i>
3.3 External communication and contact	21
<i>i. With whom to be able to communicate?.....</i>	<i>21</i>
<i>ii. How to communicate?</i>	<i>22</i>
<i>iii. Visits.....</i>	<i>22</i>
<i>iv. Contacting third parties</i>	<i>23</i>

CHAPTER 4. DETENTION CONDITIONS AND TREATMENT OF DETAINED PERSONS 26

4.1	Suitable premises	26
<i>i.</i>	<i>Detention centres</i>	26
<i>ii.</i>	<i>Other places of detention</i>	27
4.2	Food, drinking water, clothing, and bedding	29
<i>i.</i>	<i>Food and drinking water</i>	29
<i>ii.</i>	<i>Clothing and bedding</i>	30
4.3	Freedom of thought, conscience, religion, and beliefs.....	30
4.4	Leisure and recreational activities	31
4.5	Sanitation and hygiene	32
4.6	Specific cases.....	33
<i>i.</i>	<i>Children</i>	33
<i>ii.</i>	<i>Pregnant women and nursing mothers</i>	35
<i>iii.</i>	<i>Victims of human trafficking and contemporary forms of slavery</i>	36
<i>iv.</i>	<i>Victims of torture and ill-treatment, violence based on gender or sexual orientation</i> 36	
<i>v.</i>	<i>Persons with disabilities</i>	37

CHAPTER 5. HEALTHCARE 39

5.1	Access to adequate healthcare	39
5.2	Healthcare services	40
5.3	Healthcare providers.....	41
5.4	Addressing specific situations and needs.....	42
<i>i.</i>	<i>Persons with disabilities</i>	42
<i>ii.</i>	<i>Older persons</i>	43
<i>iii.</i>	<i>Children</i>	43
<i>iv.</i>	<i>Pregnant and breastfeeding women</i>	43
<i>v.</i>	<i>Victims of sexual or gender-based violence, torture or other ill-treatment</i>	44
<i>vi.</i>	<i>Victims of human trafficking and contemporary forms of slavery</i>	44
<i>vii.</i>	<i>Persons in prolonged detention</i>	44
<i>viii.</i>	<i>Persons in medical isolation and quarantine</i>	44
<i>ix.</i>	<i>Persons on hunger strike</i>	46
5.5	Health records and confidentiality	46
5.6	Documenting and reporting allegations, suspicious, and medical evidence of ill-treatment	47
5.7	Public health	48

CHAPTER 6. PERSONNEL..... 51

6.1	Personnel and training	51
<i>i.</i>	<i>Recruitment and selection</i>	51
<i>ii.</i>	<i>Training</i>	52

iii. Professional obligations	52
6.2 Emergency management	53
CHAPTER 7. MAINTENANCE OF GOOD ORDER	56
7.1 Security, discipline, isolation and means of restraint	56
i. Security and discipline	56
ii. Isolation	57
iii. Means of restraint	57
7.2 Searches	58
CHAPTER 8. COMPLAINT MECHANISMS AND INDEPENDENT MONITORING	60
8.1 Complaint mechanisms	60
8.2 Independent monitoring	61
Appendix 1 - CHECKLIST FOR LAWYERS	64
Appendix 2 - CHECKLIST FOR MEDICAL PRACTITIONERS	69
ENDNOTES	71

INTRODUCTION

1. Managing migration movements is a prerogative of member States to be exercised¹ whilst fully respecting the human rights of asylum seekers and migrants and continues to present a significant challenge for member States² Against this backdrop, immigration detention remains one of the most pressing issues in Europe and before the European Court of Human Rights (ECtHR).

2. 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

3. This guide was designed to fulfil this purpose. It serves to assist member States to implement its 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.

4. 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 other alternative, be judicially authorised/reviewed, be necessary for legitimate purposes, and operate for the shortest time possible.⁵

5. It is also important to remember there are situations when a person will not be suitable for immigration detention because of specific vulnerabilities (e.g. 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 should not be subject to any form of discrimination.⁷ Member States have a considerable burden in this regard.

Purpose of the Guide

6. This non-binding guide 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?

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

- 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 and any other volunteers assisting migrants or cooperating with authorities dealing with immigration detention.

Scope of the Guide

8. 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.

9. 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.

Distinction between limitation to freedom of movement and deprivation of liberty

10. 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 (ECHR), the starting point must be his or her concrete situation. In addition, account must be taken of a whole range of criteria such as:⁸

- the type;
- duration;
- effects;
- manner of implementation of the measure in question.⁹

11. 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 ECtHR may be summarised as follows:

- the situation and choices of concerned persons;
- the applicable legal regime of the respective country;
- the relevant duration, purpose of the measures and the procedural protection enjoyed by the concerned persons pending the events; and

- the nature and degree of the actual restrictions imposed on the concerned persons.

How to use the Guide

12. The guide has been designed in a way that enables professionals to refer separately to each of its seven 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 readings and documentation are referenced. At the end of the guide, users will find checklists for medical practitioners and lawyers.

13. This guide is based on international and European legal standards, including the case-law of the ECtHR and the Court of Justice of the European Union (CJEU).¹⁰ 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 definitions¹¹

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

Administrative detention of migrants or immigration detention refer to 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.¹²

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

Detention facility refers to places 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 refers to any organ, whether judicial or administrative, authorised by domestic law to order or decide a situation amounting to a deprivation of liberty of a person in application of laws relating to migration and asylum. It also includes private actors contracted to administer the placement of such person and to manage detention facilities.

Child refers to any human being below the age of 18 years.¹³

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

Personnel refers to persons employed or commissioned in a detention facility who carry duties towards the detention conditions or welfare of a person in immigration detention. This involves, amongst others, staff members working in a range of roles including security, detention officers, and supervisors and managers; whether employed directly by the state, as well as those whose services have been procured through outsourcing arrangements.

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

Vulnerable person refers to 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.¹⁴

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

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

CHAPTER 1. ADMINISTRATIVE DETENTION

15. Given the paramount importance of the protection of human rights in Europe, immigration detention must be in accordance with the ECHR and other relevant human rights Conventions,¹⁵ the ECtHR's case-law, 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, i.e., the decision to detain must be in conformity with the right to liberty and security pursuant to Article 5(1) ECHR and Article 9(1) 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, the detention is only in conformity with human rights when the legality of detention itself but also its conditions are complying with human rights standards. This second notion of "conditions" will be detailed in the subsequent chapters.

1.1 When can immigration detention be justified?

16. Under Article 5(1)(f) ECHR, 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; or
- pending removal or extradition of the person.

17. Any deprivation of liberty which does not pursue these aims will be in breach of Article 5(1)(f) ECHR. For instance, a person should not be detained for the sole reason of having made an application for international protection.¹⁶ For asylum seekers more restrictive standards apply and administrative detention can only be used in more limited circumstances.¹⁷

18. EU legislation authorises, amongst others, immigration detention in the following: ¹⁸

- 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 cooperate towards their removal;
- when the protection of national security or public order so requires;
- detention to secure transfer procedures under the Dublin Regulation.

19. In addition, to be compatible with the overall purpose and requirement enshrined in Article 5(1)(f) ECHR, 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”

20. 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 concerned person.¹⁹ When determining whether a decision to detain has been taken in an arbitrary manner or not, the ECtHR takes into account the key relevant factors:²⁰

- whether the detention is carried out in good faith and is based on legal grounds;²¹
- 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;²²
- whether the length of the detention exceeds what is reasonably required for the purpose pursued.

ii. “Lawful detention”

21. 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 minimum that the legal basis (national law) is accessible to the public.

ECtHR RELEVANT CASE-LAW

In the case of *Amuur v. France*, for example, the detention of the applicant at the transit zone of the Paris-Orly airport was based on two acts that were not made public. The ECtHR 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.²³

The ECtHR has also underlined that for the domestic law to be Convention compliant, it should be sufficiently precise in relation, for example, to the maximal period of detention which should be always reasonable to the purpose of the deprivation of liberty measure²⁴.

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 an unauthorised entry raised a question of the lawfulness of detention.²⁵

In *Nabil and others v. Hungary*, the ECtHR 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.²⁶

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

22. 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 alternatives measures will be ineffective in the specific case.

23. 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.

24. Alternatives to detention might be - but not limited to – the following: ²⁷

- reporting to the police or immigration authorities at regular intervals;
- surrender the passport or travel document;
- temporary authorisation to remain in the territory;
- family based care for unaccompanied children and separated children;²⁸
- residential facilities to be 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.²⁹

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 proceeding is in progress. If such proceeding is not prosecuted with due diligence, the detention will cease to be permissible under Article 5(1)(f) ECHR;
- ✓ 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 clearly established time-limits for the detention, legal advice, availability of judicial review, etc.

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

25. 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?

26. Detention should be imposed for the shortest time possible³⁰ and under no circumstance should immigration detention be for an unlimited period of time. As highlighted by the ECtHR, immigration detention is permissible only for so long as the procedures justifying the detention are pursued with due diligence.³¹ Detained persons should be released as soon as the reasons for their detention cease to apply.

27. In addition to the legitimate aim, the length of the detention is closely scrutinised by the ECtHR in light of the particular circumstances and vulnerabilities of the detained person³² and his or her detention conditions.³³ 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) ECHR.³⁴

ECtHR RELEVANT CASE-LAW

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.³⁵

1.4 What additional safeguards for vulnerable persons?

28. It has been confirmed on many occasions that vulnerability is inherent to the situation of migrants.³⁶ 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.³⁷

29. The detention of a vulnerable person will not be in conformity with Article 5(1)(f) ECHR 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 faith³⁸. In addition to Article 5(1)(f) ECHR, immigration detention of vulnerable persons can raise issues under Article 3 ECHR, 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.

30. 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 ECtHR case law the following examples can amongst others be cited³⁹:

- Children;⁴⁰
- unaccompanied and separated children;⁴¹
- pregnant women and nursing mothers;⁴²
- older persons;
- single parents with children;⁴³
- persons with disabilities or with serious illnesses;⁴⁴
- LGBTI persons;⁴⁵;
- victims of human trafficking;⁴⁶
- victims of torture, ill-treatment, sexual and gender-based violence or domestic violence, of physical or psychological nature.⁴⁷

ECtHR RELEVANT CASE-LAW

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 ECHR. 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 ECtHR recalled the Greek authorities were under the obligation to protect and take care for him by taking appropriate measures in the light of its positive obligations under Article 3 ECHR.⁴⁸

1.5 Procedural guarantees in case of detention

31. When detained, persons continue to enjoy a set of procedural rights related to their detention. Under Article 5(2) ECHR, they have the right to be informed, in a language they understand,⁴⁹ of the reasons for their deprivation of liberty.⁵⁰ 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 under Article 5(1) ECHR. Domestic courts have to examine and decide on the lawfulness of the persons' detention "speedily" and to order their release if the detention is not lawful.

32. Under Article 13 ECHR, detained persons have also the right to have an effective remedy in relation to complaints related to the conditions of their detention.⁵¹ 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 already occurred because of such conditions.⁵²

KEEP IN MIND

In 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 anyone?
- ✓ Is it 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 of the decision to detain been duly explained to the person concerned in a manner and language he/she understands?
- ✓ Is the person concerned informed of the possible duration of the detention?
- ✓ Is the person 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](#)
- ❖ UNHCR '[Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention](#)', 2012
- ❖ 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](#)

CHAPTER 2. PROCEDURES ON ARRIVAL IN THE DETENTION FACILITY

33. The notion of arrival refers to the moment of arrival at a detention facility. Persons newly entering the facility cover both persons arriving for the first time in the facility, as well as to persons 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 as well as 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) after their arrival.⁵³

34. In case the procedures on arrival are not followed by the competent authorities, the latter will bear the burden of proof of the respect of the detained person's rights.⁵⁴

2.1 Searches

35. 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.⁵⁵ This is in line with the obligation of the authority under Article 2 ECHR to protect and promote the health and well-being of detained persons and staff, especially in cases where danger is foreseeable.⁵⁶

36. 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 limbs.⁵⁷ 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

37. The ECtHR 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) ECHR and to respect the person's right to review the lawfulness of detention under Article 5(4) ECHR.⁵⁸ Thus accurate registration is an important safeguard against arbitrary detention and incommunicado detention.⁵⁹

38. Registration record should cover information about – but not 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 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 concerned person, and whether he or she has specific needs;
- an inventory of the person's belongings (the person's possession when entering the detention facility, in particular any valuables, electronic devices, baggage items, medication as well as cash and whether those items are left in the possession of the person concerned or stored by the authorities);⁶⁰
- 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.⁶¹

39. The assistance of an interpreter who can communicate in a language/dialect that the detained person can understand should be offered in case 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.

40. The person concerned should have access to the record.⁶² 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.

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

2.3 Information on arrival

42. 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

43. From the moment persons are placed in detention, competent authorities are responsible for any ill-treatment they might be subject to.⁶³ 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.⁶⁴

44. The aims of the medical screening are:

- screening the person concerned for detecting any transmissible diseases in order to protect the public health (for instance, Covid-19) and, in particular, the health of other detained persons; personnel and civil society persons interacting with them;
- identifying 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 or trauma or risk of self-harm;⁶⁵
- assessing whether the detention is, or continues to be, appropriate from a medical point of view.⁶⁶

45. 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 screening process itself should not unduly interfere with the fundamental rights of the person concerned.

46. The results of the medical screening have to 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, e.g. diabetes or epilepsy, or any other information voluntarily provided by the detained person.⁶⁷ Authorities should keep in mind that persons might not wish to share their trauma at first contact during the medical screening. Follow-up health care should be indicated and provided for issues identified through screening.

47. Information on injuries as well as allegations which 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.⁶⁸

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

- ❖ 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
- ❖ [Collection of CPT visit reports, public statements and standards](#)
- ❖ [UNHCR, International detention Coalition: Vulnerability Screening Tool : a tool for asylum and migration systems \(2016\)](#)
- ❖ [World Health Organisation: Addressing the health challenges in immigration detention, and alternatives to detention: a country implementation guide, \(2022\)](#)

CHAPTER 3. INFORMATION DISSEMINATION AND COMMUNICATION

48. 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.⁶⁹

3.1 Information dissemination to detained persons

49. Detained persons should be aware of their legal situation and detention conditions, including the subjective rights they enjoy and duties whilst detained.⁷⁰

i. Information upon deprivation of liberty

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

51. The information on the grounds for which the person is detained should be as detailed as possible.⁷¹ The information therefore should refer to the concrete individual situation of the person concerned who should include at least:

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

52. In addition to the grounds for which the person is detained, the latter has also to 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

53. Detained persons should be informed on 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 which are relevant to daily life in detention.⁷²

54. Information provided on internal rules should cover, but not limited to, the following:
- use of public facilities, such as recreational rooms, libraries, open air spaces, smoking areas, cafeteria, kitchen, or sanitary facilities;
 - meals schedules;
 - personal items that can be taken and stored by the administration for security reasons;
 - disciplinary procedures, emergency measures;
 - role of personnel members (recreational activities, cleaning, administration and etc.)
 - regime for external visits;
55. 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;
 - 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 gender and gender based specific forms of 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.
56. Detained persons should be informed of the contact details of the appropriate interlocutors and services available.

iii. Information during detention

57. 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 the removal and of its details;
 - the progress with the removal procedure;
 - their possible reunification with other family members.

iv. Information upon release

58. Upon release, authorities are encouraged to provide persons with practical information sheets of the host countries (e.g., emergency phone numbers, contact details of shelters and relevant NGO's, legal counsel, etc.).

3.2 How to inform detained persons

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

i. General means of information within the detention facility

60. Provision of information through general means can be achieved by distribution of leaflets to all detained persons at the moment of their arrival within the detention facility and be put on display publicly within the detention facility at all times.

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

ii. Individual means of information

62. In addition to the general means of information 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 if the person 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 which they can understand, and which is gender and culture sensitive.⁷³ Interpretation should be ensured while providing the relevant information, as appropriate.

63. 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 notified individually to the person concerned, whether such proceedings have been initiated by this person on their behalf or on behalf of persons under their responsibility.⁷⁴

3.3 External communication and contact

64. 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

i. With whom to be able to communicate?

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

ii. How to communicate?

66. 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 telephone (in dedicated rooms);
- use of mobile phones⁷⁵ (including internet calls (Voice over Internet Protocol));⁷⁶
- internet connection access (wi-fi) or access to a computer room;
- access delivery of letters without delay as well as the provision of paper and pencils.

67. Communication with the outside should not be monitored or altered in any shape or form (censored) respecting the privacy of detained persons (e.g., no recording of visits or of telephone calls, absolute prohibition of reading emails or letters and other intrusive measures of the kind). However, competent authorities can limit the possibility of detained persons to communicate where there are compelling reasons relevant to safety and good order. Amongst others, such limitations might comprise a set maximum time for using the internet or computer for each person in order to allow equal access to such type of communication for all detained persons, check of communications with regard to prohibited items (drugs, guns, etc.) or access blocked for 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.

iii. Visits

68. 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)⁷⁷, friends and community support groups⁷⁸. Persons should be offered the possibility to have visits several times per week.

69. 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.⁷⁹

70. Visit conditions should respect privacy and take place under open conditions (e.g., glass partition or screens should not be used).⁸⁰ Visit arrangements and procedures should further encourage a conducive visit environment (e.g., round table respecting privacy). Such measures should take into the best interest of the child and be adjusted accordingly,⁸¹ for example, visiting rooms that include a play area for children.

71. 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 (e.g., Covid-19 preventing 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.⁸² Such restrictions should not be applied as disciplinary measure or in a way that undermines the substance of the right to receive visits.

iv. Contacting third parties

72. 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 (e.g., national human rights institutions, ombudspersons, commissioners);
- monitoring bodies (e.g., the CPT or National Preventive Mechanisms (NPM));
- international organisations such as 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 which are competent in the field and are accredited by the host State.

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

74. Moreover, every detained person has the right to submit an individual application before the ECtHR, 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.⁸³

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

- all letters should be forwarded promptly without opening;⁸⁴
- assistance should be offered in obtaining access and copies of relevant documents;⁸⁵
- facilitate necessary medical examinations.⁸⁶

76. 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 be not decided 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:

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

- ❖ Council of Europe, “[How to convey child-friendly information to children in migration: A handbook for frontline professionals](#)”, 2018
- ❖ 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](#)

CHAPTER 4. DETENTION CONDITIONS AND TREATMENT OF DETAINED PERSONS

77. The ECtHR has confirmed in its caselaw that the conditions of administrative detention must not breach Article 3 ECHR.⁸⁷ 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.⁸⁸ In order to comply with member States obligations deriving from the ECHR, it is important for competent authorities to ensure that the conditions of immigration detention meet minimum standards.⁸⁹ As mentioned previously, detention conditions might render the detention unjustified under Article 5(1) ECHR.

78. 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.

79. Since immigration detention does not have the same purpose of 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.⁹⁰

4.1 Suitable premises

i. Detention centres

80. Detention facilities should be secure and hygienic⁹¹ 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-like⁹² (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 regime,⁹³ and avoidance of restrictions on movement unless justified by the aim to maintain good order and security;
- avoidance of overcrowding by having and observing a limit on the number of the persons possible to be hosted by a detention centre at the same time;⁹⁴
- during the night, ability to turn artificial light off or block natural light out, and sleep without unreasonable noise levels;
- accommodate women separately to men with both groups' privacy guaranteed;⁹⁵
- secure facilities to store clothing, cash, and other personal possessions such as lockable personal spaces (lockers);⁹⁶
- ability to receive and store their private documents and correspondence safely and securely⁹⁷ (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);⁹⁸

- adequate furnishing,⁹⁹ lighting (including natural light), heating, cooling, allow circulation of fresh air and ventilation systems;¹⁰⁰
- adequate and sufficiently available facilities for rest and needs of nature;¹⁰¹
- sanitised living spaces that are in a state of good repair;¹⁰²
- prompt identification and response to disrepair;¹⁰³
- sufficient room to exercise, including outdoors,¹⁰⁴ with spaces being properly equipped and adapted for such exercise purposes;¹⁰⁵
- place couples together where both persons consent;¹⁰⁶
- the principle of family unity should be respected unless it is not in the interest of the member of a family (e.g., in case of allegation/indication of domestic violence).¹⁰⁷

ECtHR RELEVANT CASE-LAW

In *Turdikhojaev v. Ukraine*¹⁰⁸, the claimant alleged that the conditions of his imprisonment were such that there was poor ventilation and a lack of personal space. The ECtHR found a violation of Article 3 ECHR stemming from the holding of the claimant in a cell that was less than 2 m² of personal space.

In, *Dougoz v. Greece*¹⁰⁹, the ECtHR found that the detention of an individual in conditions of overcrowding, no sleeping facilities combined with an inordinate length of detention violated Article 3 ECHR.

ii. Other places of detention

81. 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.

82. For so 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 his or her luggage and other personal possessions, except for reasons of public safety and security.

Prisons

83. Prisons are not suitable places for persons detained under immigration powers¹¹⁰ as they are designed for accommodation of persons charged with or convicted of criminal offences.¹¹¹ As such, prisons are securitised, 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. It should be decided after careful consideration of all the aspects of the case. They should be held in prison for the shortest time possible and in line with the principle of separation from the general prison regime and population.¹¹²

Police station

84. Police stations and headquarters are also inadequate facilities for immigration detention, unless used for the shortest time possible, i.e., at the very beginning (after the deprivation of liberty of a person) or at the very end of the detention period (e.g., immediately before the removal).¹¹³

Transit zones

85. Similarly, transit zones, airport reception centres, and point of entry holding facilities are unsuitable facilities for immigration detention when they are used without review¹¹⁴ and authorisation in law.¹¹⁵

Emergency facilities

86. This covers in particular situations where within a short period of time an exceptional sharp increase in migratory flows occur, which create organisational, logistical and structural difficulties for the receiving state.¹¹⁶ These exceptional circumstances may arise based on unforeseeable factors and therefore be out of the control of the authorities. Thus, a lack of financial resources alone is not a sufficient reason.

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

Transportation

88. When transferring or transporting detained persons from one place to another, it is key to ensure that the material conditions are safe and secure.¹¹⁷ This can be achieved by implementing the following measures:¹¹⁸

- ensure all journeys of whatever length are always monitored by qualified personnel;¹¹⁹
- use vehicles that are suitably designed for the specific journey,¹²⁰ equipped with the necessary safety devices such as belts¹²¹ and emergency locking mechanisms,¹²² have compartments or cubicles of a reasonable height¹²³ and size considering the length of the journey¹²⁴ to allow for sufficient personal space;¹²⁵
- provide persons with free sanitary facilities for long journeys;¹²⁶
- 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 to any medical conditions and/or vulnerabilities a person has;¹²⁷

- protect persons against any ill-treatment including gender-based violence, theft, assaults, or harassment.¹²⁸

4.2 Food, drinking water, clothing, and bedding

i. Food and drinking water

89. Since detained persons are under the exclusive control of the authorities throughout their detention, the latter are responsible to meet their basic nutritional and subsistence needs.¹²⁹ This can be achieved by implementing the following measures, which is not intended as an exhaustive list:

- always have available free, fresh, clean, and potable drinking water throughout the detention facility, including overnight;¹³⁰
- provide at least three free good quality meals,¹³¹ every day at adequate intervals, and in sufficient portions with at least one meal served warm;¹³²
- menus should be reviewed and approved by qualified dieticians. 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 personnel on 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,¹³³ religion,¹³⁴ vegan and vegetarian diets or other dietary needs (e.g., nursing mothers or diabetic persons might need to eat different meals or children should have the possibility to have snacks in-between mealtimes);¹³⁵
- provide adequate catering facilities,¹³⁶ with regular distribution of clean and separate cutlery for every person;¹³⁷
- provide sufficient space for detained persons to eat,¹³⁸ with enough tables and chairs considering the number of detained persons in the given scenario.¹³⁹

ECtHR RELEVANT CASE-LAW

This case in *R.R. and Others v. Hungary* concerns a number of alleged human rights violations of an Iranian/Afghan family which are not limited to the provision of food. Focusing on this issue though, 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 the applicants' above allegation, the ECtHR found a violation of Article 3 ECHR for the failure to provide him with food during his detention in the transit zone and without assessing his needs.

ii. Clothing and bedding

90. Detained persons need access to other household items such as adequate clothing, footwear, and bedding to ensure their dignity and well-being.¹⁴⁰ Wearing and choosing their own clothes, including underwear and footwear, preserves their personal autonomy and identity and may avoid the feeling of a carceral environment. It is important for this reason that they 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, a range of suitable clothing and footwear which is sufficient in supply taking into account their needs according to the length of their detention;¹⁴¹
- suitable clothing should be capable of being used for sleep, exercise, attending hearings, and for daily use suitable to climate conditions;
- provide detained persons, when necessary, a range of suitable clothing and footwear;
- providing adequate storage for detained persons to store their clothing and footwear
- frequently providing the necessary resources such as laundry facilities to wash and dry clothes at reasonable intervals, as well to replace them when necessary;¹⁴²
- offering appropriate rest, food, and the opportunity to wash and change clothes to detained persons following a long journey to appear before a court.¹⁴³

91. 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.

92. The ability to rest and sleep for sufficient hours without disturbance is crucial to detained persons' welfare 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:¹⁴⁴

- sufficient space to sleep and rest, including separate and safe sleeping areas for single women with or without children;¹⁴⁵
- separate bed and mattress in good condition;
- separate plinth in good condition if the duration of detention is under 24 hours;
- clean sheets and linen at frequent and reasonable intervals (for instance, once a week) during their detention.

4.3 Freedom of thought, conscience, religion, and beliefs

93. Every detained person has the right to practise their religious and non-religious belief,¹⁴⁶ whether in private or public.¹⁴⁷ This includes their personal and moral convictions.¹⁴⁸ The risks of unjustly interfering with this right can be mitigated by allowing, and if needed

facilitating, the practise of their belief.¹⁴⁹ The list below provides a non-exhaustive list of how a person may practise their belief:¹⁵⁰

- holding and changing a belief;¹⁵¹
- worship, prayer, or meditation;¹⁵²
- observing a specific dietary requirement;¹⁵³
- celebrating and observing key fasts, festivals, or holy periods.

94. It is helpful to demonstrate how those operating places of detention may be able to facilitate persons' ability to practise their belief, subject to legally justified interferences¹⁵⁴ (for example, if their behaviour amounts to harassment, threats or other criminalised acts¹⁵⁵):

- ensure detained persons can register their faith so personnel are aware of their specific belief and needs;
- respect and facilitate detained persons' specific faith requirements regarding their dress and diet;¹⁵⁶
- protect religious objects and/or artefacts from destruction or removal;¹⁵⁷
- allow the performance of religious rites, worship, prayer, and meditation in accordance with the said belief,¹⁵⁸ and facilitate ritual washing where required by the belief;
- provide suitable spaces for worship, prayer, and meditation;¹⁵⁹
- allow the organisation of or participation in religious, services, or ceremonies;¹⁶⁰
- where detention regimes (e.g., legal or family visits, events, educational services, etc.) coincide with worship, prayer, meditation, or key fasts and holy periods, make suitable arrangements to ensure such activities can still take place alongside the practice;¹⁶¹
- protect detained persons from assault, humiliation or threats, including religiously, racially, gender-based or sexually motivated abuse or violence.¹⁶²

4.4 Leisure and recreational activities

95. To protect and promote detained persons' well-being, it is important to ensure they have the opportunity and facilities to engage in leisure and recreational activities for free.¹⁶³ This will enable detained persons to keep busy, develop their skills and knowledge, exercise and improve their fitness, and socialise.

96. 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.¹⁶⁴ 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.);
- outdoor spaces with fresh air, natural light,¹⁶⁵ and adequate means of shelter for persons to shield from bad weather or seek shade from the sun;¹⁶⁶
- boardgames and cards;

- access to purposeful activities such as language classes, IT/computer classes, gardening, arts and crafts, music, cookery skills and so-called “cultural kitchens” or reading lessons;
- access to a television,¹⁶⁷ radio,¹⁶⁸ computer and to the extent possible internet,¹⁶⁹ newspapers and books;¹⁷⁰
- access to a personal mobile phone in line with good order and security considerations, and a sufficient number of community phones compared to the number of detained persons, with compatible charging devices to be able to communicate with those they choose.

4.5 Sanitation and hygiene

97. 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.¹⁷¹ To achieve this, detained persons should be provided with basic toiletries on a regular basis for free,¹⁷² so they have the resources to maintain their personal hygiene and sanitation.¹⁷³

98. 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.¹⁷⁴ A kit should include adequate quantities of:¹⁷⁵

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

99. 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:

- free and regular access to showers;¹⁷⁶
- free access toilets at any time,¹⁷⁷ including during the night,¹⁷⁸ and without undue delay;¹⁷⁹
- washing facilities with hot and cold water;¹⁸⁰
- sanitary facilities are in a good state of repair,¹⁸¹ and safe to use,¹⁸² for example, washing basins, sinks, taps, etc.;
- showers¹⁸³ and toilets are separate and have doors for privacy,¹⁸⁴ and are separate for men and women;
- showers are individual and provide enough space to change in private out of sight of other people;
- toilets are built with adequate plumbing;¹⁸⁵

- toilets, showers, wash basins are sufficient in supply compared to the number of detained persons sharing the facility;¹⁸⁶
- sanitary facilities take into account the specific person's needs and vulnerabilities of people, e.g., wheel-chair accessible.

100. 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:

- provide persons with basic equipment and items to wash and dry their clothes;¹⁸⁷
- provide persons with the necessary products and equipment to keep their accommodation clean;
- dispose of rubbish and other waste materials regularly and safely;¹⁸⁸
- fumigate cells, bedding and food storage spaces when necessary and in accordance with national regulations.

4.6 Specific cases

101. 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.¹⁸⁹

102. Conditions have to take into account the particular needs and circumstances of the person concerned and seek an appropriate solution for each particular case. In cases where the detention conditions did not take into account the particular needs and circumstances of the concerned person, the ECtHR 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 ECHR.¹⁹⁰ The examples below do not provide an exhaustive list of all such individuals but demonstrate key examples of specific cases.

i. Children

103. In the specific context of administrative detention, international standards provide that the detention of children has to 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,¹⁹¹ which need to be treated as a primary consideration in any decision-making.¹⁹²

104. 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.¹⁹³ 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 promptly identify children as quickly as possible and take immediate steps to safeguard them. 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,¹⁹⁴ 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;¹⁹⁵
- 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;¹⁹⁶
- 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;
- inform the persons on their right to challenge the results of an age assessment, any time limits applicable and how to access those remedies.

105. 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 guardians¹⁹⁷ and/or social workers¹⁹⁸;
- in accompanied child cases, avoid the separation of families unless it is in the child's best interests¹⁹⁹;
- take steps to seek suitable non-custodial care arrangement alternatives.²⁰⁰

106. Further specific considerations and actions are needed in case of unaccompanied or separated child cases, including:

- take prompt and appropriate steps to trace the child's family and reunite them²⁰¹;
- avoid the detention of the child in the adult population,²⁰² and protect them from any form of ill-treatment or abuse, including gender-based violence, human trafficking and contemporary forms of slavery²⁰³;
- avoid the separation of siblings;
- conduct an initial well-being interview and assessment with a qualified professional in a language the child understands;
- provide prompt and free access to legal representation,²⁰⁴ and a competent guardian,²⁰⁵ who can promote their best interests;
- provide effective and accessible complaints mechanisms for children (e.g., through ombudspersons).

107. 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.²⁰⁶ These include adequate indoor and outdoor spaces, and safely installed play equipment.²⁰⁷

108. 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.²⁰⁸ This can be most effectively promoted by guaranteeing the following basic safeguards:

- ensure the child can continue their respective level of age-appropriate education;²⁰⁹
- provide qualified teaching personnel to deliver educational services covering all necessary curricula;²¹⁰
- provide free sufficient and adequate resources and facilities required for the child to continue their compulsory education (e.g., stationery, a suitable learning and study space, study guides, books, and an appropriate resourced children's library).

TOOLBOX / FURTHER READING

- ❖ HELP online courses [Refugee and Migrant Children](#)
- ❖ HELP online courses [Combating Trafficking in Human Beings](#)
- ❖ [Promoting child-friendly approaches in the area of migration - Standards, guidance and current practices \(2019\)](#)
- ❖ [How to convey child-friendly information to children in migration - A handbook for frontline professionals](#) (2018)
- ❖ '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

109. As a rule, the detention of pregnant women and nursing mothers should be avoided.²¹¹ Where a pregnant woman is identified in detention, their pre-natal and post-natal needs should be provided for whilst their detention is immediately reviewed.²¹² For example, a pregnant woman will generally require, subject to a medical professional and licenced dietician's specific advice:

- balanced diet including high levels of protein, grains, fresh fruit, and vegetables;²¹³
- non-food items as required (e.g., appropriate bedding and resting facilities, morning sickness remedies, maternity clothing, etc.);
- regular and on-going access to a qualified medical practitioner to monitor and address their health and pregnancy needs.²¹⁴

110. 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.²¹⁵

iii. Victims of human trafficking and contemporary forms of slavery

111. Administrative detention of victims of human trafficking and contemporary forms of slavery should be avoided,²¹⁶ noting the obligation of member States to respect the principle of non-punishment of such victims.²¹⁷ The authorities need to identify and take reasonable steps to protect victims of human trafficking and contemporary forms of slavery (which includes sexual, criminal, and labour exploitation)²¹⁸ 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 in identifying and referring the potential victim to the relevant body which is 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:²¹⁹

- a lack of travel and/or identity documents;
- physical injuries inconsistent with the claimed cause;²²⁰
- receipt of excessive phone calls and/or text messages;
- a reluctance to engage with authorities;
- having a history of unexplained missing periods;
- having 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.

112. 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,²²¹ personnel members should ensure that their specific physical, psychological and welfare needs are protected pending a review of the decision or order to detain.²²² 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;²²³
- prompt assessment of any physical and/or mental health needs²²⁴ and appropriate provision of healthcare;²²⁵
- appropriate and secure accommodation and material assistance;²²⁶
- 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, violence based on gender or sexual orientation

113. 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.²²⁷ Torture and ill-treatment includes a wide range of acts which include physical, psychological and sexual abuse, for example:

- rape and sexual assault;²²⁸
- female genital mutilation;²²⁹
- forced sterilisation / abortion;²³⁰
- honour-based violence.²³¹

114. 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

115. 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 have to ensure the enjoyment or exercise of rights on an equal basis with others.²³²

116. 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 wheelchairs²³³, the possibility to communicate with sign-language²³⁴, as well as the possibility to move around for persons who are blind.

117. 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.²³⁵ For example, the possibility for persons to move freely within the detention facility by wheel-chair contributes to their autonomy, and in particular the possibility to use the sanitary facilities independently ensures their dignity.²³⁶ Persons should not have to rely on other detained persons, but rather receive assistance, particularly in case of emergency, provided by staff or qualified personnel.²³⁷ Moreover, particular attention has to be paid to ensure that information about the detention, the internal rules and about 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, that 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 indications’](#), 2016
- ❖ [‘Human trafficking indicators’](#), UN Office on Drugs and Crime
- ❖ [‘General recommendation No.38 \(2020\) on trafficking in woman 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, 2020
- ❖ [‘Assistance to victims of human trafficking’](#), GRETA, 2018
- ❖ [‘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

118. 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 concerned of the detained person as part of their right to health. This not only requires that adequate healthcare services are provided, but also that the minimum standards of hygiene and sanitation are also met, to avoid the spread of diseases, infections, and other illnesses.

119. 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 person's mental and/or physical health.

120. 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.²³⁸

5.1 Access to adequate healthcare

121. Access to adequate healthcare entails prompt and accurate diagnosis and care, defined on a case-by-case basis under regular and systematic supervision²³⁹, a comprehensive therapeutic strategy and continuous treatment aimed at curing persons' diseases or where there is no cure then preventing their aggravation and stabilising and supporting their condition, rather than addressing them on a symptomatic basis.²⁴⁰ To guarantee persons' access to "adequate" healthcare,²⁴¹ the competent authorities are encouraged to ensure the following minimum services to all detained persons free of charge:²⁴²

- medical screening upon arrival, conducted by medical practitioners,²⁴³ 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 any related information necessary to inform the concerned person;
- emergency healthcare and necessary treatment for physical and psychological illnesses by medical practitioners;²⁴⁴
- 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.;²⁴⁵
- access to qualified dentists, opticians and gynaecologists;²⁴⁶
- 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 persons understand.²⁴⁷

5.2 Healthcare services

122. The healthcare services in detention should always align with the general health administration of the State.²⁴⁸ This requires that all the necessary medical services, including timely surgical procedures,²⁴⁹ psychiatric healthcare,²⁵⁰ and any necessary specialised treatments are provided to detained persons²⁵¹ to an appropriate and proper standard, and where necessary at specialised hospitals.²⁵²

123. 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,²⁵³ and stress or illness resulting from the deprivation of liberty need to be diagnosed;
- diagnoses need to be as prompt and accurate as possible;²⁵⁴
- following a diagnosis, healthcare practitioners need to take all necessary steps to treat the identified illness and/or injury,²⁵⁵ aid recovery and/or prevent any avoidable deterioration;²⁵⁶
- treatment and recovery journeys require consistent and competent implementation of a suitable treatment plan followed by an appropriate medical aftercare plan;²⁵⁷
- 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 decency, privacy, dignity, and patient confidentiality of detained persons.

124. 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 disclosure.²⁵⁸ Where healthcare practitioners are concerned that a person is unable to fully communicate due to language barriers, a qualified interpreter or translator needs to be provided without undue delay.

125. 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 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 consent freely.²⁵⁹ 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.

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

127. 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.²⁶⁰ Medical treatment in such situation 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.²⁶¹

128. 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 treatment.²⁶² 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;²⁶³
- an accurate account of the patient's complaints;
- the proposed treatment plan following the assessment;
- provision of consent forms.

5.3 Healthcare providers

129. 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 able to provide the necessary treatment, the presence of paramedics or nursing personnel can be sufficient. If health care 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.

130. Healthcare services can be provided by public or private actors 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 in the detention facilities) and base their decisions on the health needs of the persons in administrative detention.²⁶⁴ 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.²⁶⁵

131. 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, to the extent 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;²⁶⁶

- ensure access to a qualified medical practitioner at any time without delay for medical emergencies;²⁶⁷
- 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.

132. If a person requires specialist medical assessment, diagnostics,²⁶⁸ 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.²⁶⁹ To this end, detention facilities need to be adequately staffed to ensure necessary transfers to hospitals can take place without delay.²⁷⁰

5.4 Addressing specific situations and needs

133. 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:²⁷¹

- consideration of whether adequate medical care can be provided for a person with specific health needs in detention;²⁷²
- the provision of healthcare should be appropriate to any gender-specific needs. For example, same sex healthcare personnel should be made available, if possible, on a detained person's request;²⁷³
- regular monitoring;
- adequate medical support which meets the particular vulnerability needs of the detained person should be guaranteed.²⁷⁴

i. Persons with disabilities

134. 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.²⁷⁵ 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:

- provide appropriate care and medical treatment;²⁷⁶
- undergo a prompt medical screening and assessment upon arrival at the detention facility,²⁷⁷ with regular check-ups as required thereafter;
- ensure 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.²⁷⁸

135. Persons with mental health needs or disabilities,²⁷⁹ and those with self-harm and/or suicidal ideations or tendencies, need to receive prompt and consistent specialist medical attention,²⁸⁰ and have their access to adequate counselling services guaranteed,²⁸¹ pending a review of their detention. The healthcare of persons with mental health needs, and self-harm and/suicidal ideations²⁸² 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?²⁸³
- where detained persons with mental health needs are not be able to explain their symptoms and feelings coherently, are personnel trained in identifying and appropriately responding to such situations?²⁸⁴
- 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 in adequate supply? Do personnel know how to use this equipment through training?
- is there a multi-disciplinary approach worked out for the detained persons? (concertation between different teams: social, psychological, medical, security, direction, etc.).
- do detained persons have access to specialised treatment, such as psychiatric treatment, if required, in specialised institutions or civilian hospitals, as appropriate?

ii. Older persons

136. 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.²⁸⁵

iii. Children

137. Children should have access to specific healthcare services taken into account the specific needs of children, their age and gender. Child-specific health care services entails access to paediatrician, health specialist as well as child specialists in social work and development. Children should be informed in a child-friendly and age-appropriate manner about the 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 case of separated or unaccompanied children by a legal guardian.²⁸⁶

iv. Pregnant and breastfeeding women

138. 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 a qualified health practitioner (e.g., a midwife, general practitioner, obstetrician, paediatrician, sonographer, neonatal nurses etc.).²⁸⁷ These services need to be comprehensive and provide sufficient advice on their overall health including their dietary needs.²⁸⁸

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

139. 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 specialised health services pending an immediate review of their detention. These may include:

- treatment of any psychological and/or physical injury,²⁸⁹ 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;²⁹⁰
- suicide and self-harm prevention.

vi. Victims of human trafficking and contemporary forms of slavery

140. 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;²⁹¹
- appropriate provision of healthcare,²⁹² 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.²⁹³

vii. Persons in prolonged detention

141. Persons detained for a prolonged period²⁹⁴ are particularly vulnerable to developing physical and/or psychological health problems, or to the exacerbation of any pre-existing illnesses.²⁹⁵ 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

142. With the aim to prevent 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:

- who have confirmed communicable or contagious diseases (medical isolation);
- who are suspected of or under the 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).

143. 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 general health situation in a particular territory) or while continuing

detention (in case of close contact with persons who have or suspected to have communicable or contagious diseases).

144. In both cases, competent authorities should keep in mind that unlike isolation used as a discipline measure, medical isolation and quarantine are not of punitive nature and should serve the sole purpose of protection of person's health. When medical isolation and quarantine applied, 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).

145. While it is legitimate and reasonable to suspend non-essential activities, the fundamental rights of detained persons who are in isolation or in quarantine have to 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 Voice-over-Internet-Protocol communication).²⁹⁶

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

- a person held in medical isolation should be released straight 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.

147. While being held in medical isolation or quarantine, persons should be subject to regular medical and psychological checks with an aim to determine their health conditions. In case a person in quarantine develops symptoms of communicable or contagious disease, he/she should be placed in isolation without undue delays.

148. Depending on the nature of a disease again, isolated persons might be kept in solitary confinement, while 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 wearing of masks or gloves, special suits);
- housing spaces are not over-crowded and respect social distance.

149. 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

150. Hunger strike is 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 actions or decisions of competent authorities.

151. 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 has to be informed of their rights and the possible consequences of the hunger strike on their health and should be subject to regular medical and psychological checks with an aim to determine their health conditions.

152. A decision to feed against 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.²⁹⁷ Intervention in case of hunger strikes, particularly in the form of force-feeding should not aim at discouraging the striker from continuation of 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.²⁹⁸ Accordingly, the personnel dealing with the persons deprived of their liberty should have "know-how" skills in case of hunger strikes by the latter.

153. 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.²⁹⁹ Methods, such as handcuffing the striker, causing severe pain to administer food should be unambiguously avoided.

154. 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 of the person concerned,³⁰⁰ 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 a rip-proof clothing). The person should benefit from a daily regime as normal as possible (including access to shower facilities, outdoor exercise and recreation).³⁰¹

5.5 Health records and confidentiality

155. 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 respected³⁰² in a

manner consistent with patients in the community.³⁰³ Steps need to be taken to ensure that all patients have their medical confidentiality observed. These include:

- non-healthcare professionals are not to be present or within hearing or seeing distance during a medical consultation and/or examination;
- if in an exceptional reason the presence of a personnel member is needed, for example for security, the personnel member should be of the same sex, and the process needs to at all times ensure the patient's medical confidentiality, privacy, and dignity (i.e., in sight of the security personnel, but out of hearing);
- translators and interpreters may be present during the consultation or examination only upon 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 not accessible by non-healthcare personnel;³⁰⁴
- 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;³⁰⁵
- in case of a medical emergency (and imminent threat of harm) non-healthcare personnel can be allowed to access medical files (i.e., in case of epilepsy or haemophilia) while respecting confidentiality;
- in case a person is transferred to another detention facility, medical confidentiality should be upheld;
- upon release or execution of 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 specific epidemic/pandemic are to be followed.

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

156. Healthcare professionals in detention facilities are very likely to encounter persons who have suffered from ill-treatment of some sort. This might include human trafficking and of contemporary forms of slavery, gender or sexual based violence, or ill-treatment and/or torture whether before or even during their detention.³⁰⁶ In these situations, it is very important to the patient's best interests that medical professionals identify any indicators of ill-treatment whether before or during a person's administrative detention.

157. 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 towards 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.

158. 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, reservation, or fear;
- mental health presentations;
- self-harm and/or suicide attempts;
- ideations of self-harm and/or suicide;
- reluctance to engage with healthcare 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.

159. 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.³⁰⁷

5.7 Public health

160. 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.³⁰⁸ It is key that any measures that are taken to meet these obligations are justified in law and applied in a non-discriminatory way.³⁰⁹ Subject to the specific needs of the concerned public health situation, suitable measures and resources supplied free of charge might include:

- equal access to information;³¹⁰
- personal protection equipment;³¹¹
- hygiene products such as soap, detergents, and washing powder;³¹²
- screening processes and regular testing with detained persons' consent or in compliance with domestic legislation and in respect of their medical confidentiality;³¹³
- isolation of persons, in conditions that meet international law standards,³¹⁴ suspected to be 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;³¹⁵
- sufficient space to observe any social distancing rules.³¹⁶

161. 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.³¹⁷ They will need access to prompt and adequate healthcare in the event they contract the condition.³¹⁸

162. 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,³¹⁹ 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.³²⁰ 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 thereof. Some of the critical points of such examinations are:

- ✓ the medical examinations should be carried out by health practitioners;
- ✓ where possible, female doctors/nurses should be available for women;
- ✓ concerned persons should be duly informed on the procedure, the methods and the reasons of the medical examination;
- ✓ concerned persons 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 confidential information and duly protected;
- ✓ concerned persons 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 right;
- ✓ medical examinations should be free of charges. However, if the concerned individual requests supplementary examinations from an external medical practitioner, these might be at his or her own costs.

TOOLBOX / FURTHER READING

- ❖ Office of the United Nations High Commissioner for Human Rights (OHCHR), '[Detention Guidance: Administrative Detention of Migrants](#)'
- ❖ 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 Organisation: Addressing the health challenges in immigration detention, and alternatives to detention: a country implementation guide \(2022\)](#)

CHAPTER 6. PERSONNEL

163. 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.

164. Personnel should be allowed to communicate any concerns or needs they have, resulting from 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, i.e., following an occupational health review.

6.1 Personnel and training

i. Recruitment and selection

165. 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.³²¹

166. Personnel working in administrative detention facilities should be carefully selected bearing in mind the specific context of their work in a non-carceral 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.³²²

167. These criteria may include, but are not limited, to:

- absence of criminal records history, and integrity;
- language skills (i.e., able to communicate effectively with other personnel members);³²³
- interpersonal skills and appropriate personality;³²⁴
- culturally sensitive communication skills;³²⁵
- 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;³²⁶
- same-sex personnel should be available with an appropriate gender ratio of personnel to the detained population.

168. 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 as well as female personnel should be, to the extent

possible, present at all times (including at night) in a sufficient manner in order to meet the specific needs of all persons in administrative detentions.³²⁷

ii. Training

169. To ensure that all personnel are fully aware of and able to discharge all their duties whilst 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;³²⁸
- code of conduct;
- duties of all personnel members, including respect for human rights in the detention context;
- data and information protection laws,³²⁹ including confidentiality rules;³³⁰
- first aid;
- health and safety procedures;
- crisis management strategies, including emergency procedures;
- whistleblowing, complaints and personnel grievances procedures;
- detection of possible symptoms of stress, physical and/or mental health, and risks of self-harm and suicide; and follow-up actions needed such as referrals to specialists and other support services;³³¹
- specific needs of vulnerable groups;
- cultural awareness, religious tolerance and sensitivity;
- interpersonal³³² and intercultural communication;³³³
- policies and rules relating to maintaining good order, security, discipline and means of restraint; including the consequences of non-compliance with such;³³⁴
- personnel should be trained in and demonstrate 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 issues³³⁵ and special needs of vulnerability.

170. To ensure that personnel members' knowledge and skills 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, personnel with specific duties and responsibilities in relation to vulnerable persons should also receive training on how to screen and identify vulnerable persons, 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 identification of vulnerable groups and may attend such training courses on a voluntary basis.

iii. Professional obligations

171. The duties, codes of conduct, and functions of personnel members in detention facilities will vary according to their specific post 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:³³⁶

- duty of care of 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;³³⁷
- treating all detained persons with respect;³³⁸
- 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 circumstance,³³⁹ and to challenge and report to the authorities any such behaviour³⁴⁰;
- respecting plurality and diversity, not discriminating against any detained person based on any protected characteristic they may possess,³⁴¹ and to challenge and report to the authorities any such behaviour³⁴²;
- taking full account of the need to challenge and combat all forms of intolerance (i.e., racism, sexism, religious intolerance, xenophobia, homophobia and transphobia) as well as to promote gender sensitivity and prevent 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.

172. If a member of the 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.

173. 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.³⁴³

6.2 Emergency management

174. In accordance with Article 2 ECHR and other relevant international instruments competent authorities are under obligation to protect lives of persons within their exclusive control as in the case of detained persons. To discharge the obligation states, have to ensure the safety of detained persons in the event of an emergency. To that end, appropriate procedures should be in place to handle the 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;
- personnel or detained person accidents;
- suicide attempts;
- injurious incidents;
- deaths.

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

- plan and review operational and contingency plans appropriate to the type and level of the emergency, in consultation with relevant professionals;
- provide all persons with the opportunity to report an emergency incident at any time during their detention;³⁴⁴
- ensure all persons are informed about how they can report incidents, and have the resources to do so;³⁴⁵
- conduct risk assessments in line with domestic and international law;
- ensure personnel trained in first aid are clearly identifiable as such (e.g., by wearing first aid badges or displaying photographs and names of first aid-qualified personnel throughout the detention facility);
- ensure first aid kits are available in sufficient numbers in all populated areas
- ensure fire safety equipment are safely installed, in working order, and regularly checked and where needed promptly serviced (e.g., smoke/heat sensors and alarms, fire extinguishers, and sprinklers);
- ensure emergency exit routes and evacuation areas are adequately indicated;
- ensure 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 on 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 on-going 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

176. 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. This Chapter is targeted at all personnel working closely with persons held in detention facilities.

7.1 Security, discipline, isolation and means of restraint

177. Detention facilities need to operate in such a way that protects and promotes the safety and security of all detained persons.³⁴⁶ This requires that a system of good order is maintained through guaranteeing minimum standards of detention conditions that respect human rights and dignity,³⁴⁷ regular and effective risk assessments, safety and security reporting procedures that are freely accessible to detained persons and personnel at any time,³⁴⁸ and where necessary, proportionate security and discipline measures based on risk assessments.³⁴⁹

i. Security and discipline

178. Disciplinary rules should have as their sole purpose the maintenance of good order within the detention facility and protecting the safety of the persons in administrative detention as well as the personnel in the detention facility and third persons.³⁵⁰ 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 reaction to a 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 to impose disciplinary measures.

179. 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.³⁵¹

180. Detained persons should be informed about any security and/or the disciplinary rules orally and handed a written copy of the rules in a language and manner the person concerned understands.³⁵² It should be clear and foreseeable for detained persons which conduct may lead to security and/or disciplinary measures and what rights the person concerned has in a procedure to impose disciplinary measures.

181. 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.³⁵³ All disciplinary procedures should be prescribed by law;³⁵⁴ this

includes the types and lengths of any disciplinary measures, the responsible decision-maker, and relevant review and/or appellate processes³⁵⁵;

- all detained persons accused of a disciplinary offence should be informed, in a language and manner they understand, in detail of the relevant charge and reasons for it; and should be offered the appropriate and necessary safeguards in place to prepare and present their defence should they so wish;³⁵⁶
- 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 in an adequate relationship to the breach committed;³⁵⁷
- disciplinary measures should never be arbitrary or excessive with regard to the measure implies and the length and scope of the measure imposed;³⁵⁸
- disciplinary measures should never constitute any form of torture or ill-treatment;
- detained persons should be afforded with the right to lodge a complaint and right to appeal against disciplinary measures to a competent and independent authority;³⁵⁹ The authority should be personally and institutionally independent, and in the position to overturn the measure.

ii. Isolation

182. Generally, the use of isolation and solitary confinement should be avoided,³⁶⁰ unless strictly necessary as a last resort:³⁶¹ the duration of such isolation or solidarity confinement should be time-specific,³⁶² and the shortest period deemed necessary³⁶³ to achieve a legitimate safety or security aim, whilst ensuring that the conditions never meet a situation of complete sensory and social isolation.³⁶⁴

183. Detained persons should never be subject to this oppressive and punitive measures 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.³⁶⁵ These guarantees include:³⁶⁶

- prompt full and accurate record of isolation and/or solitary confinement including legal basis, conditions, duration, and personnel members involved;³⁶⁷
- the availability of a doctor and other medical practitioners who monitor the physical and mental condition and provide adequate medical assessment and treatment, without delay;³⁶⁸
- medical examinations before, during, and after the isolation period;³⁶⁹
- at least one hour of outdoor exercise a day;³⁷⁰
- free and confidential access to internal and external complaints mechanisms.³⁷¹

iii. Means of restraint

184. Force should not be used on detained persons except where necessary³⁷² for self-defence or for lawful order purposes.³⁷³ 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;³⁷⁴
- 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;³⁷⁵
- 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.

185. 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

186. 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.³⁷⁶

187. Searches should provide for the concerned person' minimum guarantees under national and international law.³⁷⁷ This can be promoted by conducting every search:

- in line with the legal procedures governing such a search;
- body searches should be carried out by same-sex personnel;
- for the shortest period necessary;
- with due consideration and full respect for the detained person's human rights,³⁷⁸ including their right to privacy³⁷⁹ and enjoyment of property;
- only by personnel members with lawful authority to search can conduct the procedure;
- if in an exceptional case a strip search is needed, this can only be done by a same sex personnel member with lawful authority to conduct the procedure,³⁸⁰ and in a manner that fully respects the detained persons' dignity³⁸¹ and privacy³⁸²;
- with a prompt, full and accurate record of the search.

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:

- ✓ any security and/or disciplinary measure used is prescribed by law, 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 and evidence against them, able to respond to the charge and 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, transparently with no repercussions to the safety and security of the person making the complaint;
- ✓ full observance of the rights of the detained persons under Article 2 and Article 3 ECHR during disciplinary proceedings and/or in application of sanctions.

TOOLBOX / FURTHER READING

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

CHAPTER 8. COMPLAINT MECHANISMS AND INDEPENDENT MONITORING

188. Every person has the right to complain about any abuse they face in detention and to have such complaints effectively investigated without unreasonable delay.³⁸³ 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 for the safety and well-being of detainees. This chapter brings together existing standards and guidance on these issues.

8.1 Complaint mechanisms

189. Competent authorities should ensure that detained persons can complain about the conditions of their detention or their treatment in detention,³⁸⁴ and seek redress and/or remedies through a fair, independent, and transparent complaints and investigations procedure.³⁸⁵

190. 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.³⁸⁶

191. Complaint mechanisms should provide some minimum guarantees to ensure that they operate fairly and effectively.³⁸⁷ These include:

- 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 request (for instance, legal representatives, doctors, consular authorities, etc.);
- the detained person should be kept updated on the progress of their complaint and 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 concerned person in writing.

ECtHR RELEVANT CASE LAW

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 ECHR by not informing the relevant authorities.³⁸⁸

8.2 Independent monitoring

192. To promote and guarantee that detention conditions meet international minimum standards, all detention facilities should be subject to regular independent monitoring³⁸⁹ conducted by independent monitoring bodies and trained personnel.³⁹⁰ Independent bodies means bodies which have the competence to monitor places of detention according to national law or based on international obligations of the State. The degree of independence must be according to their mandate, 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 in the premises.

193. 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.

194. Monitoring bodies, whether internal or external, should be founded on principles of independence from the authorities, integrity, objectivity, visibility, and transparency.³⁹¹ Their work should be carried out fearlessly, with scrupulous honesty, and impartially; in conformity with codified rules and procedures that are not subject to state regulation or governance.³⁹² All monitoring bodies should, during their visits, pay specific attention to whether the following services and conditions align with international 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 representation and judicial remedies;
- healthcare services;
- hygiene and sanitation;
- detention facilities including lighting, ventilating, heating, plumbing, toilets, and showers;
- emergency responses.

195. 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.³⁹³ Their function should be to monitor personnel's compliance 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.

196. 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 such monitoring board should be suitably qualified and experienced appointed by a competent public authority, separate to those responsible for the maintenance and operation of the detention facility.³⁹⁴ 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 (NPMs);
- National ombudsman institutions;
- National inspectorates or monitors;
- National parliamentarians;
- National human rights non-governmental organisations accredited by the host State.

197. 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;³⁹⁵
- monitors should be guaranteed access to any site and any document (excluding medical records of the detainees unless informed consent is provided);
- 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 to the communication between the monitors and concerned, such as setting aside a room for interviews in private, or making sure detained persons, personnel should be available for interviews (informing them about monitoring bodies' request for interviews or providing the monitoring body with contact details of persons);
- monitors should be permitted to observe any disciplinary proceedings;

- monitors should make a full and accurate record of their visits and any concerns they have identified, and report them to the authorities without delay; ensuring that follow-up visits and checks are promptly scheduled to monitor the resolution of such 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.

198. 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 and any other preventive or monitoring body and no such person or organisation should be otherwise prejudiced in any way. The confidentiality of any communication of persons held within the scope of these rules with 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 of 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 findings on any location or document in a place of detention and speak to any individual in private.

TOOLBOX / FURTHER READING

- ❖ [International Detention Coalition: Monitoring Immigration Detention.](#)
- ❖ [FRA: Establishing national independent mechanisms to monitor fundamental rights compliance at EU external borders](#)
- ❖ [IOM: International migration law information note](#)
- ❖ [OHCR: Detention guidelines](#)

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.

I. 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 victim of human trafficking and contemporary forms of slavery, signs of torture or ill-treatment, mental health issues, health issues?

II. Vulnerabilities

i. Age

- ✓ How old your client says 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 a child, 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 there are an unaccompanied child, do they have free access to a guardian and/or social worker, 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 contemporary forms of slavery? Remember, some persons may not even know they are a victim or what human trafficking or contemporary forms of slavery.
- ✓ Some may not trust any figure of authority to make a disclosure and some persons 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 i.e., a smuggler or an 'employer'?
 - Where were they apprehended by 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 drug;
 - Possession of offensive weapon;
 - Production, sale, or use of false identity document;
 - 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, how long for?
- Were they given time off work? If so, how often?
- ✓ Are there any other indicators?
 - Injury and scar consistent with credible explanation
 - Unexplained injury and scar
 - Reserved, distressed, 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, gender-based and sexual violence mean?
- ✓ Have they declared they have been harmed in this way? 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; requirement for same-sex personnel member 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 how if at all 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 or attempts of self-harm and/or 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, ask questions, and 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 how they are feeling?
- How is the length of their detention impacting how they are feeling?

III. 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 free separate beds or, if 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 number of detained persons and how many sleep in the same room in reality?

ii. Toilet and shower

- ✓ Is there easy access to toilet whenever needed?
- ✓ Is there adequate access to shower and running hot shower water?
- ✓ Are these facilities adequate in number compared to detained persons numbers?
- ✓ 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 living environment, bathrooms and 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?
- ✓ Is food catered to 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 curricula?
- ✓ Are study and revision materials including well-resourced and accessible library and stationery provided for free?
- ✓ Are suitable recreational activities available considering detained persons' needs?

vii. *Personnel*

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

viii. *Disciplinary measures applied to detained persons*

- ✓ Are there procedures following charge?
- ✓ Are sanctions applied?
- ✓ Are there any appeal processes?
- ✓ What is the length and nature of measures and 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 not 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.³⁹⁶ This checklist covers some of the basic considerations that ought to be made upon arrival, during and upon departure of the detention facility. 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.

I. Upon arrival of the person in the detention facility

- ✓ At the outset, ask the detained person if he/she has any particular complaint(s) on 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 treatments prior to the detention and for which reasons.
- ✓ Ask the detained person if he/she uses any medicine on a regular basis, if yes for which reasons, and for what frequency. If it is revealed that a detained person uses any medicine on a regular basis take the 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 which reasons?
- ✓ Perform a medical check to the detained person at the moment of the arrival to make sure he/she has not been 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 prejudicially health practices in the country of origin of the concerned person, such as sterilization, infectious diseases, etc.
- ✓ Register the health conditions of the detained person at the moment of the arrival, specifying as a minimum, 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 how they could call/inform 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.

II. Upon departure of the person from the detention facility

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

III. Throughout the entire detention period

All questions/issues listed at the moment of the arrival/departure should be also asked/dealt with by the medical practitioners throughout the entire detention/reception period. In addition, all along the detention period, the following indicative measures could help medical practitioners to better perform their mission and efficiently protect 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 sanitized by professional personnel.
- ✓ All medical personnel should wear signs that clearly indicate that they belong to medical services. Those signs should have a non-discriminatory nature in religious and cultural terms.
- ✓ Update the medical equipment at each specific detention facility.
- ✓ Have, to the possible extent, 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 concerned persons and their medical data obtained by the authorities of each specific state.
- ✓ Make sure that medical data of the detained asylum seekers is duly protected by the authorities and medical personnel in the same conditions as the medical data of the national of the member States.
- ✓ 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 measure to guarantee the confidentiality during medical examination and regarding treatment of files containing personal and medical data.

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

ENDNOTES

¹ *A.A. and others v. North Macedonia*, 55798/16 §115, 05.07.2022; *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 223, ECHR 2011); *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 122, ECHR 2012

² As the ECtHR has stressed, such obligation can be engaged under the ECHR when the rights under Article 3, 5, 8, 13, Article 4 of Prot. 4, are at stake. See, for example, ECtHR, *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, §§ 139- 140, ECHR 2012.

³ See: 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 Commissioner of Human Rights, (2010) Resolution 1509 (2006) of the PACE on the human rights of irregular migrants.

⁶ See for example: ECtHR, *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 167, 13 February 2020; ECtHR, *Chahal v. the United Kingdom*, 15 November 1996, § 73, Reports of Judgments and Decisions 1996-V; and ECtHR, *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 102, Series A no. 215.

⁷ ECtHR, *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 221, ECHR 2011.

⁸ See for example: ECtHR, *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 71, 15 December 2016; ECtHR, *Ilias and Ahmed v. Hungary* [GC], no. 47287/15, § 217, 21 November 2019; ECtHR, *Z.A. and Others v. Russia* [GC], nos. 61411/15 and 3 others, § 138, 21 November 2019; ECtHR, *R.R. and Others v. Hungary*, no. 36037/17, § 74, 2 March 2021.

⁹ ECtHR, *De Tommaso v. Italy* [GC], no. 43395/09, § 80, 23 February 2017; ECtHR, *Guzzardi v. Italy*, 6 November 1980, § 92, Series A no. 39; ECtHR, *Medvedyev and Others v. France* [GC], no. 3394/03, § 73, ECHR 2010; ECtHR, *Creangă v. Romania* [GC], no. 29226/03, § 91, 23 February 2012.

¹⁰ See ECHR, Article 53 and the Charter of Fundamental Rights of the European Union, Article 53. See also Article 4 of the 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.

¹¹ The definitions used in this Guide take into account especially the definitions formulated in Article 2 of the 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 the Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.

¹² 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 EU 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.*”; the 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).

¹³ UN Convention on the Rights of the Child.

¹⁴ Council of Europe Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025).

¹⁵ 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 UN Convention of the Rights of the Child (CRC), the UN Convention against Torture (CAT) and its Optional Protocol, the UN Convention on the Elimination of Discrimination Against Women (CEDAW) and the UN International Convention for the Protection of All Persons from Enforced Disappearance (ICED), the UN 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.

¹⁶UN Universal Declaration of Human Rights, (UDHR), Article 14; the Charter of Fundamental Rights of the European Union, Article 18; UN Convention relating to the Status of Refugees, Article 31.

¹⁷UN Convention relating to the Status of Refugees, Art. 31(1); UNHCR Detention Guidelines. See also paragraph 22 above.

¹⁸Directive 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); the 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).

¹⁹ECtHR, *Amuur v. France*, 25 June 1996, § 43, *Reports of Judgments and Decisions* 1996-III.

²⁰ECtHR, *Saadi v. the United Kingdom* [GC], no. 13229/03, § 74, ECHR 2008.

²¹*Infra*, Chapter IV.

²²ECtHR, *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, §§ 205-234, ECHR 2011.

²³ECtHR *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.

²⁴ECtHR, *Mathloom v. Greece*, no. 48883/07, §§ 60-71, 24 April 2012

²⁵ECtHR, *Suso Musa v. Malta*, no. 42337/12, 23 July 2013.

²⁶ECtHR, *Nabil and Others v. Hungary*, no. 62116/12, §§ 39-44, 22 September 2015.

²⁷For 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).

²⁸CDDH, [Guide on family-based care for unaccompanied and separated children](#), 2021

²⁹It 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.

³⁰Article 28 (3) of the 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 the 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 the 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.

³¹ECtHR, *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 164, ECHR 2009; ECtHR, *Auad v. Bulgaria*, no. 46390/10, § 128, 11 October 2011; ECJU, *Said Shamilovich Kadzoev (Huchbarov)*, C-357/09 PPU § 60, 30 November 2009.

³²On the detention of unaccompanied children see ECtHR, *Rahimi v. Greece*, no. 8687/08, 5 April 2011, on detention of children detained in unsuitable facilities ECtHR, *Muskhadzhiyeva and Others v. Belgium*, no. 41442/07, 19 January 2010 on detention of families with children see ECtHR, *Tarakhel v. Switzerland* [GC], no. 29217/12, ECHR 2014 (extracts), for stateless individuals, see ECtHR, *Auad v. Bulgaria*, no. 46390/10, § 128, 11 October 2011.

³³ECtHR, *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, ECHR 2011; ECtHR, *R.R. and Others v. Hungary*, no. 36037/17, 2 March 2021.

³⁴*Rantsev v. Cyprus and Russia*, no. 25965/04, ECHR 2010 (extracts).

³⁵ECtHR, *Louled Massoud v. Malta*, no. 24340/08, 27 July 2010. See also ECtHR, *Al Husin v. Bosnia and Herzegovina* (no. 2), no. 10112/16, 25 June 2019.

³⁶ECtHR, *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 167, 13 February 2020; ECtHR, *Chahal v. the United Kingdom*, 15 November 1996, § 73, *Reports of Judgments and Decisions* 1996-V; and ECtHR, *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 102, Series A no. 215.

³⁷UNHCR, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, Guideline 4 and 9.

³⁸ECtHR, *Abdullahi Elmi and Aweys Abubakar v. Malta*, nos. 25794/13 and 28151/13, 22 November 2016; ECtHR, *Abdi Mahamud v. Malta*, no. 56796/13, 3 May 2016.

³⁹Article 21 of the 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).

- ⁴⁰ECtHR, *A.B. and Others v. France*, no. 11593/12, § 115, 12 July 2016; ECtHR, *Popov v. France*, nos. 39472/07 and 39474/07, 19 January 2012; ECtHR, *Abdullahi Elmi and Aweys Abubakar v. Malta*, nos. 25794/13 and 28151/13, 22 November 2016; ECtHR, *Rahimi v. Greece*, no. 8687/08, 5 April 2011; ECtHR, *Moustahi v. France*, no. 9347/14, 25 June 2020.
- ⁴¹ECtHR, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, ECHR 2006-XI.
- ⁴²ECtHR, *Mahmundi and Others v. Greece*, no. 14902/10, § 70, 31 July 2012.
- ⁴³Article 21 of the 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).
- ⁴⁴See ECtHR, *Asalya v. Turkey*, no. 43875/09, § 50, 15 April 2014.
- ⁴⁵ECtHR, *O.M. v. Hungary*, no. 9912/15, § 53, 5 July 2016.
- ⁴⁶ECtHR, *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, 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.
- ⁴⁷ECtHR, *Gisayev v. Russia*, no. 14811/04, §116, 20 January 2011; ECtHR, *Opuz v. Turkey*, no. 33401/02, § 160, ECHR 2009.
- ⁴⁸ECtHR, *Darboe and Camara v. Italy*, no. 5797/17, 21 July 2022.
- ⁴⁹ECtHR, *Rahimi v. Greece*, no. 8687/08, §120, 5 April 2011.
- ⁵⁰ECtHR, *Khlaifia and Others v. Italy* [GC], no. 16483/12, §132, 15 December 2016.
- ⁵¹ECtHR, *G.B. and Others v. Turkey*, no. 4633/15, §§ 125-138, 17 October 2019.
- ⁵²ECtHR *Sergey Babushkin v. Russia*, no. 5993/08, § 40, 28 November 2013.
- ⁵³CPT, Report on the 2015 visit to Sweden, [CPT/Inf \(2016\)1](#), §37.
- ⁵⁴ECtHR, *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §123, 10 January 2012; ECtHR, *Al Nashiri v. Poland*, no. 28761/11, §396, 24 July 2014.
- ⁵⁵European Convention on Human Rights, Article 2
- ⁵⁶ECtHR, *Daraibou v. Croatia*, no. 84523/17, 17 January 2023, §§88 – 89.
- ⁵⁷ECtHR, *Daraibou v. Croatia*, no. 84523/17, 17 January 2023, §§88 – 89.
- ⁵⁸ECtHR, *Çakıcı v. Turkey* [GC], no. 23657/94, §105, ECHR 1999-IV; ECtHR, *Kurt v. Turkey*, 25 May 1998 §125, Reports of Judgments and Decisions 1998-III; ECtHR, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, §236, ECHR 2012.
- ⁵⁹UN International Convention for the Protection of All Persons from Enforced Disappearance, Article 17; ECtHR, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, §233, ECHR 2012; ECtHR, *Kurt v. Turkey*, 25 May 1998, §124, Reports of Judgments and Decisions 1998-III.
- ⁶⁰UN International Convention for the Protection of All Persons from Enforced Disappearance, Article 17(3); PACE Resolution 1707 (2010), § 9.2.4; ECtHR, *Çakıcı v. Turkey* [GC], no. 23657/94, §105, ECHR 1999-IV.
- ⁶¹UN International Convention for the Protection of All Persons from Enforced Disappearance, Article 17(3); UNCHR Guidelines, Guideline 8 § 48(iv); ECtHR, *Çakıcı v. Turkey* [GC], no. 23657/94, §105, ECHR 1999-IV.
- ⁶²UN Body of Principles, Principle 12.
- ⁶³See for the responsibility of the State concerning the treatment of the applicant in detention ECtHR, *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, §§223-234, ECHR 2011 and ECtHR, *Khlaifia and Others v. Italy* [GC], no. 16483/12, §§158-69, 15 December 2016. Concerning the applicant's living conditions, see ECtHR *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, §§249-264, ECHR 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 the asylum seekers see also the 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).
- ⁶⁴CPT, [23rd General Report](#), §73; UNHCR Detention Guidelines, 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).
- ⁶⁵Committee of Ministers Recommendation Rec(2003)5, § 12; PACE Resolution 1707 (2010), § 9.2.4; ECtHR, *Wenner v. Germany*, no. 62303/13, 1 September 2016.
- ⁶⁶ECtHR, *Ślawomir Musiał v. Poland*, no. 28300/06, § 88, 20 January 2009.
- ⁶⁷CPT, Report on the 2017 visit to Italy, [CPT/Inf \(2018\)13](#), §§ 25 ff. and 51 ff.
- ⁶⁸CPT, Report on the 2014 visit to Austria, [CPT/Inf \(2015\) 34](#), §46.
- ⁶⁹ECtHR, *Riad and Idiab v. Belgium*, nos. 29787/03 and 29810/03, 24 January 2008.

⁷⁰See, for information on asylum applicants, the 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, Art. 14. For information on refugees and subsidiary protection status holders, see the 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), Arts. 26–27. 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.

⁷¹See 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.

⁷²CPT, [19th General Report](#), § 88.

⁷³Reference and good example 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.

⁷⁴See 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, paragraph 12 and 16.

⁷⁵CPT, Report on the 2014 visit to the Czech Republic, [CPT/Inf \(2015\)18](#), §42.

⁷⁶CPT, 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 the former Yugoslav Republic of Macedonia, [CPT/Inf \(2016\)8](#), §133.

⁷⁷ECtHR, *Kruskovic v. Croatia*, Application No. 46185/08, §18, 21 June 2011.

⁷⁸Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173, BPP, Principle 20.

⁷⁹Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, Article 18.

⁸⁰CPT, Report on the 2015 visit to Hungary, [CPT/Inf \(2016\)27](#), §71.

⁸¹CPT, Report on the 2014 visit to the Czech Republic, [CPT/Inf \(2015\)18](#), §41.

⁸²CPT, Report on the 2009 visit to Hungary, [CPT/Inf \(2010\)16](#), §44.

⁸³ECtHR, *Petra v. Romania*, 23 September 1998, §43, *Reports of Judgments and Decisions* 1998-VII.

⁸⁴ECtHR, *Peñaranda Soto v. Malta*, no. 16680/14, §§97-99, 19 December 2017.

⁸⁵ECtHR, *Naydyon v. Ukraine*, no. 16474/03, §§ 63, 68, 14 October 2010.

⁸⁶ECtHR, *Boicenco v. Moldova*, no. 41088/05, §158, 11 July 2006.

⁸⁷ECtHR, *JA and Others v Italy*, 21329/18, 30 March 2023.

⁸⁸Directive 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.

⁸⁹Directive 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; the 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](#), §253.

⁹⁰CPT, [7th General Report](#), §29.

⁹¹See the 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, the 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).

⁹²European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, March 2017, Section 3; CM Recommendation (2022)17, §101; ‘Twenty Guidelines on Forced Return’, Guideline 10.2 (second sentence); PACE Resolution 1707(2010), 9.2.2.

⁹³European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, March 2017, Section 3.

⁹⁴ECtHR, *Muršić v. Croatia* [GC], no. 7334/13, 20 October 2016; ECtHR, *Turdikhojaev v. Ukraine*, no. 72510/12, 18 March 2021; ‘Twenty Guidelines on Forced Return’, Guideline 10.2 (first sentence).

- ⁹⁵European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, March 2017, Section 3.
- ⁹⁶CPT, Report on the 2007 visit to Croatia, [CPT/Inf \(2008\)29](#), §35.
- ⁹⁷European Convention on Human Rights, Article 8; 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), Articles 18(7), 24(4), 25(2).
- ⁹⁸European Convention on Human Rights, Article 8.
- ⁹⁹Twenty 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.
- ¹⁰⁰ECtHR, *Peers v. Greece*, no. 28524/95, ECHR 2001-III.
- ¹⁰¹'Report of the Special Rapporteur on the Human Rights of Migrants, François Crépeau, Detention of Migrants in an Irregular Situation', A/HRC/20/24, §72; Mandela Rules, Rules 13 and 14.
- ¹⁰²'Twenty Guidelines on Forced Return', Guideline 10.2 (first sentence); 2; CPT, Report on the 2014 visit to the former Yugoslav Republic of Macedonia, [CPT/Inf\(2016\)8](#), §113.
- ¹⁰³CPT, Report on the 2002 visit to Ukraine, [CPT/Inf \(2004\)34](#), §62; CPT, Report on the 2014 visit to the former Yugoslav Republic of Macedonia, [CPT/Inf\(2016\)8](#), Recommendations.
- ¹⁰⁴ECtHR, *Muršić v. Croatia* [GC], no. 7334/13, 20 October 2016; ECtHR, *Monir Lotfy v. Cyprus*, no. 37139/13, §165, 29 June 2021; ECtHR, *S.D. v. Greece*, no. 53541/07, § 49-54, 11 June 2009; ECtHR, *Riad and Idiab v. Belgium*, nos. 29787/03 and 29810/03, 24 January 2008; ECtHR, *A.A. v. Greece*, no. 12186/08, 22 July 2010; ECtHR, *Khlaifia and Others v. Italy* [GC], no. 16483/12, §142, 15 December 2016; ECtHR, *Monir Lotfy v. Cyprus*, no. 37139/13, §165, 29 June 2021.
- ¹⁰⁵CPT, Report on the 2015 visit to Hungary, [CPT/Inf \(2016\)27](#), §42; CPT, Report on the 2010 visit to France, [CPT/Inf \(2012\)13](#), §43; CPT, Report on the 2009 visit to Ukraine, [CPT/Inf \(2011\)29](#), §62.
- ¹⁰⁶'Women deprived of their liberty', CPT/Inf(2000) 13-part, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Section 24; the 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).
- ¹⁰⁷See ExCom Conclusion No. 93, 2002 but also most recent ECtHR 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 (ECtHR, *Nikoghosyan and Others v. Poland*, no. 14743/17, § 84, 3 March 2022).
- ¹⁰⁸ECtHR, *Turdikhojaev v. Ukraine*, no. 72510/12, 18 March 2021.
- ¹⁰⁹ECtHR, *Dougoz v. Greece*, no. 40907/98, ECHR 2001-II
- ¹¹⁰'Immigration detention: Factsheet', CPT, March 2017, Section 3. See also, CPT, Report on the 2014 visit to Ireland, [CPT/Inf \(2015\)38](#), §19.
- ¹¹¹CPT, Report on the 2014 visit to Ireland, [CPT/Inf \(2015\) 38](#), §19; CPT, Report on the 2010 visit to Germany, [CPT/Inf \(2012\)6](#), §33.
- ¹¹²ECtHR, *Azimov v. Russia*, no. 67474/11, § 150, 18 April 2013; CJEU; *Thi Ly Pham v Stadt Schweinfurt* ECJ C-474/13, EU:C:2014:2096, §§ 19 and 21
- ¹¹³ECtHR, *Abdolkhani and Karimnia v. Turkey* (no. 2), no. 50213/08, 27 July 2010; ECtHR, *Charahili v. Turkey*, no. 46605/07, 13 April 2010; ECtHR, *R.U. v. Greece*, no. 2237/08, 7 June 2011.
- ¹¹⁴ECtHR, *Amuur v. France*, 25 June 1996, *Reports of Judgments and Decisions* 1996-III; ECtHR, *Riad and Idiab v. Belgium*, nos. 29787/03 and 29810/03, 24 January 2008; *Immigration detention: Factsheet*, CPT, March 2017, Section 3.
- ¹¹⁵ECtHR, *Shamsa v. Poland*, nos. 45355/99 and 45357/99, 27 November 2003.
- ¹¹⁶ECtHR, *J.R and Others v. Greece*, Application No. 22696/16, § 138; ECtHR, *Khlaifia and Others v. Italy*, Application No. 16483/12, § 179
- ¹¹⁷ECtHR, *Khlaifia and Others v. Italy* [GC], no. 16483/12, 15 December 2016; *Parliamentary Assembly of the Council of Europe, Resolution 2266 (2019) Protecting human rights during transfers of prisoners*.
- ¹¹⁸ECtHR, *Tomov and Others v. Russia*, nos. 18255/10 and 5 others, §§123 – 128, 9 April 2019.
- ¹¹⁹CPT, Report on the 2015 visit to Serbia, [CPT/Inf \(2016\)2](#), §53; CPT, Report on the 2012 visit to United Kingdom (Scotland), [CPT/Inf \(2014\)11](#), §88; CPT, Report on the 2001 visit to Slovenia, [CPT/Inf \(2002\)36](#), §95.
- ¹²⁰CPT, Report on the 2000 visit to Lithuania, [CPT/Inf \(2001\)22](#), §§117 and 118.
- ¹²¹CPT, Report on the 2016 visit to Netherlands, [CPT/Inf \(2017\)1](#), §29; CPT, Report on the 2012 visit to United Kingdom (Scotland), [CPT/Inf \(2014\)11](#), §88; CPT, Report on the 2011 visit to Andorra, [CPT/Inf \(2012\)28](#), §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; ECtHR, *Engel v. Hungary*, no. 46857/06, §28, 20 May 2010.

¹²²'Transport of Detainees: Factsheet', European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, June 2018.

¹²³'Transport of Detainees: Factsheet', European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, June 2018; ECtHR, *Idalov v. Russia* [GC], no. 5826/03, §103, 22 May 2012.

¹²⁴'Transport of Detainees: Factsheet', European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, June 2018. ECtHR, *Vlasov v. Russia*, no. 78146/01, §§92-99, 12 June 2008; ECtHR, *Retunscaia v. Romania*, no. 25251/04, §78, 8 January 2013; ECtHR, *Radzhab Magomedov v. Russia*, no. 20933/08, §61, 20 December 2016.

¹²⁵'Transport of Detainees: Factsheet', European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, June 2018; ECtHR, *Vlasov v. Russia*, no. 78146/01, §§92-99, 12 June 2008; ECtHR, *Retunscaia v. Romania*, no. 25251/04, §78, 8 January 2013; ECtHR, *Radzhab Magomedov v. Russia*, no. 20933/08, §61, 20 December 2016.

¹²⁶CPT, 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 United Kingdom, [CPT/Inf \(2006\)28](#), §23; CPT, Report on the 2000 visit to Lithuania, [CPT/Inf \(2001\)22](#), §118.

¹²⁷CPT, Report on the 1991 visit to Spain, [CPT/Inf \(96\)9](#), §150; ECtHR, *Tarariyeva v. Russia*, no. 4353/03, §112-117, ECHR 2006-XV (extracts).

¹²⁸'Transport of Detainees: Factsheet', European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, June 2018. ECtHR, *Balajevs v. Latvia*, no. 8347/07, 28 April 2016; ECtHR, *Ostroveņecs v. Latvia*, no. 36043/13, 5 October 2017; ECtHR, *Ilgiz Khalikov v. Russia*, no. 48724/15, 15 January 2019.

¹²⁹ ECtHR, *Kadiķis v. Latvia* (no. 2), no. 62393/00, §55, 4 May 2006; ECtHR, *Stepuleac v. Moldova*, no. 8207/06, §55, 6 November 2007; ECtHR, *R.R. and Others v. Hungary*, no. 36037/17, 2 March 2021.

¹³⁰Mandela Rules, Rule 22.2. [EASO guidance on reception conditions: operational standards and indications](#), 2016, Indicator 22.1; The Sphere Project, "How much water is needed in emergencies".

¹³¹ECtHR, *Monir Lotfy v. Cyprus*, no. 37139/13, §165, 29 June 2021; ECtHR, *Sili v. Ukraine*, no. 42903/14, 8 July 2021; ECtHR, *Dudchenko v. Russia*, no. 37717/05, §130, 7 November 2017; ECtHR, *Muršić v. Croatia* [GC], no. 7334/13, §166, 20 October 2016.

¹³²ECtHR, *Muršić v. Croatia* [GC], no. 7334/13, §166, 20 October 2016.

¹³³ECtHR, *Ebedin Abi v. Turkey*, no. 10839/09, §§31 – 54, 13 March 2018.

¹³⁴ECtHR, *Erlich and Kastro v. Romania*, nos. 23735/16 and 23740/16, 9 June 2020.

¹³⁵CPT, Report on the 2014 visit to the former Yugoslav Republic of Macedonia, [CPT/Inf \(2016\)8](#), §120; ECtHR, *Jakóbski v. Poland*, no. 18429/06, §§45 – 55, 7 December 2010; ECtHR, *Vartic v. Romania* (no. 2), no. 14150/08, §§33-36, 17 December 2013; ECtHR, *Ebedin Abi v. Turkey*, no. 10839/09, §§31-54, 13 March 2018; ECtHR, *Erlich and Kastro v. Romania*, nos. 23735/16 and 23740/16, 9 June 2020.

¹³⁶ECtHR, *Riad and Idiab v. Belgium*, nos. 29787/03 and 29810/03, 24 January 2008; ECtHR, *A.A. v. Greece*, no. 12186/08, 22 July 2010.

¹³⁷CPT, Report on the 2014 visit to the former Yugoslav Republic of Macedonia, [CPT/Inf \(2016\)8](#), Recommendations.

¹³⁸ECtHR, *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, 10 January 2012.

¹³⁹CPT, Report on the 2014 visit to the former Yugoslav Republic of Macedonia, [CPT/Inf \(2016\)8](#), Recommendations; ECtHR, *Khlaifia and Others v. Italy* [GC], no. 16483/12, §142 and 146, 15 December 2016.

¹⁴⁰[EASO guidance on reception conditions: operational standards and indications](#), 2018, Section 3.

¹⁴¹[EASO guidance on reception conditions: operational standards and indications](#), 2018, Indicators 23.2 – 23.3.

¹⁴²CPT, Report on the 2007 visit to Croatia, [CPT/Inf \(2008\) 29](#), §37; Mandela Rules, Rule 19.

¹⁴³CPT, Report on the 2000 visit to Lithuania, [CPT/Inf \(2001\)22](#), §§117-118.

¹⁴⁴ECtHR, *Dougoz v. Greece*, no. 40907/98, ECHR 2001-II; ECtHR, *S.D. v. Greece*, no. 53541/07, §§49-54, 11 June 2009.

¹⁴⁵ECtHR, *Dougoz v. Greece*, no. 40907/98, ECHR 2001-II; ECtHR, *S.D. v. Greece*, no. 53541/07, §§49-54, 11 June 2009; 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.

¹⁴⁶ECtHR, *Abdullah Yalçın v. Turkey* (no. 2), no. 34417/10, 14 June 2022; ECtHR, *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, §78, ECHR 2000-XI; ECtHR, *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, §117, ECHR 2001-XII; and ECtHR, *Serif v. Greece*, no. 38178/97, §52.

¹⁴⁷European Convention on Human Rights, Article 9; ECtHR, *Pichon and Sajous v. France* (dec.), no. 49853/99.

- ¹⁴⁸European Convention on Human Rights, Article 9.
- ¹⁴⁹ECtHR, *Svyato-Mykhaylivska Parafiya v. Ukraine*, no. 77703/01, §116, 14 June 2007; ECtHR, *Eweida and Others v. the United Kingdom*, nos. 48420/10 and 3 others, §80, ECHR 2013 (extracts); ECtHR, *Nasirov and Others v. Azerbaijan*, no. 58717/10, §60, 20 February 2020.
- ¹⁵⁰ECtHR, *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, §60, ECHR 2000-XI; ECtHR, *Nasirov and Others v. Azerbaijan*, no. 58717/10, §60, 20 February 2020.
- ¹⁵¹European Convention on Human Rights, Article 9; ECtHR, *Pichon and Sajous v. France* (dec.), no. 49853/99, ECHR 2001-X.
- ¹⁵²CPT, Report on the 2014 visit to the former Yugoslav Republic of Macedonia, [CPT/Inf \(2016\)8](#), §120.
- ¹⁵³CPT, Report on the 2014 visit to the former Yugoslav Republic of Macedonia, [CPT/Inf \(2016\)8](#), §120; ECtHR, *Jakóbski v. Poland*, no. 18429/06, §§45-55, 7 December 2010; ECtHR, *Vartic v. Romania* (no. 2), no. 14150/08, §§33-36, 17 December 2013; ECtHR, *Erlich and Kastro v. Romania*, nos. 23735/16 and 23740/16, 9 June 2020.
- ¹⁵⁴European Convention on Human Rights, Article 9.
- ¹⁵⁵ECtHR, *Nasirov and Others v. Azerbaijan*, no. 58717/10, §56, 20 February 2020.
- ¹⁵⁶CPT, Report on the 2014 visit to the former Yugoslav Republic of Macedonia, [CPT/Inf \(2016\)8](#), §120; ICCPR, Article 18; UN Convention Relating to the Status of Refugees, Article 4; UNHCR Detention Guidelines, Guideline 8, §48(ix).
- ¹⁵⁷ECtHR, *Tsartsidze and Others v. Georgia*, no. 18766/04, §8, 17 January 2017.
- ¹⁵⁸ECtHR, *Tsartsidze and Others v. Georgia*, no. 18766/04, §23, 17 January 2017.
- ¹⁵⁹CPT, Report on the 2014 visit to the former Yugoslav Republic of Macedonia, [CPT/Inf \(2016\)8](#), §120.
- ¹⁶⁰ECtHR, *Tsartsidze and Others v. Georgia*, no. 18766/04, §82, 17 January 2017; ECtHR, *Güler and Uğur v. Turkey*, nos. 31706/10 and 33088/10, §55, 2 December 2014.
- ¹⁶¹ECHR Article 9.
- ¹⁶²ECtHR, *Tsartsidze and Others v. Georgia*, no. 18766/04, §27, 17 January 2017.
- ¹⁶³ECtHR, *A.A. v. Greece*, no. 12186/08, §§57-65, 22 July 2010.
- ¹⁶⁴CPT, Report on the 2014 visit to the former Yugoslav Republic of Macedonia, [CPT/Inf \(2016\)8](#), §113.
- ¹⁶⁵Detention Guidelines, UNHCR, Guideline 8.48; ECtHR, *Moiseyev v. Russia*, no. 62936/00, §125, 9 October 2008.
- ¹⁶⁶ECtHR, *Mandić and Jović v. Slovenia*, nos. 5774/10 and 5985/10, §78, 20 October 2011.
- ¹⁶⁷ECtHR, *Riad and Idiab v. Belgium*, nos. 29787/03 and 29810/03, 24 January 2008; ECtHR, *A.A. v. Greece*, no. 12186/08, 22 July 2010.
- ¹⁶⁸ECtHR, *Riad and Idiab v. Belgium*, nos. 29787/03 and 29810/03, 24 January 2008; ECtHR, *A.A. v. Greece*, no. 12186/08, 22 July 2010.
- ¹⁶⁹CPT, 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.
- ¹⁷⁰'Report of the Special Rapporteur on the Human Rights of Migrants, François Crépeau, Detention of Migrants in an Irregular Situation', A/HRC/20/24, §§29 and 72.
- ¹⁷¹ECtHR, *V.D. v. Romania*, no. 7078/02, §§94-100, 16 February 2010.
- ¹⁷²ECtHR, *S.D. v. Greece*, no. 53541/07, §§49-54, 11 June 2009; ECtHR, *Sili v. Ukraine*, no. 42903/14, 8 July 2021.
- ¹⁷³ECtHR, *S.D. v. Greece*, no. 53541/07, §§49-54, 11 June 2009; ECtHR, *Sili v. Ukraine*, no. 42903/14, 8 July 2021; CPT, Report on the 2011 visit to Greece, [CPT/Inf \(2012\)1](#), §38.
- ¹⁷⁴CPT, Report on the 2014 visit to the former Yugoslav Republic of Macedonia, [CPT/Inf \(2016\)8](#), Recommendations.
- ¹⁷⁵CPT, Report on the 2014 visit to the former Yugoslav Republic of Macedonia, [CPT/Inf \(2016\)8](#), Recommendations.
- ¹⁷⁶ECtHR, *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §158, 10 January 2012.
- ¹⁷⁷ECtHR, *S.D. v. Greece*, no. 53541/07, §§49-54, 11 June 2009.
- ¹⁷⁸CPT, Report on the 2011 visit to Greece, [CPT/Inf \(2012\)1](#), §38.
- ¹⁷⁹ECtHR, *Khlaifia and Others v. Italy* [GC], no. 16483/12, §146, 15 December 2016.
- ¹⁸⁰CPT, Report on the 2013 visit to Greece, [CPT/Inf \(2014\)26](#), §51; ECtHR, *S.D. v. Greece*, no. 53541/07, 11 June 2009; ECtHR, *A.A. v. Greece*, no. 12186/08, 22 July 2010.
- ¹⁸¹ECtHR, *A.A. v. Greece*, no. 12186/08, §§57-65, 22 July 2010.
- ¹⁸²ECtHR, *Sili v. Ukraine*, no. 42903/14, 8 July 2021; ECtHR, *Khlaifia and Others v. Italy* [GC], no. 16483/12, §171, 15 December 2016.
- ¹⁸³ECtHR, *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §158, 10 January 2012; ECtHR, *Aleksandr Makarov v. Russia*, no. 15217/07, §97, 12 March 2009; ECtHR, *Longin v. Croatia*, no. 49268/10, §60, 6 November 2012.

- ¹⁸⁴ECtHR, *Khlaifia and Others v. Italy* [GC], no. 16483/12, §171, 15 December 2016; ECtHR, *Szafrański v. Poland*, no. 17249/12, §§37-41, 15 December 2015.
- ¹⁸⁵ECtHR, *Sili v. Ukraine*, no. 42903/14, 8 July 2021.
- ¹⁸⁶ECtHR, *Moiseyev v. Russia*, no. 62936/00, §124, 9 October 2008.
- ¹⁸⁷CPT, Report on the 2007 visit to Croatia, [CPT/Inf \(2008\)29](#), §37.
- ¹⁸⁸ECtHR, *A.A. v. Greece*, no. 12186/08, 22 July 2010.
- ¹⁸⁹'Immigration detention: Factsheet', CPT, March 2017, Section 1.
- ¹⁹⁰ECtHR, *Floreau v. Romania*, no. 37186/03, §50, 14 September 2010; ECtHR, *Canali v. France*, no. 40119/09, 25 April 2013.
- ¹⁹¹Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 2010, Paragraph 22; ECtHR, *M.D. v. France*, no. 50376/13, 10th October 2019.
- ¹⁹²UN Convention on the Rights of the Child, Article 3; ECtHR, *Darboe and Camara v. Italy*, no. 5797/17, §156-157, 21 July 2022.
- ¹⁹³UN Convention on the Rights of the Child, Article 2.
- ¹⁹⁴Council of Europe Convention on Action Against Trafficking in Human Beings, Chapter 3, Article 10 (3).
- ¹⁹⁵Guidance Note: on preventing and combatting trafficking in human beings for the purpose of labour exploitation, Council of Europe, GRETA, 2021, §68.
- ¹⁹⁶Council of Europe Convention on Action Against Trafficking in Human Beings, Chapter 3, Article 10(3). See also: 'An Age Assessment for Children in Migration: A human rights-based approach', Council of Europe <https://rm.coe.int/ageassessmentchildrenmigration/168099529f>. See also ECSR, European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 114/2015, 15.6.2018 and ECtHR *Darboe and Camara v. Italy*, no. 5797/17, 21 July 2022.
- ¹⁹⁷General Comment No.6 (2005): Treatment of unaccompanied and separated children outside their country of origin, UNCRC, §63.
- ¹⁹⁸CPT, [19th General Report](#), §99.
- ¹⁹⁹Directive 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.
- ²⁰⁰Directive 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), Articles 11(2) and 24(2)(d); ECtHR, *Mohamad v. Greece*, no. 70586/11, §§82-86, 11 December 2014; CM Recommendation Rec(2003)5, Principle 22 second sentence; ECtHR, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, §83.
- ²⁰¹UN Convention on the Rights of the Child, Articles 10 and Article 22(2); 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 24(3); PACE Resolution 1810 (2011), §§5.12 and 5.14.
- ²⁰²ECtHR, *Güveç v. Turkey*, no. 70337/01, ECHR 2009 (extracts).
- ²⁰³UN Convention on the Rights of the Child, Article 37 (c).
- ²⁰⁴UN Committee on the Rights of the Child, General Comment No. 6 (2005), §§33-38 and 69.
- ²⁰⁵Council of Europe Convention on Action against Trafficking in Human Beings, Chapter 3, Article 10 (4); 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 25(1)a; 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 24(1); the Charter of Fundamental Rights of the European Union, Article 26; Committee on the Rights of the Child, General Comment No. 6, §§21 and 33; PACE Resolution 1810(2011), §5.5; EU Fundamental Rights Agency – European Commission, Guardianship for children deprived of parental care – A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking; EU Publications Office: Luxembourg, June 2014, Pages 15-16; PACE Resolution 1810(2011) §5.5; UN Committee on the Rights of the Child, General Comment No 6 (2005), §§21 and 33; 'Detention Guidelines', UNHCR, Guideline 9.2, §56; ECtHR, *Rahimi v. Greece*, no. 8687/08, §§88 – 94, 5 April 2011.
- ²⁰⁶CM Recommendation (2022)17, §102; UN Convention on the Rights of the Child, Articles 27 and 31; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 2017, Page 9; 'Ending immigration detention of children and providing adequate care and reception for them', United Nations General Assembly, 20th July 2020, §27.
- ²⁰⁷; UN Convention on the Rights of the Child, Articles 27 and 31.

²⁰⁸‘Ending immigration detention of children and providing adequate care and reception for them’, United Nations General Assembly, 20th July 2020, §18; ‘Report of the 2012 Day of General Discussion: the Rights of All Children in the Context of International Migration; Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, 16th November 2017.

²⁰⁹ UN Convention on the Rights of the Child, Article 28; ‘Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice’, 2010, §21.

²¹⁰ ‘EASO Guidance on reception conditions for unaccompanied children: operational standards and indicators’, EASO Practical Guides Series, December 2018, Section 7.1.

²¹¹ ‘Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-seekers and Alternatives to Detention’, UNHCR, Guideline 9.3; 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(1); the 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 3(9) and 16(3).

²¹² UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-seekers and Alternatives to Detention, Guideline 9.3; 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(1); 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 3(9), Article 16(3).

²¹³ ‘Women deprived of their liberty’, CPT/Inf(2000) 13-part, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, §26.

²¹⁴ Rule 48 (1); *Mahmundi and Others v. Greece*, no. 14902/10, §70, 31 July 2012.

²¹⁵ ECtHR, *P. and S. v. Poland*, no. 57375/08, 30 October 2012; Recommendation CM/Rec(2022)17, §68, 20 May 2022.

²¹⁶ CM Recommendation on trafficking in human beings for the purpose of labour exploitation, adopted on 27 September 2022.

²¹⁷ Council of Europe Convention on Action against Trafficking in Human Beings, Article 26.

²¹⁸ ‘The Crime’, UN Office on Drugs and Crime; Istanbul Convention.

²¹⁹ ‘Global Report on Trafficking in Persons’, UN Office on Drugs and Crime, 2020; ‘Guidance Note: on preventing and combatting trafficking in human beings for the purpose of labour exploitation’, Council of Europe, GRETA, 2021, §65.

²²⁰ 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, 32 – 43.

²²¹ 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’, UN Human Rights Office of the High Commissioner, Page 12; ‘Guidance Note: on preventing and combatting trafficking in human beings for the purpose of labour exploitation’, Council of Europe, GRETA, 2021, §82 – 84.

²²² CM Recommendation (2022)17, §48.

²²³ ECtHR, *Rantsev v. Cyprus and Russia*, no. 25965/04, ECHR 2010 (extracts); ECtHR, *T.I. and Others v. Greece*, 40311/10, 18 July 2019; ECtHR, *S.M. v. Croatia* [GC], no. 60561/14, 25 June 2020; ECtHR, *V.C.L. and A.N. v. the United Kingdom*, nos. 77587/12 and 74603/12, 16 February 2021; ECtHR, *Zoletic and Others v. Azerbaijan*, no. 20116/12, 7 October 2021.

²²⁴ ECtHR, *Ślawomir Musiał v. Poland*, no. 28300/06, 20 January 2009.

²²⁵ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, Article 11(7).

²²⁶ Explanatory Report – CETS 197 – Action against Trafficking in Human Beings, §152.

²²⁷ ECtHR, *Aftet Süreyya Eren v. Turkey*, application no. 36617/07, 20 October 2015.

²²⁸ ECtHR, *Maslova and Nalbandov v Russia*, application no. 839/02, 24 January 2008.

²²⁹ ECtHR, *Collins and Akaziebie v. Sweden*, application no. 23944/05, 8 March 2007.

²³⁰ ECtHR, *Gauer and Others v. France*, no. 61521/08, March 2011; *V.C. v. Slovakia*, no. 18968/07, 8th November 2011; *N.B. v. Slovakia*, no. 29518/10, 12th June 2012; *I.G., M.K. and R.H. v. Slovakia*, no.

15966/04, 13th November 2012; *G.M. and Others v. the Republic of Moldova*, no. 44394/15, 22 November 2022.

²³¹ECtHR, *R.D. v. France*, application no. 34648/14, 16 June 2016.

²³²Article 2 CRPD; UNHCR, Guidelines, Guideline 9.5, § 63) and therefore need to correspond to the specific needs resulting from a detained person's disabilities, in order to comply with Article 3 ECHR (ECtHR, *Semikhvostov v. Russia*, no. 2689/12, § 77, 6 February 2014; ECtHR, *Farbtuhs v. Latvia*, no. 4672/02, § 56, 2 December 2004; ECtHR, *Jasinskis v. Latvia*, no. 45744/08, § 59, 21 December 2010; ECtHR, *Z.H. v. Hungary*, no. 28973/11, § 29, 8 November 2012.)

²³³ECtHR, *Price v. the United Kingdom*, no. 33394/96, § 27, ECHR 2001-VII.

²³⁴ECtHR, *Z.H. v. Hungary*, Application No. 28973/11, §§ 29-33, 8 November 2012.

²³⁵Article 14 (F) of Convention on the Rights of Persons with Disabilities (CRPD).

²³⁶ECtHR, *Vincent v. France*, no. 6253/03, §103, 24 October 2006; ECtHR, *Engel v. Hungary*, no. 46857/06, §§27 and 30, 20 May 2010.

²³⁷ECtHR, *Semikhvostov v. Russia*, no. 2689/12, §§ 84-85, 6 February 2014.

²³⁸ECtHR, *Wenner v. Germany*, no. 62303/13, §66, 1 September 2016; ECtHR, *Sakir v. Greece*, no. 48475/09, §52, 24 March 2016.

²³⁹ECtHR, *Aleksanyan v. Russia*, no. 46468/06, § 140, 22 December 2008.

²⁴⁰ECtHR, *Moxamed Ismaaciil and Abdirahman Warsame v. Malta*, nos. 52160/13 and 52165/13, §97, 12 January 2016; ECtHR, *Ukhan v. Ukraine*, no. 30628/02, § 74, 18 December 2008.

²⁴¹ECtHR, *Cosovan v. the Republic of Moldova*, no. 13472/18, §74, 22 March 2022; 'Detention Guidance: Administrative Detention of Migrants', OHCHR, Page 12.

²⁴²ECtHR, *Wenerski v. Poland*, no. 44369/02, §§56-65, 20 January 2009.

²⁴³Articles 16 (a) and Article 42.1; UN, Body of Principles for the Protection of all persons under any form of detention or imprisonment, Principle 24; CPT, [19th General Report](#), §82.

²⁴⁴ECtHR, *Kudła v. Poland* [GC], no. 30210/96, ECHR 2000-XI.

²⁴⁵See E/CN.4/2005/85/Add.1, communications sent by the Special Rapporteur on the human rights of migrants to the Government of Spain.

²⁴⁶ECtHR, *Slyusarev v. Russia*, no. 60333/00, §§34 – 44, 20 April 2010.

²⁴⁷CPT, [19th General Report](#), §92.

²⁴⁸Articles 40.1 and 40.3. ECtHR, *Cosovan v. the Republic of Moldova*, no. 13472/18, §83, 22 March 2022.

²⁴⁹ECtHR, *Nogin v. Russia*, no. 58530/08, §97, 15 January 2015.

²⁵⁰Directive 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 19(2).

²⁵¹Directive 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 19(1).

²⁵²ECtHR, *Cosovan v. the Republic of Moldova*, no. 13472/18, §58, 22 March 2022.

²⁵³ECtHR, *McGlinchey and Others v. the United Kingdom*, no. 50390/99, ECHR 2003-V; ECtHR, *Cosovan v. the Republic of Moldova*, no. 13472/18, §58, 22 March 2022.

²⁵⁴ECtHR, *Vasyukov v. Russia*, no. 2974/05, 5 April 2011.

²⁵⁵ECtHR, *Holomiov v. Moldova*, no. 30649/05, §117, 7 November 2006.

²⁵⁶ECtHR, *Pitalev v. Russia*, no. 34393/03, §54, 30 July 2009.

²⁵⁷ECtHR, *Cosovan v. the Republic of Moldova*, no. 13472/18, §77 and 82, 22 March 2022.

²⁵⁸European Convention on Human Rights, Article 8.

²⁵⁹European Convention for the protection of human rights and dignity of the human being with regard to the application of biology and medicine, Article 5;

²⁶⁰European Convention for the protection of human rights and dignity of the human being with regard to the application of biology and medicine, Article 8

²⁶¹Concluding observations on the tenth periodic report of Portugal', 13th June 2022 – 1st July 2022, §41(c); UN Convention on the Rights of Persons with Disabilities, Article 23(1); Convention on the Elimination of all Forms of Discrimination Against Women, Article 16; Convention on the Elimination of all Forms of Discrimination Against Women, Article 39(b); Charter of Fundamental Rights of the European Union, Articles 7 and 9; UN International Covenant on Civil and Political Rights, Article 17(1); European Convention on Human Rights, Article 8; ECtHR, *Gauer and Others v. France*, no. 61521/08, March 2011; ECtHR, *V.C. v. Slovakia*, no. 18968/07, ECHR 2011 (extracts); ECtHR, *N.B. v. Slovakia*, no. 29518/10, 12 June 2012.

²⁶²ECtHR, *Khudobin v. Russia*, no. 59696/00, §83, ECHR 2006-XII (extracts).

²⁶³ECtHR, *Melnik v. Ukraine*, no. 72286/01, §§104-106, 28 March 2006.

²⁶⁴ECtHR, *Cosovan v. the Republic of Moldova*, no. 13472/18, §44 and 86, 22 March 2022; Third periodic report of the Republic of Moldova of the United Nations Committee Against Torture and Other

Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”, CAT/C/MDA/CO/3, adopted on 21 December 2017) §19.

²⁶⁵ECtHR, *Cosovan v. the Republic of Moldova*, no. 13472/18, §86, 22 March 2022.

²⁶⁶CPT, [7th General Report](#), § 31.

²⁶⁷CPT, [19th General Report](#), Safeguards for irregular migrants deprived of their liberty, §91.

²⁶⁸ECtHR, *Normantowicz v. Poland*, no. 65196/16, §88, 17 March 2022.

²⁶⁹ECtHR, *Amirov v. Russia*, no. 51857/13, 27 November 2014; ECtHR, *Mozer v. the Republic of Moldova and Russia* [GC], no. 11138/10, §183, 23 February 2016.

²⁷⁰ECtHR, *A.A. v. Greece*, no. 12186/08, 22 July 2010.

²⁷¹Directive 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 (1).

²⁷²ECtHR, *Normantowicz v. Poland*, no. 65196/16, §80, 17 March 2022.

²⁷³Recommendation 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, §49 and 96.4.

²⁷⁴Directive 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 (1).

²⁷⁵ECtHR, *Grimailovs v. Latvia*, no. 6087/03, §§150-151, 25 June 2013; ECtHR, *Yunusova and Yunusov v. Azerbaijan*, no. 59620/14, §138, 2 June 2016; ECtHR, *Z.H. v. Hungary*, no. 28973/11, §29, 8 November 2012; ECtHR, *Price v. the United Kingdom*, no. 33394/96, §§25-30, ECHR 2001-VII.

²⁷⁶CPT, [19th General Report](#), §90 and 91; CPT, Report on its 2014 visit to Finland, [CPT/\(2015\)25](#), §§35

and 36; Recommendation CommDH (2001)19 of the Commissioner for Human Rights (Recommendation 8); UNHCR Guidelines, Guideline 8, pg. 48 (vi); CPT, [19th General Report](#), §90; CPT, [10th General Report](#), §32; 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(1); PACE Resolution 1509(2006), No. 12.4 last sentence; PACE Resolution 1637(2008), Item 9.13; Recommendation CommDH (2001)19 of the Commissioner for Human Rights, Recommendation 8; ECtHR, *Holomiov v. Moldova*, no. 30649/05, §§ 117-122, 7 November 2006; ECtHR, *Ashot Harutyunyan v. Armenia*, no. 34334/04, §§105- 116, 15 June 2010.

²⁷⁷UNHCR Detention Guidelines, Guideline 9.5, §63.

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²⁷⁹ECtHR, *Novak v. Croatia*, no. 8883/04, 14 June 2007; ECtHR, *Dybeku v. Albania*, no. 41153/06, 18 December 2007; ECtHR, *Raffray Taddei v. France*, no. 36435/07, 21 December 2010.

²⁸⁰ECtHR, *Śławomir Musiał v. Poland*, no. 28300/06, 20 January 2009; ECtHR, *Keenan v. the United Kingdom*, no. 27229/95, ECHR 2001-III; ECtHR, *Renolde v. France*, no. 5608/05, ECHR 2008 (extracts); ECtHR, *Rooman v. Belgium* [GC], no. 18052/11, §145, 31 January 2019.

²⁸¹CPT, Report on the 2014 visit to Finland, [CPT/\(2015\)25](#); 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).

²⁸²ECtHR, *Rivière v. France*, no. 33834/03, 11 July 2006; ECtHR, *Jeanty v. Belgium*, no. 82284/17, §§101 – 114, 31 March 2020.

²⁸³ECtHR, *Strazimiri v. Albania*, no. 34602/16, §§108-112, 21 January 2020.

²⁸⁴ECtHR, *Murray v. the Netherlands* [GC], no. 10511/10, §106, 26 April 2016.

²⁸⁵ECtHR, *Farbtuhs v. Latvia*, no. 4672/02, 2 December 2004; ECtHR, *Contrada v. Italy (no. 2)*, no. 7509/08, 11 February 2014.

²⁸⁶European Convention for the protection of human rights and dignity of the human being with regard to the application of biology and medicine, Article 6

²⁸⁷ECtHR, *Mahmundi and Others v. Greece*, no. 14902/10, §70, 31 July 2012.

²⁸⁸*Ibid.*

²⁸⁹UNHCR Guidelines, Guideline 9.3, §61.

²⁹⁰CM Recommendation, 2022, 96.3. CM Recommendation Rec(2003)5, Principle 13; Bangkok Rules, Rule 42.4; 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), Articles 11(2), 19, 23(4), 25; CPT, Report on the 2014 visit to Finland, [CPT/\(2015\)25](#), §36; UNHCR Detention Guidelines, Guideline 9.1 §§49-50; the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence.

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- ²⁹⁵ECtHR, *S.M.M. v. the United Kingdom*, no. 77450/12, §83, 22 June 2017.
- ²⁹⁶Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (Covid-19) pandemic, CPT.
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- ³⁰⁰ECtHR, *Karabet and Others v. Ukraine*, nos. 38906/07 and 52025/07, 17 January 2013.
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- ³⁰⁹[COVID-19 Guidance: OHCHR and COVID-19](#), OHCHR
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- ³⁷³Rule 64.1; PACE Resolution 1707(2010), Item 9.2.12; ECtHR, *Tekin v. Turkey*, no. 22496/93, 9 June 1198 §53 *Reports of Judgments and Decisions 1998-IV*; ECtHR, *Tali v. Estonia*, no. 66393/10, §59, 13 February 2014; ECtHR, *Premninny v. Russia*, no. 44973/04, 10 February 2011.
- ³⁷⁴ECtHR, *H.M. and Others v. Hungary*, no. 38967/17, 2 June 2022; European Prison Rules, Rule 54.4; Mandela Rules, Rule 50.
- ³⁷⁵ECtHR, *Shlykov and Others v. Russia*, nos. 78638/11 and 3 others, §§77-93, 19 January 2021.
- ³⁷⁶European Convention on Human Rights, Article 8; ECtHR, *Wainwright v. the United Kingdom*, no. 12350/04, §43, ECHR 2006-X; ECtHR, *Iwańczuk v. Poland*, no. 25196/94, 15 November 2001; ECtHR, *Roth v. Germany*, nos. 6780/18 and 30776/18, §51, 22 October 2020.
- ³⁷⁷ECtHR, *Wainwright v. the United Kingdom*, no. 12350/04, §42, ECHR 2006-X; ECtHR, *Dejneka v. Poland*, no. 9635/13, §§61-66 and 75-76, 1 June 2017.
- ³⁷⁸ECtHR, *Wainwright v. the United Kingdom*, no. 12350/04, §42, ECHR 2006-X; ECtHR, *Dejneka v. Poland*, no. 9635/13, §60, 1 June 2017; ECtHR, *Valašinas v. Lithuania*, no. 44558/98, ECHR 2001-VIII.
- ³⁷⁹ECtHR, *Valašinas v. Lithuania*, no. 44558/98, §117, ECHR 2001-VIII.
- ³⁸⁰ECtHR, *Valašinas v. Lithuania*, no. 44558/98, ECHR 2001-VIII.
- ³⁸¹ECtHR, *Iwańczuk v. Poland*, no. 25196/94, 15 November 2001.
- ³⁸²ECtHR, *Milka v. Poland*, no. 14322/12, 15 September 2015.
- ³⁸³Article 3, ECHR
- ³⁸⁴ECtHR, *Sakir v. Greece*, no. 48475/09, 24 March 2016.
- ³⁸⁵ECtHR, *Mikeladze and Others v. Georgia*, no. 54217/16, §§60 – 68, 16 November 2021.
- ³⁸⁶CM Recommendation 2022, 96.1.
- ³⁸⁷UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders, Rule 25, UN Body of Principles, Principle 33, CM Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse – §44 ; CPT, [19th General Report](#), §89; CPT, [23rd General Report](#), §§77 and 79.
- ³⁸⁸ECtHR, *Gjini v. Serbia*, no. 1128/16, §§84-88 and 96-103, 15 January 2019.
- ³⁸⁹CM Recommendation, 2022, §97. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, [30th general report of the CPT](#), May 2021, pp. 15-16.
- ³⁹⁰Twenty Guidelines on Forced Return, Guideline 10.5 last sentence; CPT, [2nd General Report](#), §54; UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 29.1.
- ³⁹¹United Nations Training Manual on Human Rights Monitoring.
- ³⁹²CPT, [19th General Report](#), §89; Twenty Guidelines on Forced Return (guideline 10.5 last sentence); PACE Resolution 1707(2010), Item 9.2.15.
- ³⁹³UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 29.2.
- ³⁹⁴Twenty Guidelines on Forced Return, Guideline 10.5 last sentence; CPT, [2nd General Report](#); EU Agency for Fundamental Rights, [Establishing national independent mechanisms to monitor](#)

fundamental rights compliance at EU external borders, Luxembourg, Publication Office of the EU, October 2022.

³⁹⁵CPT, [19th General Report](#), §89; Twenty Guidelines on Forced Return (guideline 10.5 last sentence); PACE Resolution 1707(2010), Item 9.2.15.

³⁹⁶ For further and more details, please refer to CPT standards.