

European Immigration Detention Rules Existing Standards

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1. Council of Europe

1.1 European Convention on Human Rights

Article 3 – Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5 – Right to Liberty and Security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - a. the lawful detention of a person after conviction by a competent court;
 - b. the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
 - c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - d. the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
 - e. the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
 - f. the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

Article 8 – Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

1.2 Committee of Ministers

European Prison Rules (Appendix to Recommendation Rec(2006)2) Appendix to Recommendation Rec(2006)2 to the Member States on the European Prison Rules, 11 January 2006

Part I

Basic principles

1. All persons deprived of their liberty shall be treated with respect for their human rights.
2. Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.
3. Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.
4. Prison conditions that infringe prisoners' human rights are not justified by lack of resources.
5. Life in prison shall approximate as closely as possible the positive aspects of life in the community.
6. All detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty.

7. Co-operation with outside social services and as far as possible the involvement of civil society in prison life shall be encouraged.

8. Prison staff carry out an important public service and their recruitment, training and conditions of work shall enable them to maintain high standards in their care of prisoners.

9 All prisons shall be subject to regular government inspection and independent monitoring.

Scope and application

10.1 The European Prison Rules apply to persons who have been remanded in custody by a judicial authority or who have been deprived of their liberty following conviction.¹

10.2 In principle, persons who have been remanded in custody by a judicial authority and persons who are deprived of their liberty following conviction should only be detained in prisons, that is, in institutions reserved for detainees of these two categories.

10.3 The Rules also apply to persons:

- a. who may be detained for any other reason in a prison; or
- b. who have been remanded in custody by a judicial authority or deprived of their liberty following conviction and who may, for any reason, be detained elsewhere.

10.4 All persons who are detained in a prison or who are detained in the manner referred to in paragraph 10.3.b are regarded as prisoners for the purpose of these rules.

11.1 Children under the age of 18 years should not be detained in a prison for adults, but in an establishment specially designed for the purpose.

11.2 If children are nevertheless exceptionally held in such a prison there shall be special regulations that take account of their status and needs.

12.1 Persons who are suffering from mental illness and whose state of mental health is incompatible with detention in a prison should be detained in an establishment specially designed for the purpose.

12.2 If such persons are nevertheless exceptionally held in prison there shall be special regulations that take account of their status and needs.

13. These rules shall be applied impartially, without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Part II – Conditions of Imprisonment

Admission

14. No person shall be admitted to or held in a prison as a prisoner without a valid commitment order, in accordance with national law.

15.1 At admission the following details shall be recorded immediately concerning each prisoner:

- a. information concerning the identity of the prisoner;
- b. the reasons for commitment and the authority for it;
- c. the day and hour of admission;
- d. an inventory of the personal property of the prisoner that is to be held in safekeeping in accordance with Rule 31;
- e. any visible injuries and complaints about prior ill-treatment; and
- f. subject to the requirements of medical confidentiality, any information about the prisoner's health that is relevant to the physical and mental well-being of the prisoner or others.

15.2 At admission all prisoners shall be given information in accordance with Rule 30.

15.3 Immediately after admission notification of the detention of the prisoner shall be given in accordance with Rule 24.9.

16. As soon as possible after admission:

- a. information about the health of the prisoner on admission shall be supplemented by a medical examination in accordance with Rule 42;
- b. the appropriate level of security for the prisoner shall be determined in accordance with Rule 51;
- c. the threat to safety that the prisoner poses shall be determined in accordance with Rule 52;

¹ According to the Commentary on the European Prison Rules, Rule 10 acknowledges that next to remand prisoners or sentenced offenders other categories can be held in prisons by virtue of provisions in national law, such as immigration detainees. These persons, as long as they are detained in prisons are also to be treated as prisoners in terms of these rules. A prison is by definition not a suitable place to detain someone who is neither suspected nor convicted of a criminal offence. Consequently, immigration detainees should only be held in prison in exceptional cases, for example because of known potential for violence or when in-patient treatment is required and no other secure hospital facility is available.

- d. any available information about the social situation of the prisoner shall be evaluated in order to deal with the immediate personal and welfare needs of the prisoner; and
- e. in the case of sentenced prisoners the necessary steps shall be taken to implement programmes in accordance with Part VIII of these rules.

Allocation and accommodation

17.1 Prisoners shall be allocated, as far as possible, to prisons close to their homes or places of social rehabilitation.

17.2 Allocation shall also take into account the requirements of continuing criminal investigations, safety and security and the need to provide appropriate regimes for all prisoners.

17.3 As far as possible, prisoners shall be consulted about their initial allocation and any subsequent transfer from one prison to another.

18.1 The accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation.

18.2 In all buildings where prisoners are required to live, work or congregate:

- a. the windows shall be large enough to enable the prisoners to read or work by natural light in normal conditions and shall allow the entrance of fresh air except where there is an adequate air conditioning system;
- b. artificial light shall satisfy recognised technical standards; and
- c. there shall be an alarm system that enables prisoners to contact the staff without delay.

18.3 Specific minimum requirements in respect of the matters referred to in paragraphs 1 and 2 shall be set in national law.

18.4 National law shall provide mechanisms for ensuring that these minimum requirements are not breached by the overcrowding of prisons.

18.5 Prisoners shall normally be accommodated during the night in individual cells except where it is preferable for them to share sleeping accommodation.

18.6 Accommodation shall only be shared if it is suitable for this purpose and shall be occupied by prisoners suitable to associate with each other.

18.7 As far as possible, prisoners shall be given a choice before being required to share sleeping accommodation.

18.8 In deciding to accommodate prisoners in particular prisons or in particular sections of a prison due account shall be taken of the need to detain:

- a. untried prisoners separately from sentenced prisoners;
- b. male prisoners separately from females; and
- c. young adult prisoners separately from older prisoners.

18.9 Exceptions can be made to the requirements for separate detention in terms of paragraph 8 in order to allow prisoners to participate jointly in organised activities, but these groups shall always be separated at night unless they consent to be detained together and the prison authorities judge that it would be in the best interest of all the prisoners concerned.

18.10 Accommodation of all prisoners shall be in conditions with the least restrictive security arrangements compatible with the risk of their escaping or harming themselves or others.

Hygiene

19.1 All parts of every prison shall be properly maintained and kept clean at all times.

19.2 When prisoners are admitted to prison the cells or other accommodation to which they are allocated shall be clean.

19.3 Prisoners shall have ready access to sanitary facilities that are hygienic and respect privacy.

19.4 Adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least twice a week (or more frequently if necessary) in the interest of general hygiene.

19.5 Prisoners shall keep their persons, clothing and sleeping accommodation clean and tidy.

19.6 The prison authorities shall provide them with the means for doing so including toiletries and general cleaning implements and materials.

19.7 Special provision shall be made for the sanitary needs of women.

Clothing and bedding

20.1 Prisoners who do not have adequate clothing of their own shall be provided with clothing suitable for the climate.

20.2 Such clothing shall not be degrading or humiliating.

20.3 All clothing shall be maintained in good condition and replaced when necessary.

20.4 Prisoners who obtain permission to go outside prison shall not be required to wear clothing that identifies them as prisoners.

21. Every prisoner shall be provided with a separate bed and separate and appropriate bedding, which shall be kept in good order and changed often enough to ensure its cleanliness.

Nutrition

22.1 Prisoners shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work.

22.2 The requirements of a nutritious diet, including its minimum energy and protein content, shall be prescribed in national law.

22.3 Food shall be prepared and served hygienically.

22.4 There shall be three meals a day with reasonable intervals between them.

22.5 Clean drinking water shall be available to prisoners at all times.

22.6 The medical practitioner or a qualified nurse shall order a change in diet for a particular prisoner when it is needed on medical grounds.

Legal advice

23.1 All prisoners are entitled to legal advice, and the prison authorities shall provide them with reasonable facilities for gaining access to such advice.

23.2 Prisoners may consult on any legal matter with a legal adviser of their own choice and at their own expense.

23.3 Where there is a recognised scheme of free legal aid the authorities shall bring it to the attention of all prisoners.

23.4 Consultations and other communications including correspondence about legal matters between prisoners and their legal advisers shall be confidential.

23.5 A judicial authority may in exceptional circumstances authorise restrictions on such confidentiality to prevent serious crime or major breaches of prison safety and security.

23.6 Prisoners shall have access to, or be allowed to keep in their possession, documents relating to their legal proceedings.

Contact with the outside world

24.1 Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons.

24.2 Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact.

24.3 National law shall specify national and international bodies and officials with whom communication by prisoners shall not be restricted.

24.4 The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible.

24.5 Prison authorities shall assist prisoners in maintaining adequate contact with the outside world and provide them with the appropriate welfare support to do so.

24.6 Any information received of the death or serious illness of any near relative shall be promptly communicated to the prisoner.

24.7 Whenever circumstances allow, the prisoner should be authorised to leave prison either under escort or alone in order to visit a sick relative, attend a funeral or for other humanitarian reasons.

24.8 Prisoners shall be allowed to inform their families immediately of their imprisonment or transfer to another institution and of any serious illness or injury they may suffer.

24.9 Upon the admission of a prisoner to prison, the death or serious illness of, or serious injury to a prisoner, or the transfer of a prisoner to a hospital, the authorities shall, unless the prisoner has requested them not to

do so, immediately inform the spouse or partner of the prisoner, or, if the prisoner is single, the nearest relative and any other person previously designated by the prisoner.

24.10 Prisoners shall be allowed to keep themselves informed regularly of public affairs by subscribing to and reading newspapers, periodicals and other publications and by listening to radio or television transmissions unless there is a specific prohibition for a specified period by a judicial authority in an individual case.

24.11 Prison authorities shall ensure that prisoners are able to participate in elections, referenda and in other aspects of public life, in so far as their right to do so is not restricted by national law.

24.12 Prisoners shall be allowed to communicate with the media unless there are compelling reasons to forbid this for the maintenance of safety and security, in the public interest or in order to protect the integrity of victims, other prisoners or staff.

Prison regime

25.1 The regime provided for all prisoners shall offer a balanced programme of activities.

25.2 This regime shall allow all prisoners to spend as many hours a day outside their cells as are necessary for an adequate level of human and social interaction.

25.3 This regime shall also provide for the welfare needs of prisoners.

25.4 Particular attention shall be paid to the needs of prisoners who have experienced physical, mental or sexual abuse.

Work

26.1 Prison work shall be approached as a positive element of the prison regime and shall never be used as a punishment.

26.2 Prison authorities shall strive to provide sufficient work of a useful nature.

26.3 As far as possible, the work provided shall be such as will maintain or increase prisoners' ability to earn a living after release.

26.4 In conformity with Rule 13 there shall be no discrimination on the basis of gender in the type of work provided.

26.5 Work that encompasses vocational training shall be provided for prisoners able to benefit from it and especially for young prisoners.

26.6 Prisoners may choose the type of employment in which they wish to participate, within the limits of what is available, proper vocational selection and the requirements of good order and discipline.

26.7 The organisation and methods of work in the institutions shall resemble as closely as possible those of similar work in the community in order to prepare prisoners for the conditions of normal occupational life.

26.8 Although the pursuit of financial profit from industries in the institutions can be valuable in raising standards and improving the quality and relevance of training, the interests of the prisoners should not be subordinated to that purpose.

26.9 Work for prisoners shall be provided by the prison authorities, either on their own or in co-operation with private contractors, inside or outside prison.

26.10 In all instances there shall be equitable remuneration of the work of prisoners.

26.11 Prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to allocate a part of their earnings to their families.

26.12 Prisoners may be encouraged to save part of their earnings, which shall be handed over to them on release or be used for other approved purposes.

26.13 Health and safety precautions for prisoners shall protect them adequately and shall not be less rigorous than those that apply to workers outside.

26.14 Provision shall be made to indemnify prisoners against industrial injury, including occupational disease, on terms not less favourable than those extended by national law to workers outside.

26.15 The maximum daily and weekly working hours of the prisoners shall be fixed in conformity with local rules or custom regulating the employment of free workers.

26.16 Prisoners shall have at least one rest day a week and sufficient time for education and other activities.

26.17 As far as possible, prisoners who work shall be included in national social security systems.

Exercise and recreation

27.1 Every prisoner shall be provided with the opportunity of at least one hour of exercise every day in the open air, if the weather permits.

27.2 When the weather is inclement alternative arrangements shall be made to allow prisoners to exercise.

27.3 Properly organised activities to promote physical fitness and provide for adequate exercise and recreational opportunities shall form an integral part of prison regimes.

27.4 Prison authorities shall facilitate such activities by providing appropriate installations and equipment.

27.5 Prison authorities shall make arrangements to organise special activities for those prisoners who need them.

27.6 Recreational opportunities, which include sport, games, cultural activities, hobbies and other leisure pursuits, shall be provided and, as far as possible, prisoners shall be allowed to organise them.

27.7 Prisoners shall be allowed to associate with each other during exercise and in order to take part in recreational activities.

Education

28.1 Every prison shall seek to provide all prisoners with access to educational programmes which are as comprehensive as possible and which meet their individual needs while taking into account their aspirations.

28.2 Priority shall be given to prisoners with literacy and numeracy needs and those who lack basic or vocational education.

28.3 Particular attention shall be paid to the education of young prisoners and those with special needs.

28.4 Education shall have no less a status than work within the prison regime and prisoners shall not be disadvantaged financially or otherwise by taking part in education.

28.5 Every institution shall have a library for the use of all prisoners, adequately stocked with a wide range of both recreational and educational resources, books and other media.

28.6 Wherever possible, the prison library should be organised in co-operation with community library services.

28.7 As far as practicable, the education of prisoners shall:

- a. be integrated with the educational and vocational training system of the country so that after their release they may continue their education and vocational training without difficulty; and
- b. take place under the auspices of external educational institutions.

Freedom of thought, conscience and religion

29.1 Prisoners' freedom of thought, conscience and religion shall be respected.

29.2 The prison regime shall be organised so far as is practicable to allow prisoners to practise their religion and follow their beliefs, to attend services or meetings led by approved representatives of such religion or beliefs, to receive visits in private from such representatives of their religion or beliefs and to have in their possession books or literature relating to their religion or beliefs.

29.3 Prisoners may not be compelled to practise a religion or belief, to attend religious services or meetings, to take part in religious practices or to accept a visit from a representative of any religion or belief.

Information

30.1 At admission, and as often as necessary afterwards all prisoners shall be informed in writing and orally in a language they understand of the regulations governing prison discipline and of their rights and duties in prison.

30.2 Prisoners shall be allowed to keep in their possession a written version of the information they are given.

30.3 Prisoners shall be informed about any legal proceedings in which they are involved and, if they are sentenced, the time to be served and the possibilities of early release.

Prisoners' property

31.1 All property that prisoners are not allowed to retain under the rules governing the prison shall be placed in safe custody on admission to the institution.

31.2 A prisoner whose property is taken into safe custody shall sign an inventory of the property.

31.3 Steps shall be taken to keep such property in good condition.

31.4 If it has been found necessary to destroy any such property, this shall be recorded and the prisoner informed.

31.5 Prisoners shall, subject to the requirements of hygiene, good order and security, be entitled to purchase or otherwise obtain goods, including food and drink for their personal use at prices that are not abnormally higher than those in free society.

31.6 If a prisoner brings in any medicines, the medical practitioner shall decide what use shall be made of them.

31.7 Where prisoners are allowed to keep possession of their property the prison authorities shall take steps to assist in its safekeeping.

Transfer of prisoners

32.1 While prisoners are being moved to or from a prison, or to other places such as court or hospital, they shall be exposed to public view as little as possible and proper safeguards shall be adopted to ensure their anonymity.

32.2 The transport of prisoners in conveyances with inadequate ventilation or light, or which would subject them in any way to unnecessary physical hardship or indignity, shall be prohibited.

32.3 The transport of prisoners shall be carried out at the expense and under the direction of the public authorities.

Release of prisoners

33.1 All prisoners shall be released without delay when their commitment orders expire, or when a court or other authority orders their release.

33.2 The date and time of the release shall be recorded.

33.3 All prisoners shall have the benefit of arrangements designed to assist them in returning to free society after release.

33.4 On the release of a prisoner all articles and money belonging to the prisoner that were taken into safe custody shall be returned except in so far as there have been authorised withdrawals of money or the authorised sending of any such property out of the institution, or it has been found necessary to destroy any article on hygienic grounds.

33.5 The prisoner shall sign a receipt for the property returned.

33.6 When release is pre-arranged, the prisoner shall be offered a medical examination in accordance with Rule 42 as close as possible to the time of release.

33.7 Steps must be taken to ensure that on release prisoners are provided, as necessary, with appropriate documents and identification papers, and assisted in finding suitable accommodation and work.

33.8 Released prisoners shall also be provided with immediate means of subsistence, be suitably and adequately clothed with regard to the climate and season, and have sufficient means to reach their destination.

Women

34.1 In addition to the specific provisions in these rules dealing with women prisoners, the authorities shall pay particular attention to the requirements of women such as their physical, vocational, social and psychological needs when making decisions that affect any aspect of their detention.

34.2 Particular efforts shall be made to give access to special services for women prisoners who have needs as referred to in Rule 25.4.

34.3 Prisoners shall be allowed to give birth outside prison, but where a child is born in prison the authorities shall provide all necessary support and facilities.

Detained children

35.1 Where exceptionally children under the age of 18 years are detained in a prison for adults the authorities shall ensure that, in addition to the services available to all prisoners, prisoners who are children have access to the social, psychological and educational services, religious care and recreational programmes or equivalents to them that are available to children in the community.

35.2 Every prisoner who is a child and is subject to compulsory education shall have access to such education.

35.3 Additional assistance shall be provided to children who are released from prison.

35.4 Where children are detained in a prison they shall be kept in a part of the prison that is separate from that used by adults unless it is considered that this is against the best interests of the child.

Infants

36.1 Infants may stay in prison with a parent only when it is in the best interest of the infants concerned. They shall not be treated as prisoners.

36.2 Where such infants are allowed to stay in prison with a parent special provision shall be made for a nursery, staffed by qualified persons, where the infants shall be placed when the parent is involved in activities where the infant cannot be present.

36.3 Special accommodation shall be set aside to protect the welfare of such infants.

Foreign nationals

37.1 Prisoners who are foreign nationals shall be informed, without delay, of their right to request contact and be allowed reasonable facilities to communicate with the diplomatic or consular representative of their state.

37.2 Prisoners who are nationals of states without diplomatic or consular representation in the country, and refugees or stateless persons, shall be allowed similar facilities to communicate with the diplomatic representative of the state which takes charge of their interests or the national or international authority whose task it is to serve the interests of such persons.

37.3 In the interests of foreign nationals in prison who may have special needs, prison authorities shall cooperate fully with diplomatic or consular officials representing prisoners.

37.4 Specific information about legal assistance shall be provided to prisoners who are foreign nationals.

37.5 Prisoners who are foreign nationals shall be informed of the possibility of requesting that the execution of their sentence be transferred to another country.

Ethnic or linguistic minorities

38.1 Special arrangements shall be made to meet the needs of prisoners who belong to ethnic or linguistic minorities.

38.2 As far as practicable the cultural practices of different groups shall be allowed to continue in prison.

38.3 Linguistic needs shall be met by using competent interpreters and by providing written material in the range of languages used in a particular prison.

Part III - Health

Health care

39. Prison authorities shall safeguard the health of all prisoners in their care.

Organisation of prison health care

40.1 Medical services in prison shall be organised in close relation with the general health administration of the community or nation.

40.2 Health policy in prisons shall be integrated into, and compatible with, national health policy.

40.3 Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

40.4 Medical services in prison shall seek to detect and treat physical or mental illnesses or defects from which prisoners may suffer.

40.5 All necessary medical, surgical and psychiatric services including those available in the community shall be provided to the prisoner for that purpose.

Medical and health care personnel

41.1 Every prison shall have the services of at least one qualified general medical practitioner.

41.2 Arrangements shall be made to ensure at all times that a qualified medical practitioner is available without delay in cases of urgency.

41.3 Where prisons do not have a full-time medical practitioner, a part-time medical practitioner shall visit regularly.

41.4 Every prison shall have personnel suitably trained in health care.

41.5 The services of qualified dentists and opticians shall be available to every prisoner.

Duties of the medical practitioner

42.1 The medical practitioner or a qualified nurse reporting to such a medical practitioner shall see every prisoner as soon as possible after admission, and shall examine them unless this is obviously unnecessary.

42.2 The medical practitioner or a qualified nurse reporting to such a medical practitioner shall examine the prisoner if requested at release, and shall otherwise examine prisoners whenever necessary.

42.3 When examining a prisoner the medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to:

- a. observing the normal rules of medical confidentiality;
- b. diagnosing physical or mental illness and taking all measures necessary for its treatment and for the continuation of existing medical treatment;
- c. recording and reporting to the relevant authorities any sign or indication that prisoners may have been treated violently;
- d. dealing with withdrawal symptoms resulting from use of drugs, medication or alcohol;
- e. identifying any psychological or other stress brought on by the fact of deprivation of liberty;

- f. isolating prisoners suspected of infectious or contagious conditions for the period of infection and providing them with proper treatment;
- g. ensuring that prisoners carrying the HIV virus are not isolated for that reason alone;
- h. noting physical or mental defects that might impede resettlement after release;
- i. determining the fitness of each prisoner to work and to exercise; and
- j. making arrangements with community agencies for the continuation of any necessary medical and psychiatric treatment after release, if prisoners give their consent to such arrangements.

43.1 The medical practitioner shall have the care of the physical and mental health of the prisoners and shall see, under the conditions and with a frequency consistent with health care standards in the community, all sick prisoners, all who report illness or injury and any prisoner to whom attention is specially directed.

43.2 The medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to the health of prisoners held under conditions of solitary confinement, shall visit such prisoners daily, and shall provide them with prompt medical assistance and treatment at the request of such prisoners or the prison staff.

43.3 The medical practitioner shall report to the director whenever it is considered that a prisoner's physical or mental health is being put seriously at risk by continued imprisonment or by any condition of imprisonment, including conditions of solitary confinement.

44. The medical practitioner or other competent authority shall regularly inspect, collect information by other means if appropriate, and advise the director upon:

- a. the quantity, quality, preparation and serving of food and water;
- b. the hygiene and cleanliness of the institution and prisoners;
- c. the sanitation, heating, lighting and ventilation of the institution; and
- d. the suitability and cleanliness of the prisoners' clothing and bedding.

45.1 The director shall consider the reports and advice that the medical practitioner or other competent authority submits according to Rules 43 and 44 and, when in agreement with the recommendations made, shall take immediate steps to implement them.

45.2 If the recommendations of the medical practitioner are not within the director's competence or if the director does not agree with them, the director shall immediately submit the advice of the medical practitioner and a personal report to higher authority.

Health care provision

46.1 Sick prisoners who require specialist treatment shall be transferred to specialised institutions or to civil hospitals, when such treatment is not available in prison.

46.2 Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide the prisoners referred to them with appropriate care and treatment.

Mental health

47.1 Specialised prisons or sections under medical control shall be available for the observation and treatment of prisoners suffering from mental disorder or abnormality who do not necessarily fall under the provisions of Rule 12.

47.2 The prison medical service shall provide for the psychiatric treatment of all prisoners who are in need of such treatment and pay special attention to suicide prevention.

Other matters

48.1 Prisoners shall not be subjected to any experiments without their consent.

48.2 Experiments involving prisoners that may result in physical injury, mental distress or other damage to health shall be prohibited.

Part IV – Good Order

General approach to good order

49. Good order in prison shall be maintained by taking into account the requirements of security, safety and discipline, while also providing prisoners with living conditions which respect human dignity and offering them a full programme of activities in accordance with Rule 25.

50. Subject to the needs of good order, safety and security, prisoners shall be allowed to discuss matters relating to the general conditions of imprisonment and shall be encouraged to communicate with the prison authorities about these matters.

Security

51.1 The security measures applied to individual prisoners shall be the minimum necessary to achieve their secure custody.

51.2 The security which is provided by physical barriers and other technical means shall be complemented by the dynamic security provided by an alert staff who know the prisoners who are under their control.

51.3 As soon as possible after admission, prisoners shall be assessed to determine:

- a. the risk that they would present to the community if they were to escape;
- b. the risk that they will try to escape either on their own or with external assistance.

51.4 Each prisoner shall then be held in security conditions appropriate to these levels of risk.

51.5 The level of security necessary shall be reviewed at regular intervals throughout a person's imprisonment.

Safety

52.1 As soon as possible after admission, prisoners shall be assessed to determine whether they pose a safety risk to other prisoners, prison staff or other persons working in or visiting prison or whether they are likely to harm themselves.

52.2 Procedures shall be in place to ensure the safety of prisoners, prison staff and all visitors and to reduce to a minimum the risk of violence and other events that might threaten safety.

52.3 Every possible effort shall be made to allow all prisoners to take a full part in daily activities in safety.

52.4 It shall be possible for prisoners to contact staff at all times, including during the night.

52.5 National health and safety laws shall be observed in prisons.

Special high security or safety measures

53.1 Special high security or safety measures shall only be applied in exceptional circumstances.

53.2 There shall be clear procedures to be followed when such measures are to be applied to any prisoner.

53.3 The nature of any such measures, their duration and the grounds on which they may be applied shall be determined by national law.

53.4 The application of the measures in each case shall be approved by the competent authority for a specified period of time.

53.5 Any decision to extend the approved period of time shall be subject to a new approval by the competent authority.

53.6 Such measures shall be applied to individuals and not to groups of prisoners.

53.7 Any prisoner subjected to such measures shall have a right of complaint in the terms set out in Rule 70.

Searching and controls

54.1 There shall be detailed procedures which staff have to follow when searching:

- a. all places where prisoners live, work and congregate;
- b. prisoners;
- c. visitors and their possessions; and
- d. staff.

54.2 The situations in which such searches are necessary and their nature shall be defined by national law.

54.3 Staff shall be trained to carry out these searches in such a way as to detect and prevent any attempt to escape or to hide contraband, while at the same time respecting the dignity of those being searched and their personal possessions.

54.4 Persons being searched shall not be humiliated by the searching process.

54.5 Persons shall only be searched by staff of the same gender.

54.6 There shall be no internal physical searches of prisoners' bodies by prison staff.

54.7 An intimate examination related to a search may be conducted by a medical practitioner only.

54.8 Prisoners shall be present when their personal property is being searched unless investigating techniques or the potential threat to staff prohibit this.

54.9 The obligation to protect security and safety shall be balanced against the privacy of visitors.

54.10 Procedures for controlling professional visitors, such as legal representatives, social workers and medical practitioners, etc., shall be the subject of consultation with their professional bodies to ensure a balance between security and safety, and the right of confidential professional access.

Criminal acts

55. An alleged criminal act committed in a prison shall be investigated in the same way as it would be in free society and shall be dealt with in accordance with national law.

Discipline and punishment

56.1 Disciplinary procedures shall be mechanisms of last resort.

56.2 Whenever possible, prison authorities shall use mechanisms of restoration and mediation to resolve disputes with and among prisoners.

57.1 Only conduct likely to constitute a threat to good order, safety or security may be defined as a disciplinary offence.

57.2 National law shall determine:

- a. the acts or omissions by prisoners that constitute disciplinary offences;
- b. the procedures to be followed at disciplinary hearings;
- c. the types and duration of punishment that may be imposed;
- d. the authority competent to impose such punishment; and
- e. access to and the authority of the appellate process.

58. Any allegation of infringement of the disciplinary rules by a prisoner shall be reported promptly to the competent authority, which shall investigate it without undue delay.

59. Prisoners charged with disciplinary offences shall:

- a. be informed promptly, in a language which they understand and in detail, of the nature of the accusations against them;
- b. have adequate time and facilities for the preparation of their defence;
- c. be allowed to defend themselves in person or through legal assistance when the interests of justice so require;
- d. be allowed to request the attendance of witnesses and to examine them or to have them examined on their behalf; and
- e. have the free assistance of an interpreter if they cannot understand or speak the language used at the hearing.

60.1 Any punishment imposed after conviction of a disciplinary offence shall be in accordance with national law.

60.2 The severity of any punishment shall be proportionate to the offence.

60.3 Collective punishments and corporal punishment, punishment by placing in a dark cell, and all other forms of inhuman or degrading punishment shall be prohibited.

60.4 Punishment shall not include a total prohibition on family contact.

60.5 Solitary confinement shall be imposed as a punishment only in exceptional cases and for a specified period of time, which shall be as short as possible.

60.6 Instruments of restraint shall never be applied as a punishment.

61. A prisoner who is found guilty of a disciplinary offence shall be able to appeal to a competent and independent higher authority.

62. No prisoner shall be employed or given authority in the prison in any disciplinary capacity.

Double jeopardy

A prisoner shall never be punished twice for the same act or conduct.

Use of force

64.1 Prison staff shall not use force against prisoners except in self-defence or in cases of attempted escape or active or passive physical resistance to a lawful order and always as a last resort.

64.2 The amount of force used shall be the minimum necessary and shall be imposed for the shortest necessary time.

65. There shall be detailed procedures about the use of force including stipulations about:

- a. the various types of force that may be used;
- b. the circumstances in which each type of force may be used;
- c. the members of staff who are entitled to use different types of force;
- d. the level of authority required before any force is used; and
- e. the reports that must be completed once force has been used.

66. Staff who deal directly with prisoners shall be trained in techniques that enable the minimal use of force in the restraint of prisoners who are aggressive.

67.1 Staff of other law enforcement agencies shall only be involved in dealing with prisoners inside prisons in exceptional circumstances.

67.2 There shall be a formal agreement between the prison authorities and any such other law enforcement agencies unless the relationship is already regulated by domestic law.

67.3 Such agreement shall stipulate:

- a. the circumstances in which members of other law enforcement agencies may enter a prison to deal with any conflict;
- b. the extent of the authority which such other law enforcement agencies shall have while they are in the prison and their relationship with the director of the prison;
- c. the various types of force that members of such agencies may use;
- d. the circumstances in which each type of force may be used;
- e. the level of authority required before any force is used; and
- f. the reports that must be completed once force has been used.

Instruments of restraint

68.1 The use of chains and irons shall be prohibited.

68.2 Handcuffs, restraint jackets and other body restraints shall not be used except:

- a. if necessary, as a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority unless that authority decides otherwise; or
- b. by order of the director, if other methods of control fail, in order to protect a prisoner from self-injury, injury to others or to prevent serious damage to property, provided that in such instances the director shall immediately inform the medical practitioner and report to the higher prison authority.

68.3 Instruments of restraint shall not be applied for any longer time than is strictly necessary.

68.4 The manner of use of instruments of restraint shall be specified in national law.

Weapons

69.1 Except in an operational emergency, prison staff shall not carry lethal weapons within the prison perimeter.

69.2 The open carrying of other weapons, including batons, by persons in contact with prisoners shall be prohibited within the prison perimeter unless they are required for safety and security in order to deal with a particular incident.

69.3 Staff shall not be provided with weapons unless they have been trained in their use.

Requests and complaints

70.1 Prisoners, individually or as a group, shall have ample opportunity to make requests or complaints to the director of the prison or to any other competent authority.

70.2 If mediation seems appropriate this should be tried first.

70.3 If a request is denied or a complaint is rejected, reasons shall be provided to the prisoner and the prisoner shall have the right to appeal to an independent authority.

70.4 Prisoners shall not be punished because of having made a request or lodged a complaint.

70.5 The competent authority shall take into account any written complaints from relatives of a prisoner when they have reason to believe that a prisoner's rights have been violated.

70.6 No complaint by a legal representative or organisation concerned with the welfare of prisoners may be brought on behalf of a prisoner if the prisoner concerned does not consent to it being brought.

70.7 Prisoners are entitled to seek legal advice about complaints and appeals procedures and to legal assistance when the interests of justice require.

[Recommendation Rec\(2003\)5 of the Committee of Ministers to member states on measures of detention of asylum seekers, 16 April 2003](#)

3. The aim of detention is not to penalise asylum seekers. Measures of detention of asylum seekers may be resorted to only in the following situations:

- when their identity, including nationality, has in case of doubt to be verified, in particular when asylum seekers have destroyed their travel or identity documents or used fraudulent documents in order to mislead the authorities of the host state;
- when elements on which the asylum claim is based have to be determined which, in the absence of detention, could not be obtained;
- when a decision needs to be taken on their right to enter the territory of the state concerned, or
- when protection of national security and public order so requires.

[Twenty Guidelines on Forced Return, 4 May 2005](#)

Chapter III – Detention pending removal

Guideline 10. Conditions of detention pending removal

1. Persons detained pending removal should normally be accommodated within the shortest possible time in facilities specifically designated for that purpose, offering material conditions and a regime appropriate to their legal situation and staffed by suitably qualified personnel.
2. Such facilities should provide accommodation which is adequately furnished, clean and in a good state of repair, and which offers sufficient living space for the numbers involved. In addition, care should be taken in the design and layout of the premises to avoid, as far as possible, any impression of a “carceral” environment. Organised activities should include outdoor exercise, access to a day room and to radio/television and newspapers/magazines, as well as other appropriate means of recreation.
3. Staff in such facilities should be carefully selected and receive appropriate training. Member states are encouraged to provide the staff concerned, as far as possible, with training that would not only equip them with interpersonal communication skills but also familiarise them with the different cultures of the detainees. Preferably, some of the staff should have relevant language skills and should be able to recognise possible symptoms of stress reactions displayed by detained persons and take appropriate action. When necessary, staff should also be able to draw on outside support, in particular medical and social support.
4. Persons detained pending their removal from the territory should not normally be held together with ordinary prisoners, whether convicted or on remand. Men and women should be separated from the opposite sex if they so wish; however, the principle of the unity of the family should be respected and families should therefore be accommodated accordingly.
5. National authorities should ensure that the persons detained in these facilities have access to lawyers, doctors, non-governmental organisations, members of their families, and the UNHCR, and that they are able to communicate with the outside world, in accordance with the relevant national regulations. Moreover, the functioning of these facilities should be regularly monitored, including by recognised independent monitors.
6. Detainees shall have the right to file complaints for alleged instances of ill-treatment or for failure to protect them from violence by other detainees. Complainants and witnesses shall be protected against any ill-treatment or intimidation arising as a result of their complaint or of the evidence given to support it.
7. Detainees should be systematically provided with information which explains the rules applied in the facility and the procedure applicable to them and sets out their rights and obligations. This information should be available in the languages most commonly used by those concerned and, if necessary, recourse should be made to the services of an interpreter. Detainees should be informed of their entitlement to contact a lawyer of their choice, the competent diplomatic representation of their country, international organisations such as the UNHCR and the International Organization for Migration (IOM), and non-governmental organisations. Assistance should be provided in this regard.

Guideline 11. Children and families

1. Children shall only be detained as a measure of last resort and for the shortest appropriate period of time.
2. Families detained pending removal should be provided with separate accommodation guaranteeing adequate privacy.
3. Children, whether in detention facilities or not, have a right to education and a right to leisure, including a right to engage in play and recreational activities appropriate to their age. The provision of education could be subject to the length of their stay.
4. Separated children should be provided with accommodation in institutions provided with the personnel and facilities which take into account the needs of persons of their age.
5. The best interest of the child shall be a primary consideration in the context of the detention of children pending removal.

[***The detention of asylum seekers and irregular migrants in Europe, 15 October 2010, Doc. 12416, Reply from the Committee of Ministers to Recommendation 1900 \(2010\)***](#)

5. For these reasons, the Committee of Ministers will not, at the present stage, give instruction for the preparation of rules on minimum standards of conditions of detention of irregular migrants and asylum seekers, nor for the preparation of a recommendation on the circumstances in which detention is legally permissible. Instead, it will consider asking the CDCJ to carry out a study on how Recommendation Rec(2003)5 on measures of detention of asylum seekers and the “Twenty guidelines on forced return” have been implemented in member states. The study should aim also at identifying best practices as regards alternatives to detention of irregular migrants and asylum seekers, with a view to the elaboration of a report or a draft recommendation on this issue. The CDDH should be associated with this work. The Committee of Ministers considers that presently it is too early to assess the implementation of its “Guidelines on human rights protection in the context of accelerated asylum procedures” which were adopted in 2009.

[Recommendation CM/Rec\(2012\)12 of the Committee of Ministers to member States concerning foreign prisoners, 10 October 2012](#)

3. Foreign prisoners shall be treated with respect for their human rights and with due regard for their particular situation and individual needs.
4. Foreign suspects and offenders shall be entitled to be considered for the same range of non-custodial sanctions and measures as other suspects and offenders; they shall not be excluded from consideration on the grounds of their status.
5. Foreign suspects and offenders shall not be remanded in custody or sentenced to custodial sanctions on the grounds of their status, but, as for other suspects and offenders, only when strictly necessary and as a measure of last resort.
6. Foreign offenders sentenced to imprisonment shall be entitled to full consideration for early release.
7. Positive steps shall be taken to avoid discrimination and to address specific problems that foreign persons may face while subject to community sanctions or measures, in prison, during transfer and after release.
8. Foreign prisoners who so require shall be given appropriate access to interpretation and translation facilities and the possibility to learn a language that will enable them to communicate more effectively.
9. The prison regime shall accommodate the special welfare needs of foreign prisoners and prepare them for release and social reintegration.
10. Decisions to transfer foreign prisoners to a State with which they have links shall be taken with respect for human rights, in the interests of justice and with regard to the need to socially reintegrate such prisoners.
11. Sufficient resources shall be allocated in order to deal effectively with the particular situation and specific needs of foreign prisoners.
12. Appropriate training in dealing with foreign suspects and offenders shall be provided for the relevant authorities, agencies, professionals and associations which have regular contact with such persons.

1.3 European Court of Human Rights

- [Kolompar v. Belgium](#) (24 September 1992, Appl. No. 11613/85)
→ *Detention with a view to extradition falls under 5 § 1 (f)*
- [Amuur v. France](#) (25 June 1996, Appl. No. 19776/92)
→ *The argument that the detained migrants could leave the country to evade detention is not valid*
→ *Detention of persons in international zones does include a restriction of liberty*
- [Chahal v. UK](#) (15 November 1996, Appl. No. 22414/92)
→ *Article 5 § 1 (f) knows no necessity test, detention even for a long period can be justified if action with a view to deportation is taken and ongoing*
→ *Legal review of detention must be wide enough to also cover the question of legality of the detention*
- [Dougou v. Greece](#) (6 March 2001, Appl. No. 40907/98)
→ *Severe overcrowding, absence of sleeping facilities, bad sanitary facilities can – depending on the length of detention in such facilities – amount to inhuman or degrading detention conditions violating Article 3*
- [Čonka v. Belgium](#) (5 February 2002, Appl. No. 51564/99)
→ *Detention is arbitrary if persons are deceived about the purpose of an order and detained based on that deception*
- [Mubilanzila Mayeka and Kaniki Mitunga v. Belgium](#) (12 October 2006, Appl. No. 13178/03)
→ *Unaccompanied minors must be placed in special facilities apt to their special needs and vulnerabilities*
- [Nasrullojev v. Russia](#) (11 October 2007, Appl. No. 656/06)
→ *The legal bases for a detention of persons with a view to extradition must be precise and foreseeable in their application and must comply with the “quality of law standard” of the Convention*
- [Riad and Idiab v. Belgium](#) (24 January 2008, Appl. No. 29787/03 and 29810/03)
→ *Detention of illegal aliens in the transit zone of an airport for more than ten days without providing for their basic needs violates Article 3*
- [Saadi v. UK](#) (29 January 2008, Appl. No. 13229/03)
→ *The detention of an asylum seeker in a special facility for a period of seven days is lawful in so far as it serves the control of unauthorized entry of persons to the country, is compatible with the overall purpose of Article 5 and is not arbitrary*
- [Sadaykov v. Bulgaria](#) (22 May 2008, Appl. No. 75157/01)
→ *A deportation order that merely foresees some sort of physical constraint for the purpose of being deported is not sufficient to order the detention of a person*
- [Galliani v. Romania](#) (10 June 2008, Appl. No. 69273/01)

- Before being held in detention with a view to extradition persons must be ordered to leave the country and given the choice to leave the country of their free will
- [Ismoilov and other v. Russia](#) (24 April 2009, Appl. No. 2947/06)
→ “Quality of law” in the Sense of the Convention refers to the rule of law and implies that a law is sufficiently accessible, precise and foreseeable in its application, in order to avoid all risk of arbitrariness
 - [S.D. v. Greece](#) (11 June 2009, Appl. No. 53541/07)
→ Authorities have to take into account the mental health of a detainee and possible clinical and psychological after-effects of a flight
 - [Abdolkhani and Karimnia v. Turkey](#) (22 September 2009, Appl. No. 30471/08)
→ Detention is not lawful if there is no legal basis that establishes a clear procedure for ordering and extending detention with a view to deportation and setting time-limits for such detention
 - [Mikolenko v. Estonia](#) (8 October 2009, Appl. No. 10664/05)
→ Detention for almost four years in a deportation centre is extensive considering that there was no prospect of immediate expulsion, failure to consider alternatives to detention
 - [Muskhadzhiyeva and others v. Belgium](#) (19 January 2010, Appl. No. 41442/07)
→ Minors must be placed in special detention facilities and may not be detained in detention facilities for adults, even if they are accompanied by an adult
 - [Louled Massoud v. Malta](#) (27 July 2010, Appl. No. 24340/08)
→ A period of detention of more than 18 months could give rise to doubts as to whether there are realistic prospects of an expulsion and whether the proceedings are conducted with due diligence
 - [M.S.S. v. Belgium and Greece](#) (21 January 2011, Appl. No. 30696/09)
→ The particular vulnerability of asylum seekers has to be taken into account
→ Depending on the conditions of detention even a short period of detention can violate Article 3
 - [Aaad v. Bulgaria](#) (11 October 2011, Appl. No. 46390/10)
→ Where deprivation of liberty is concerned, legal certainty is required in respect of each and every element relevant to the justification of the detention
 - [Kanagaratnam v. Belgium](#) (13 December 2011, Appl. No. 15297/09)
→ Detention of minors together with parent in a closed transit center
 - [Yoh-Ekale Mwanje c. Belgique](#) (20 December 2011, Appl. No. 10486/10)
→ In case of HIV-positive detainees authorities have to consider alternatives to detention and take all measures to protect the detainees’ health and prevent a worsening of their condition
 - [Popov v. France](#) (19 January 2012, Appl. No. 39472/07 and 39747/07)
→ Detention of families amounts to an interference with the right to family life. In case of detention of migrant children, the child’s best interests calls not only for families to be kept together but also for the authorities to do everything in their power to limit the detention of families with young children and effectively protect their right to respect for their family life
 - [Ahmade v. Greece](#) (25 September 2012, Appl. No. 50520/09)
→ Detention in a police station can amount to inhuman and degrading treatment if much longer than strictly necessary, Violation of Article 3 with Article 13 due to lack of remedy against conditions of detention
 - [Suso Musa v. Malta](#) (23 July 2013, Appl. No. 42337/12)
→ Detention of asylum-seeker for period which, particularly in view of his conditions of detention, was unreasonable
 - [Aden Ahmed v. Malta](#) (23 July 2013, Appl. No. 55352/12)
→ Criteria regarding the lack of personal space, female staff and proper diet, special status and vulnerability of immigration detainees
 - [M.A. v. Cyprus](#) (23 July 2013, Appl. No. 41872/10)
→ Transfer and stay at police headquarters of a group of immigrants with a view to identifying and deporting unlawful residents violated Article 5 § 1
 - [Horshill v. Greece](#) (1 August 2013, Appl. No. 70427/11)
→ Detention conditions in police stations amounting to degrading treatment
 - [Housein v. Greece](#) (24 October 2013, Appl. No. 71825/11)
→ Detention of an unaccompanied minor in a detention centre for adults as well as in a youth hostel violating Article 5 § 1

1.4 European Committee for the Prevention of Torture CPT

[*CPT Standards of Detention, CPT/Inf/E \(2002\) 1 - Rev. 2011, December 2011*](#)

IV. Immigration detention

Foreign nationals detained under aliens legislation, Extract from the [7th General Report on the CPT's activities covering the period 1 January to 31 December 1996 \[CPT/Inf \(97\) 10\]](#)

B. Detention facilities

25. CPT visiting delegations have met immigration detainees in a variety of custodial settings, ranging from holding facilities at points of entry to police stations, prisons and specialised detention centres. As regards more particularly transit and "international" zones at airports, the precise legal position of persons refused entry to a country and placed in such zones has been the subject of some controversy. On more than one occasion, the CPT has been confronted with the argument that such persons are not "deprived of their liberty" as they are free to leave the zone at any moment by taking any international flight of their choice.

For its part, the CPT has always maintained that a stay in a transit or "international" zone can, depending on the circumstances, amount to a deprivation of liberty within the meaning of Article 5 (1)(f) of the European Convention on Human Rights, and that consequently such zones fall within the Committee's mandate. The judgement delivered on 25 June 1996 by the European Court of Human Rights in the case of *Amuur* against France can be considered as vindicating this view. In that case, which concerned four asylum seekers held in the transit zone at Paris-Orly Airport for 20 days, the Court stated that "The mere fact that it is possible for asylum seekers to leave voluntarily the country where they wish to take refuge cannot exclude a restriction ("atteinte") on liberty" and held that "holding the applicants in the transit zone was equivalent in practice, in view of the restrictions suffered, to a deprivation of liberty".

26. Point of entry holding facilities have often been found to be inadequate, in particular for extended stays. More specifically, CPT delegations have on several occasions met persons held for days under makeshift conditions in airport lounges. It is axiomatic that such persons should be provided with suitable means for sleeping, granted access to their luggage and to suitably-equipped sanitary and washing facilities, and allowed to exercise in the open air on a daily basis. Further, access to food and, if necessary, medical care should be guaranteed.

27. In certain countries, CPT delegations have found immigration detainees held in police stations for prolonged periods (for weeks and, in certain cases, months), subject to mediocre material conditions of detention, deprived of any form of activity and on occasion obliged to share cells with criminal suspects. Such a situation is indefensible.

The CPT recognises that, in the very nature of things, immigration detainees may have to spend some time in an ordinary police detention facility. However, conditions in police stations will frequently - if not invariably - be inadequate for prolonged periods of detention. Consequently, the period of time spent by immigration detainees in such establishments should be kept to the absolute minimum.

28. On occasion, CPT delegations have found immigration detainees held in prisons. Even if the actual conditions of detention for these persons in the establishments concerned are adequate -which has not always been the case - the CPT considers such an approach to be fundamentally flawed. A prison is by definition not a suitable place in which to detain someone who is neither convicted nor suspected of a criminal offence.

Admittedly, in certain exceptional cases, it might be appropriate to hold an immigration detainee in a prison, because of a known potential for violence. Further, an immigration detainee in need of in-patient treatment might have to be accommodated temporarily in a prison health-care facility, in the event of no other secure hospital facility being available. However, such detainees should be held quite separately from prisoners, whether on remand or convicted.

29. In the view of the CPT, in those cases where it is deemed necessary to deprive persons of their liberty for an extended period under aliens legislation, they should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation and staffed by suitably-qualified personnel. The Committee is pleased to note that such an approach is increasingly being followed in Parties to the Convention.

Obviously, such centres should provide accommodation which is adequately-furnished, clean and in a good state of repair, and which offers sufficient living space for the numbers involved. Further, care should be taken in the design and layout of the premises to avoid as far as possible any impression of a carceral environment. As regards regime activities, they should include outdoor exercise, access to a day room and to radio/television and newspapers/magazines, as well as other appropriate means of recreation (e.g. board games, table tennis). The longer the period for which persons are detained, the more developed should be the activities which are offered to them.

The staff of centres for immigration detainees have a particularly onerous task. Firstly, there will inevitably be communication difficulties caused by language barriers. Secondly, many detained persons will find the fact that they have been deprived of their liberty when they are not suspected of any criminal offence difficult to accept. Thirdly, there is a risk of tension between detainees of different nationalities or ethnic groups. Consequently, the CPT places a premium upon the supervisory staff in such centres being carefully selected and receiving appropriate training. As well as possessing well-developed qualities in the field of interpersonal communication, the staff concerned should be familiarised with the different cultures of the detainees and at least some of them should have relevant language skills. Further, they should be taught to recognise possible symptoms of stress reactions displayed by detained persons (whether post-traumatic or induced by socio-cultural changes) and to take appropriate action.

C. Safeguards during detention

30. Immigration detainees should - in the same way as other categories of persons deprived of their liberty - be entitled, as from the outset of their detention, to inform a person of their choice of their situation and to have access to a lawyer and a doctor. Further, they should be expressly informed, without delay and in a language they understand, of all their rights and of the procedure applicable to them.

The CPT has observed that these requirements are met in some countries, but not in others. In particular, visiting delegations have on many occasions met immigration detainees who manifestly had not been fully informed in a language they understood of their legal position. In order to overcome such difficulties, immigration detainees should be systematically provided with a document explaining the procedure applicable to them and setting out their rights. This document should be available in the languages most commonly spoken by those concerned and, if necessary, recourse should be had to the services of an interpreter.

31. The right of access to a lawyer should apply throughout the detention period and include both the right to speak with the lawyer in private and to have him present during interviews with the authorities concerned.

All detention facilities for immigration detainees should provide access to medical care. Particular attention should be paid to the physical and psychological state of asylum seekers, some of whom may have been tortured or otherwise ill-treated in the countries from which they have come. The right of access to a doctor should include the right - if a detainee so wishes - to be examined by a doctor of his choice; however, the detainee might be expected to cover the cost of such a second examination.

More generally, immigration detainees should be entitled to maintain contact with the outside world during their detention, and in particular to have access to a telephone and to receive visits from relatives and representatives of relevant organisations.

Safeguards for irregular migrants deprived of their liberty, Extract from the [19th General Report on the CPT's activities covering the period 1 August 2008 to 31 July 2009 \[CPT/Inf \(2009\) 27\]](#)

Deprivation of liberty of irregular migrants

77. In the course of its visits, the CPT has noted that a number of member States of the Council of Europe have made a concerted effort to improve the conditions of detention for irregular migrants. However, there are still far too many instances where the CPT comes across places of deprivation of liberty for irregular migrants, and on occasion asylum seekers, which are totally unsuitable. An illustrative example of such a place would be a disused warehouse, with limited or no sanitation, crammed with beds or mattresses on the floor, accommodating upwards of a hundred persons locked in together for weeks or even months, with no activities, no access to outdoor exercise and poor hygiene. CPT delegations also continue to find irregular migrants held in police stations, in conditions that are barely acceptable for twenty-four hours, let alone weeks.

In some States, irregular migrants are detained in prisons. In the CPT's opinion, a prison establishment is by definition not a suitable place in which to hold someone who is neither accused nor convicted of a criminal offence. Interestingly, prison managers and staff in the various establishments visited by the CPT often agree that they are not appropriately equipped or trained to look after irregular migrants. In this context, the CPT wishes to reiterate that staff working in centres for irregular migrants have a particularly onerous task. Consequently, they should be carefully selected and receive appropriate training.

78. Despite the existence of many detention facilities for irregular migrants in Council of Europe member States, there is still no comprehensive instrument covering the whole of the European continent and setting out the minimum standards and safeguards for irregular migrants deprived of their liberty, in line with the specific needs of this particular group of persons.

The 2006 European Prison Rules apply to those irregular migrants who are detained in prisons. However, it is stressed in the Commentary to the Rules that immigration detainees should in principle not be held in prison. Therefore, the Rules do not address the special needs and status of irregular migrants, such as those issues related to the preparation and execution of deportation procedures. It should be noted here that in accord-

ance with Article 5 (1) f of the European Convention on Human Rights, irregular migrants may be deprived of their liberty either when action is being taken with a view to deportation or in order to prevent an unauthorised entry into the country. The purpose of deprivation of liberty of irregular migrants is thus significantly different from that of persons held in prison either on remand or as convicted offenders.

79. Conditions of detention for irregular migrants should reflect the nature of their deprivation of liberty, with limited restrictions in place and a varied regime of activities. For example, detained irregular migrants should have every opportunity to remain in meaningful contact with the outside world (including frequent opportunities to make telephone calls and receive visits) and should be restricted in their freedom of movement within the detention facility as little as possible. Even when conditions of detention in prisons meet these requirements – and this is certainly not always the case – the CPT considers the detention of irregular migrants in a prison environment to be fundamentally flawed, for the reasons indicated above.

80. More generally, in certain countries, authorities routinely resort to administrative detention of irregular migrants pending deportation, sometimes with no time limitation or judicial review. It is clear that automatic administrative detention under such conditions runs the risk of being in contradiction with, inter alia, the case law of the European Court of Human Rights. In the CPT's view, States should be selective when exercising their power to deprive irregular migrants of their liberty; detention should only be resorted to after a careful examination of each individual case.

Basic rights at the initial stages of deprivation of liberty

81. The CPT considers that detained irregular migrants should, from the very outset of their deprivation of liberty, enjoy three basic rights, in the same way as other categories of detained persons. These rights are: (1) to have access to a lawyer, (2) to have access to a medical doctor, and (3) to be able to inform a relative or third party of one's choice about the detention measure.

82. The right of access to a lawyer should include the right to talk with a lawyer in private, as well as to have access to legal advice for issues related to residence, detention and deportation. This implies that when irregular migrants are not in a position to appoint and pay for a lawyer themselves, they should benefit from access to legal aid. Further, all newly arrived detainees should be promptly examined by a doctor or by a fully-qualified nurse reporting to a doctor. The right of access to a doctor should include the right – if an irregular migrant so wishes – to be examined by a doctor of his/her choice; however, the detainee might be expected to meet the cost of such an examination. Notifying a relative or third party of one's choice about the detention measure is greatly facilitated if irregular migrants are allowed to keep their mobile phones during deprivation of liberty or at least to have access to them.

83. In addition to these three basic rights, international treaties recognise the right of a detained irregular migrant to ask for consular assistance. However, as not all irregular migrants may wish to contact their national authorities, the exercise of this right must be left to the person concerned.

84. It is essential that newly arrived irregular migrants be immediately given information on these rights in a language they understand. To this end, they should be systematically provided with a document explaining the procedure applicable to them and setting out their rights in clear and simple terms. This document should be available in the languages most commonly spoken by the detainees and, if necessary, recourse should be had to the services of an interpreter.

General safeguards during deprivation of liberty

85. Every instance of deprivation of liberty should be covered by a proper individual detention order, readily available in the establishment where the person concerned is being held; and the detention order should be drawn up at the outset of the deprivation of liberty or as soon as possible thereafter. This basic requirement applies equally to irregular migrants who are deprived of their liberty. Further, the fundamental safeguards of persons detained by law enforcement agencies are reinforced if a single and comprehensive custody record is kept for every such person, recording all aspects of his/her custody and all action taken in connection with it.

86. Detained irregular migrants should benefit from an effective legal remedy enabling them to have the lawfulness of their deprivation of liberty decided speedily by a judicial body. This judicial review should entail an oral hearing with legal assistance, provided free of charge for persons without sufficient means, and interpretation (if required). Moreover, detained irregular migrants should be expressly informed of this legal remedy. The need for continued detention should be reviewed periodically by an independent authority.

87. Arrangements should be made enabling detained irregular migrants to consult a lawyer or a doctor on an ongoing basis, and to receive visits from NGO representatives, family members or other persons of their choice, and to have telephone contact with them. If members of the same family are deprived of their liberty under aliens legislation, every effort should be made to avoid separating them.

88. It is in the interests of both irregular migrants and staff that there be clear house rules for all detention facilities, and copies of the rules should be made available in a suitable range of languages. The 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. The house rules should also contain disciplinary procedures and provide detainees with the right to be heard on the subject of violations that they are alleged to have committed, and to appeal to an independent authority against any sanctions imposed. Without such rules, there is a risk of an unofficial (and uncontrolled) disciplinary system developing.

In case of the application of a segregation measure for security reasons or for the irregular migrant's own protection, these procedures should be accompanied by effective safeguards. The person concerned should be informed of the reasons for the measure taken against him/her, be given the opportunity to present his/her views on the matter prior to the measure being implemented, and be able to contest the measure before an appropriate authority.

89. Independent monitoring of detention facilities for irregular migrants is an important element in the prevention of ill-treatment and, more generally, of ensuring satisfactory conditions of detention. To be fully effective, monitoring visits should be both frequent and unannounced. Further, monitoring bodies should be empowered to interview irregular migrants in private and should examine all issues related to their treatment (material conditions of detention, custody records and other documentation, the exercise of detained persons' rights, health care, etc.).

Health-related safeguards

90. The assessment of the state of health of irregular migrants during their deprivation of liberty is an essential responsibility in relation to each individual detainee and in relation to a group of irregular migrants as a whole. The mental and physical health of irregular migrants may be negatively affected by previous traumatic experiences. Further, the loss of accustomed personal and cultural surroundings and uncertainty about one's future may lead to mental deterioration, including exacerbation of pre-existing symptoms of depression, anxiety and post-traumatic disorder.

91. At a minimum, a person with a recognised nursing qualification must be present on a daily basis at all centres for detained irregular migrants. Such a person should, in particular, perform the initial medical screening of new arrivals (in particular for transmissible diseases, including tuberculosis), receive requests to see a doctor, ensure the provision and distribution of prescribed medicines, keep the medical documentation and supervise the general conditions of hygiene.

92. Obviously, medical confidentiality should be observed in the same way as in the outside community; in particular, irregular migrants' medical files should not be accessible to non-medical staff but, on the contrary, should be kept under lock and key by the nurse or doctor. Moreover, all medical examinations should be conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of custodial staff. Whenever members of the medical and/or nursing staff are unable to make a proper diagnostic evaluation because of language problems, they should be able to benefit without delay from the services of a qualified interpreter. Further, detained irregular migrants should be fully informed about the treatment being offered to them.

Three other important safeguards

93. The prohibition of torture and inhuman or degrading treatment or punishment entails the obligation not to send a person to a country where there are substantial grounds for believing that he or she would run a real risk of being subjected to torture or other forms of ill-treatment. Accordingly, irregular migrants should have ready access to an asylum procedure (or other residence procedure) which guarantees both confidentiality and an objective and independent analysis of the human rights situation in other countries; an individual assessment of the risk of ill-treatment in case of deportation to the country of origin or a third country should be carried out. The CPT is concerned that in certain countries the time-limit for submitting an application for asylum is limited by law to a number of days from the date of arrival in the country or in a detention facility; applications submitted after the deadline are not considered. Such an approach increases the possibility of persons being sent to a country where they run a real risk of being subjected to torture or other forms of ill-treatment.

94. In this context, the CPT has grave misgivings about the policy adopted by certain countries of intercepting, at sea, boats transporting irregular migrants and returning the persons concerned to North or North-West Africa. A practice with similar implications allegedly takes place at certain European land borders.

Countries that implement such policies or practices could well be at risk of breaching the fundamental principle of "non-refoulement", a principle which forms part of international human rights law as well as of European Union law. This is particularly the case when the countries to which irregular migrants are sent have not ratified or acceded to the 1951 Geneva Convention relating to the Status of Refugees.

95. In line with the Twenty guidelines on forced return adopted by the Committee of Ministers on 4 May 2005, removal orders should be issued in each and every case based on a decision following national laws and procedures, and in accordance with international human rights obligations. The removal order should be handed

over in writing to the person concerned. Moreover, there should be the possibility to appeal against the order, and the deportation should not be carried out before the decision on any appeal has been delivered. The assistance of a lawyer and an interpreter should be guaranteed also at this stage of the procedure.

96. Thirdly, in respect of any place where persons are deprived of their liberty by a public authority, the CPT consistently recommends that any sign of injury to a person who alleges ill-treatment, as well as the relevant statements made by the person concerned and the doctor's conclusions (as to the degree of consistency between the person's statement and the injuries observed), be duly recorded by the doctor on a form designed for that purpose. A similar record should be made even in the absence of a specific allegation, when there are grounds to believe that ill-treatment may have occurred. Procedures should be in place to ensure that whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by the person concerned (or which, even in the absence of an allegation, are clearly indicative of ill-treatment), the record is systematically brought to the attention of the competent judicial or prosecuting authorities.

[...]

Additional safeguards for children

97. The CPT considers that every effort should be made to avoid resorting to the deprivation of liberty of an irregular migrant who is a minor. Following the principle of the "best interests of the child", as formulated in Article 3 of the United Nations Convention on the Rights of the Child, detention of children, including unaccompanied and separated children, is rarely justified and, in the Committee's view, can certainly not be motivated solely by the absence of residence status.

When, exceptionally, a child is detained, the deprivation of liberty should be for the shortest possible period of time; all efforts should be made to allow the immediate release of unaccompanied or separated children from a detention facility and their placement in more appropriate care. Further, owing to the vulnerable nature of a child, additional safeguards should apply whenever a child is detained, particularly in those cases where the children are separated from their parents or other carers, or are unaccompanied, without parents, carers or relatives.

98. As soon as possible after the presence of a child becomes known to the authorities, a professionally qualified person should conduct an initial interview, in a language the child understands. An assessment should be made of the child's particular vulnerabilities, including from the standpoints of age, health, psychosocial factors and other protection needs, including those deriving from violence, trafficking or trauma. Unaccompanied or separated children deprived of their liberty should be provided with prompt and free access to legal and other appropriate assistance, including the assignment of a guardian or legal representative. Review mechanisms should also be introduced to monitor the ongoing quality of the guardianship.

99. Steps should be taken to ensure a regular presence of, and individual contact with, a social worker and a psychologist in establishments holding children in detention. Mixed-gender staffing is another safeguard against ill-treatment; the presence of both male and female staff can have a beneficial effect in terms of the custodial ethos and foster a degree of normality in a place of detention. Children deprived of their liberty should also be offered a range of constructive activities (with particular emphasis on enabling a child to continue his or her education).

100. In order to limit the risk of exploitation, special arrangements should be made for living quarters that are suitable for children, for example, by separating them from adults, unless it is considered in the child's best interests not to do so. This would, for instance, be the case when children are in the company of their parents or other close relatives. In that case, every effort should be made to avoid splitting up the family.

Deportation of foreign nationals by air, Extract from the [13th General Report on the CPT's activities covering the period 1 January 2002 to 31 July 2003 \[CPT/Inf \(2003\) 35\]](#)

27. As from the beginning of its activities, the CPT has examined the conditions of detention of persons deprived of their liberty under aliens legislation, and this issue was dealt with in a section of the CPT's 7th General Report (CPT/Inf (97) 10, paragraphs 24 to 36). The CPT set out in that report some basic rules concerning the use of force and means of restraint in the context of procedures for the deportation of immigration detainees.

28. The CPT's visits since that report have enabled it to flesh out its knowledge of practices concerning the deportation of foreign nationals by air. [...]

1.5 Commissioner for Human Rights

[Recommendation of the Commissioner for Human Rights, Mr Alvaro Gil-Robles, concerning the rights of aliens wishing to enter a Council of Europe member state and the enforcement of expulsion orders, CommDH\(2001\)19, 19 September 2001](#)

[The Human Rights of Irregular Migrants in Europe, Issue Paper, CommDH/IssuePaper\(2007\)1, 17 December 2007](#)

[Criminalisation of Migration in Europe: Human Rights Implications, Issue Paper, CommDH/Issue Paper \(2010\)1, 4 February 2010](#)

1.6 Parliamentary Assembly

[Recommendation 1547 \(2002\), Expulsion procedures in conformity with human rights and enforced with respect for safety and dignity, 22 January 2002](#)

13. Finally, the Assembly recommends that the Committee of Ministers urge member states:

to adapt without delay their legislation and practices regarding holding prior to expulsion, in order to:

- a. limit the length of detention in waiting or transit zones to a maximum of fifteen days;
- b. limit the length of detention in police stations to the amount of time strictly necessary for any arrest and to separate foreigners awaiting expulsion from people being questioned for common law crimes;
- c. limit prison detention to those who represent a recognised danger to public order or safety and to separate foreigners awaiting expulsion from those detained for common law crimes;
- d. avoid detaining foreigners awaiting expulsion in a prison environment, and in particular to:
 - put an end to detention in cells;
 - allow access to fresh air and to private areas and to areas where foreigners can communicate with the outside world;
 - not hinder contacts with the family and non-governmental organisations;
 - guarantee access to means of communication with the outside world, such as telephones and postal services;
 - ensure that during detention foreigners can work, in dignity and with proper remuneration, and take part in sporting and cultural activities;
 - guarantee free access to consultation and independent legal representation;
- e. guarantee, under regular supervision by the judge, the strict necessity and the proportionality of the use and continuation of detention for the enforcement of the deportation order, and to set the length of detention at a maximum of one month;
- f. favour alternatives to detention which place less restrictions on freedom, such as compulsory residence orders or other forms of supervision and monitoring, such as the obligation to register; and to set up open reception centres;
- g. ensure that detention centres are supervised by persons who are specially selected and trained in psycho-social support and to ensure the permanent, or at least regular, presence of “inter-cultural mediators”, interpreters, doctors and psychologists as well as legal protection by legal counsellors;
- h. take into account, in any decision to limit personal freedom, the needs of vulnerable groups, and in particular:
 - the principle of the unity of the family must be respected in all circumstances;
 - unaccompanied minors must be treated in accordance with their age, and must immediately be taken charge of by a judge for minors and have access to independent legal consultation and representation;
 - single women must be able to use separate facilities,
 - the elderly must have access to the medical care necessary for their age;

[Recommendation 1624 \(2003\), Common policy on migration and asylum, 30 September 2003](#)

9. The Assembly therefore recommends that the Committee of Ministers instruct its relevant committees to draw up a model for a Council of Europe common policy on migration and asylum, according to the following guidelines:

With regard to detention linked to immigration or asylum:

1. detention solely for reasons of immigration and asylum should be resorted to on an exceptional basis and only where there is a convincing reason for believing that the person is trying to enter the country illegally, or

when there are legitimate reasons specific to the person concerned, such as when a person is at high risk of absconding, or when detention is necessary to enforce the removal or establish the identity of the person;

2. the person concerned should be notified in writing, in a language that he or she understands, of the reasons for the decision and the evidence on which it is based, using an interpreter if necessary, in order to ensure that the person has understood the decision;
3. the decision to detain should be considered null and void if, at the moment of the notification, the person concerned is not informed, in writing and in a language that he or she understands, of his or her rights in these circumstances and advised on how to gain access to free legal advice and representation;
4. in any case, detention for reasons of immigration or asylum should be confirmed by a judge within forty-eight hours of the decision to detain being taken;
5. under no circumstances should detention for immigration or asylum reasons be any longer than is reasonably necessary and should not be prolonged unduly.

15 European Rules Governing Minimum Standards of Conditions in Detention Centres for Migrants and Asylum Seekers, Report Doc. 12105, 11 January 2010

Rule 1: Persons deprived of their liberty shall be treated with dignity and respect for their rights;

Rule 2: Detainees shall be accommodated in centres specifically designed for the purpose of immigration detention and not in prisons;

Rule 3: All detainees must be informed promptly in simple, non-technical language that he or she can understand, the essential legal and factual grounds for detention, their rights and the rules and complaints procedure in detention;

Rule 4: Legal and factual admission criteria shall be complied with, including carrying out appropriate screening and medical checks to identify special needs. Proper records concerning admissions, stay and departure of detainees must be kept;

Rule 5: The material conditions shall be appropriate to the individual's legal and factual situation;

Rule 6: The detention regime must be appropriate to the individual's legal and factual situation;

Rule 7: The detention authorities shall safeguard the health and well-being of all detainees in their care;

Rule 8: Detainees shall be guaranteed effective access to the outside world (including access to lawyers, family, friends, UNHCR, civil society, religious/spiritual representatives) and the right to receive frequent visits from the outside world;

Rule 9: Detainees shall be guaranteed effective access to legal advice, assistance and representation of a sufficient quality and legal aid shall be provided free of charge;

Rule 10: Detainees must be able periodically to effectively challenge their detention before a court and decisions regarding detention should be reviewed automatically at regular intervals;

Rule 11: The safety, security and discipline of detainees shall be taken into account in order to maintain the good order of detention centres;

Rule 12: Detention centre staff and immigration officers shall not use force against detainees except in self-defence or in cases of attempted escape or active physical resistance to a lawful order and always as a last resort and proportionate to the situation;

Rule 13: Detention centre management and staff shall be carefully recruited, provided with appropriate training and operate to the highest professional, ethical and personal standards;

Rule 14: Detainees shall have ample opportunity to make requests or complaints to any competent authority and be guaranteed confidentiality when doing so;

Rule 15: Independent inspection and monitoring of detention centres and of conditions of detention shall take place."

Recommendation 1900 (2010), The detention of asylum seekers and irregular migrants in Europe, 11 January 2010

5.1. instruct the relevant expert committee within the Council of Europe to prepare, for the Committee of Ministers, European rules on minimum standards of conditions of detention of irregular migrants and asylum seekers. The aim of such minimum standards would be to provide, in the context of immigration detention, a parallel framework to the European Prison Rules which apply only to prisons for criminals and not to detention centres for irregular migrants and asylum seekers. The minimum standards should draw inspiration from the European Prison Rules, but recognise that they are applicable to persons not detained on the basis of having committed any criminal offence.

5.2. instruct the relevant expert committee within the Council of Europe to set up a consultation body to examine further the 10 guiding principles on the circumstances in which the detention of asylum seekers and irregu-

lar migrants is legally permissible, as presented in Resolution 1707 (2010). This consultation body should be comprised of government experts, members of civil society, representatives of the Office of the United Nations High Commissioner for Refugees (UNHCR) and other international organisations, the International Committee of the Red Cross (ICRC), representatives of the European Court of Human Rights, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the Office of the Council of Europe Commissioner for Human Rights, and the European Commission. This consultation body should not only examine the principles but also make recommendations on whether the Committee of Ministers should be encouraged to prepare a recommendation, principles or rules on the issue.

5.3. instruct the relevant expert committee within the Council of Europe to examine further the issue of alternatives to detention of migrants and asylum seekers and identify best practice on this issue with a view to preparation of a recommendation to member states by the Committee of Ministers on the subject. [...]"

[Recommendation 1917 \(2010\), Migrants and refugees: a continuing challenge for the Council of Europe, 30 April 2010](#)

12.2. fill the gaps in current Council of Europe legal standards through developing further hard and soft law instruments and practical activities pertaining to migrants, asylum seekers, refugees and displaced persons. In this respect the Committee of Ministers is encouraged to take into account, inter alia, the following specific issues, some of which are the subject of Assembly recommendations:

12.2.5. supplementing the European Prison Rules with European rules on detention centres for migrants and asylum seekers;

12.2.6. developing guidelines on alternatives to detention for irregular migrants and asylum seekers;

[Resolution 1707 \(2010\), The detention of asylum seekers and irregular migrants in Europe, 28 January 2010](#)

9. In view of the above-mentioned considerations, the Assembly calls on member states of the Council of Europe in which asylum seekers and irregular migrants are detained to comply fully with their obligations under international human rights and refugee law, and encourages them to:

9.1 follow 10 guiding principles governing the circumstances in which the detention of asylum seekers and irregular migrants may be legally permissible. [...]

9.2 put into law and practice 15 European rules governing minimum standards of conditions of detention for migrants and asylum seekers [...]

9.3. consider alternatives to detention [...].

[Resolution 1810 \(2011\), Unaccompanied children in Europe: issues of arrival, stay and return, 15 April 2011](#)

5.9. no detention of unaccompanied children on migration grounds should be allowed. Detention should be replaced with appropriate care arrangements, preferably foster care, with living conditions suitable for children's needs and for the appropriate period of time. Where children are accommodated in centres, they must be separated from adults;

[Resolution 1821 \(2011\), The interception and rescue at sea of asylum seekers, refugees and irregular migrants, 21 June 2011](#)

9.8. ensure that the placement in a detention facility of those intercepted – always excluding minors and vulnerable categories – regardless of their status, is authorised by the judicial authorities and occurs only where necessary and on grounds prescribed by law, that there is no other suitable alternative and that such placement conforms to the minimum standards and principles set forth in Assembly Resolution 1707 (2010) on the detention of asylum seekers and irregular migrants in Europe;

[Recommendation 1985 \(2011\), Undocumented migrant children in an irregular situation: a real cause for concern, 7 October 2011](#)

9. Bearing in mind the need for a firm legislative basis and implementation of the laws in practice, the Assembly recommends that member states:

9.4. refrain from detaining undocumented migrant children, and protect their liberty by abiding by the following principles:

9.4.1. a child should, in principle, never be detained. Where there is any consideration to detain a child, the best interest of the child should always come first;

9.4.2. in exceptional cases where detention is necessary, it should be provided for by law, with all relevant legal protection and effective judicial review remedies, and only after alternatives to detention have been considered;

- 9.4.3. if detained, the period must be for the shortest possible period of time and the facilities must be suited to the age of the child; relevant activities and educational support must also be available;
- 9.4.4. if detention does take place, it must be in separate facilities from those for adults, or in facilities meant to accommodate children with their parents or other family members, and the child should not be separated from a parent, except in exceptional circumstances;
- 9.4.5. unaccompanied children should, however, never be detained;
- 9.4.6. no child should be deprived of his or her liberty solely because of his or her migration status, and never as a punitive measure;
- 9.4.7. where a doubt exists as to the age of the child, the benefit of the doubt should be given to that child;[...]"

2. European Union

2.1 European Union Legislation

Charter of Fundamental Rights of the European Union

Article 6 - Right to liberty and security

Everyone has the right to liberty and security of person.

Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers

Article 7 - Residence and freedom of movement

1. Asylum seekers may move freely within the territory of the host Member State or within an area assigned to them by that Member State. The assigned area shall not affect the unalienable sphere of private life and shall allow sufficient scope for guaranteeing access to all benefits under this Directive.
2. Member States may decide on the residence of the asylum seeker for reasons of public interest, public order or, when necessary, for the swift processing and effective monitoring of his or her application.
3. When it proves necessary, for example for legal reasons or reasons of public order, Member States may confine an applicant to a particular place in accordance with their national law.
4. Member States may make provision of the material reception conditions subject to actual residence by the applicants in a specific place, to be determined by the Member States. Such a decision, which may be of a general nature, shall be taken individually and established by national legislation.
5. Member States shall provide for the possibility of granting applicants temporary permission to leave the place of residence mentioned in paragraphs 2 and 4 and/or the assigned area mentioned in paragraph 1. Decisions shall be taken individually, objectively and impartially and reasons shall be given if they are negative. The applicant shall not require permission to keep appointments with authorities and courts if his or her appearance is necessary.
6. Member States shall require applicants to inform the competent authorities of their current address and notify any change of address to such authorities as soon as possible.

Council 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 8 – Detention

1. Member States shall not hold a person in detention for the sole reason that he or she is an applicant in accordance with Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection [8].
2. When it proves necessary and on the basis of an individual assessment of each case, Member States may detain an applicant, if other less coercive alternative measures cannot be applied effectively.
3. An applicant may be detained only:
 - (a) in order to determine or verify his or her identity or nationality;
 - (b) in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant;
 - (c) in order to decide, in the context of a procedure, on the applicant's right to enter the territory;
 - (d) when he or she is detained subject to a return procedure under 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 [9], in order to prepare the return and/or carry out the

removal process, and the Member State concerned can substantiate on the basis of objective criteria, including that he or she already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that he or she is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision;

(e) when protection of national security or public order so requires;

(f) in accordance with Article 28 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person [10].

The grounds for detention shall be laid down in national law.

4. Member States shall ensure that the rules concerning alternatives to detention, such as regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at an assigned place, are laid down in national law.

Article 9 - Guarantees for detained applicants

1. An applicant shall be detained only for as short a period as possible and shall be kept in detention only for as long as the grounds set out in Article 8(3) are applicable.

Administrative procedures relevant to the grounds for detention set out in Article 8(3) shall be executed with due diligence. Delays in administrative procedures that cannot be attributed to the applicant shall not justify a continuation of detention.

2. Detention of applicants shall be ordered in writing by judicial or administrative authorities. The detention order shall state the reasons in fact and in law on which it is based.

3. Where detention is ordered by administrative authorities, Member States shall provide for a speedy judicial review of the lawfulness of detention to be conducted ex officio and/or at the request of the applicant. When conducted ex officio, such review shall be decided on as speedily as possible from the beginning of detention. When conducted at the request of the applicant, it shall be decided on as speedily as possible after the launch of the relevant proceedings. To this end, Member States shall define in national law the period within which the judicial review ex officio and/or the judicial review at the request of the applicant shall be conducted.

Where, as a result of the judicial review, detention is held to be unlawful, the applicant concerned shall be released immediately.

4. Detained applicants shall immediately be informed in writing, in a language which they understand or are reasonably supposed to understand, of the reasons for detention and the procedures laid down in national law for challenging the detention order, as well as of the possibility to request free legal assistance and representation.

5. Detention shall be reviewed by a judicial authority at reasonable intervals of time, ex officio and/or at the request of the applicant concerned, in particular whenever it is of a prolonged duration, relevant circumstances arise or new information becomes available which may affect the lawfulness of detention.

6. In cases of a judicial review of the detention order provided for in paragraph 3, Member States shall ensure that applicants have access to free legal assistance and representation. This shall include, at least, the preparation of the required procedural documents and participation in the hearing before the judicial authorities on behalf of the applicant.

Free legal assistance and representation shall be provided by suitably qualified persons as admitted or permitted under national law whose interests do not conflict or could not potentially conflict with those of the applicant.

7. Member States may also provide that free legal assistance and representation are granted:

(a) only to those who lack sufficient resources; and/or

(b) only through the services provided by legal advisers or other counsellors specifically designated by national law to assist and represent applicants.

8. Member States may also:

(a) impose monetary and/or time limits on the provision of free legal assistance and representation, provided that such limits do not arbitrarily restrict access to legal assistance and representation;

(b) provide that, as regards fees and other costs, the treatment of applicants shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.

9. Member States may demand to be reimbursed wholly or partially for any costs granted if and when the applicant's financial situation has improved considerably or if the decision to grant such costs was taken on the basis of false information supplied by the applicant.

10. Procedures for access to legal assistance and representation shall be laid down in national law.

Article 10 - Conditions of detention

1. Detention of applicants shall take place, as a rule, in specialised detention facilities. Where a Member State cannot provide accommodation in a specialised detention facility and is obliged to resort to prison accommodation, the detained applicant shall be kept separately from ordinary prisoners and the detention conditions provided for in this Directive shall apply.

As far as possible, detained applicants shall be kept separately from other third-country nationals who have not lodged an application for international protection.

When applicants cannot be detained separately from other third-country nationals, the Member State concerned shall ensure that the detention conditions provided for in this Directive are applied.

2. Detained applicants shall have access to open-air spaces.

3. Member States shall ensure that persons representing the United Nations High Commissioner for Refugees (UNHCR) have the possibility to communicate with and visit applicants in conditions that respect privacy. That possibility shall also apply to an organisation which is working on the territory of the Member State concerned on behalf of UNHCR pursuant to an agreement with that Member State.

4. Member States shall ensure that family members, legal advisers or counsellors and persons representing relevant non-governmental organisations recognised by the Member State concerned have the possibility to communicate with and visit applicants in conditions that respect privacy. Limits to access to the detention facility may be imposed only where, by virtue of national law, they are objectively necessary for the security, public order or administrative management of the detention facility, provided that access is not thereby severely restricted or rendered impossible.

5. Member States shall ensure that applicants in detention are systematically provided with information which explains the rules applied in the facility and sets out their rights and obligations in a language which they understand or are reasonably supposed to understand. Member States may derogate from this obligation in duly justified cases and for a reasonable period which shall be as short as possible, in the event that the applicant is detained at a border post or in a transit zone. This derogation shall not apply in cases referred to in Article 43 of Directive 2013/32/EU.

Article 11 - Detention of vulnerable persons and of applicants with special reception needs

1. The health, including mental health, of applicants in detention who are vulnerable persons shall be of primary concern to national authorities.

Where vulnerable persons are detained, Member States shall ensure regular monitoring and adequate support taking into account their particular situation, including their health.

2. Minors shall be detained only as a measure of last resort and after it having been established that other less coercive alternative measures cannot be applied effectively. Such detention shall be for the shortest period of time and all efforts shall be made to release the detained minors and place them in accommodation suitable for minors.

The minor's best interests, as prescribed in Article 23(2), shall be a primary consideration for Member States.

Where minors are detained, they shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age.

3. Unaccompanied minors shall be detained only in exceptional circumstances. All efforts shall be made to release the detained unaccompanied minor as soon as possible.

Unaccompanied minors shall never be detained in prison accommodation.

As far as possible, unaccompanied minors shall be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age.

Where unaccompanied minors are detained, Member States shall ensure that they are accommodated separately from adults.

4. Detained families shall be provided with separate accommodation guaranteeing adequate privacy.

5. Where female applicants are detained, Member States shall ensure that they are accommodated separately from male applicants, unless the latter are family members and all individuals concerned consent thereto.

Exceptions to the first subparagraph may also apply to the use of common spaces designed for recreational or social activities, including the provision of meals.

6. In duly justified cases and for a reasonable period that shall be as short as possible Member States may derogate from the third subparagraph of paragraph 2, paragraph 4 and the first subparagraph of paragraph 5, when the applicant is detained at a border post or in a transit zone, with the exception of the cases referred to in Article 43 of Directive 2013/32/EU.

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 15 - Detention

1. Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process, in particular when:

(a) there is a risk of absconding or

(b) the third-country national concerned avoids or hampers the preparation of return or the removal process.

Any detention shall be for as short a period as possible and only maintained as long as removal arrangements are in progress and executed with due diligence.

2. Detention shall be ordered by administrative or judicial authorities.

Detention shall be ordered in writing with reasons being given in fact and in law.

When detention has been ordered by administrative authorities, Member States shall:

(a) either provide for a speedy judicial review of the lawfulness of detention to be decided on as speedily as possible from the beginning of detention;

(b) or grant the third-country national concerned the right to take proceedings by means of which the lawfulness of detention shall be subject to a speedy judicial review to be decided on as speedily as possible after the launch of the relevant proceedings. In such a case Member States shall immediately inform the third-country national concerned about the possibility of taking such proceedings.

The third-country national concerned shall be released immediately if the detention is not lawful.

3. In every case, detention shall be reviewed at reasonable intervals of time either on application by the third-country national concerned or ex officio. In the case of prolonged detention periods, reviews shall be subject to the supervision of a judicial authority.

4. When it appears that a reasonable prospect of removal no longer exists for legal or other considerations or the conditions laid down in paragraph 1 no longer exist, detention ceases to be justified and the person concerned shall be released immediately.

5. Detention shall be maintained for as long a period as the conditions laid down in paragraph 1 are fulfilled and it is necessary to ensure successful removal. Each Member State shall set a limited period of detention, which may not exceed six months.

6. Member States may not extend the period referred to in paragraph 5 except for a limited period not exceeding a further twelve months in accordance with national law in cases where regardless of all their reasonable efforts the removal operation is likely to last longer owing to:

(a) a lack of cooperation by the third-country national concerned, or

(b) delays in obtaining the necessary documentation from third countries.

Article 16 - Conditions of detention

1. Detention shall take place as a rule in specialised detention facilities. Where a Member State cannot provide accommodation in a specialised detention facility and is obliged to resort to prison accommodation, the third-country nationals in detention shall be kept separated from ordinary prisoners.

2. Third-country nationals in detention shall be allowed — on request — to establish in due time contact with legal representatives, family members and competent consular authorities.

3. Particular attention shall be paid to the situation of vulnerable persons. Emergency health care and essential treatment of illness shall be provided.

4. Relevant and competent national, international and non-governmental organisations and bodies shall have the possibility to visit detention facilities, as referred to in paragraph 1, to the extent that they are being used for detaining third-country nationals in accordance with this Chapter. Such visits may be subject to authorisation.

5. Third-country nationals kept in detention shall be systematically provided with information which explains the rules applied in the facility and sets out their rights and obligations. Such information shall include information on their entitlement under national law to contact the organisations and bodies referred to in paragraph 4.

Article 17 - Detention of minors and families

1. Unaccompanied minors and families with minors shall only be detained as a measure of last resort and for the shortest appropriate period of time.

2. Families detained pending removal shall be provided with separate accommodation guaranteeing adequate privacy.

3. Minors in detention shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age, and shall have, depending on the length of their stay, access to education.

4. Unaccompanied minors shall as far as possible be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age.

5. The best interests of the child shall be a primary consideration in the context of the detention of minors pending removal.

Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status

Article 18 - Detention

1. Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum.
2. Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review.

Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)

Article 8 - Information and counselling in detention facilities and at border crossing points

1. Where there are indications that third-country nationals or stateless persons held in detention facilities or present at border crossing points, including transit zones, at external borders, may wish to make an application for international protection, Member States shall provide them with information on the possibility to do so. In those detention facilities and crossing points, Member States shall make arrangements for interpretation to the extent necessary to facilitate access to the asylum procedure.
2. Member States shall ensure that organisations and persons providing advice and counselling to applicants have effective access to applicants present at border crossing points, including transit zones, at external borders. Member States may provide for rules covering the presence of such organisations and persons in those crossing points and in particular that access is subject to an agreement with the competent authorities of the Member States. Limits on such access may be imposed only where, by virtue of national law, they are objectively necessary for the security, public order or administrative management of the crossing points concerned, provided that access is not thereby severely restricted or rendered impossible.

Article 26 - Detention

1. Member States shall not hold a person in detention for the sole reason that he or she is an applicant. The grounds for and conditions of detention and the guarantees available to detained applicants shall be in accordance with Directive 2013/33/EU.
2. Where an applicant is held in detention, Member States shall ensure that there is a possibility of speedy judicial review in accordance with Directive 2013/33/EU.

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 (Dublin Regulation)

Article 28 - Detention

1. Member States shall not hold a person in detention for the sole reason that he or she is subject to the procedure established by this Regulation.
2. When there is a significant risk of absconding, Member States may detain the person concerned in order to secure transfer procedures in accordance with this Regulation, on the basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively.
3. Detention shall be for as short a period as possible and shall be for no longer than the time reasonably necessary to fulfil the required administrative procedures with due diligence until the transfer under this Regulation is carried out.

Where a person is detained pursuant to this Article, the period for submitting a take charge or take back request shall not exceed one month from the lodging of the application. The Member State carrying out the procedure in accordance with this Regulation shall ask for an urgent reply in such cases. Such reply shall be given within two weeks of receipt of the request. Failure to reply within the two-week period shall be tantamount to accepting the request and shall entail the obligation to take charge or take back the person, including the obligation to provide for proper arrangements for arrival.

Where a person is detained pursuant to this Article, the transfer of that person from the requesting Member State to the Member State responsible shall be carried out as soon as practically possible, and at the latest within six weeks of the implicit or explicit acceptance of the request by another Member State to take charge or to take back the person concerned or of the moment when the appeal or review no longer has a suspensive effect in accordance with Article 27(3).

When the requesting Member State fails to comply with the deadlines for submitting a take charge or take back request or where the transfer does not take place within the period of six weeks referred to in the third subparagraph, the person shall no longer be detained. Articles 21, 23, 24 and 29 shall continue to apply accordingly.

4. As regards the detention conditions and the guarantees applicable to persons detained, in order to secure the transfer procedures to the Member State responsible, Articles 9, 10 and 11 of Directive 2013/33/EU shall apply.

2.2 European Court of Justice

- [C-357/09 PPU, Kadzoev](#), Judgment of 30 November 2009
 - *Detention is only lawful as long as a reasonable prospect of removal exists*
 - *Member States cannot invoke grounds of public order or safety for detaining persons under Directive 2008/115/EC*
- [C-61/11 PPU, Hassen El Dridi](#), Judgment of 28 April 2011
 - *Member States may adopt criminal law sanctions for persons staying illegally, but such measures have to comply with the principle of proportionality and effectiveness with regard to the means used and objectives pursued*
- [C-329/11, Alexandre Achughbalian v. Préfet du Val-de-Marne](#), Judgment of 6 December 2011
 - *Detention with a view to removal is only justified as long as the return procedure is ongoing*
- [C-534/11, Mehmet Arslan v Policie ČR, Krajské ředitelství policie Ústeckého kraje, odbor cizinecké policie](#), Judgment of 30 May 2013
 - *detention of an asylum seeker may be justified if the application for asylum has been made with the sole aim of delaying or jeopardising enforcement of a return decision*
- [C-383/13 PPU, G and R v Staatssecretaris van Veiligheid en Justitie](#), Judgment of 10 September 2013
 - *Breach of procedural rights does not necessarily render a detention in itself unlawful*

2.3 European Commission

[Study on the situation of third-country nationals pending return/removal in the EU Member States and the Schengen Associated Countries, HOME/2010/RFXX/PR/1001, 11 March 2013](#)

2.4 European Parliament

[Report on the situation of unaccompanied minors in the EU, \(2012/2263\(INI\)\), Committee on Civil Liberties, Justice and Home Affairs, 26 August 2013](#)

2.5 European Fundamental Rights Agency

[Detention of third-country nationals in return procedures, Thematic Report September 2010](#)

[Handbook on European Law relating to asylum, borders and immigration, 2013](#)

3. United Nations

3.1 Legal Bases

[International Covenant on Civil and Political Rights ICCPR, 16 December 1966, 999 U.N.T.S. 171](#)

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be sub-

ject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

[Convention on the Rights of the Child CRC, 20 November 1989, 1577 U.N.T.S. 3](#)

Article 37

States Parties shall ensure that:

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

3.2 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](#)

Principle 1: All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

Principle 2: Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.

Principle 3: There shall be no restriction upon or derogation from any of the human rights of persons under any form of detention or imprisonment recognized or existing in any State pursuant to law, conventions, regulations or custom on the pretext that this Body of Principles does not recognize such rights or that it recognizes them to a lesser extent.

Principle 5: 1. These principles shall be applied to all persons within the territory of any given State, without distinction of any kind, such as race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status.

Principle 16: 2. If a detained or imprisoned person is a foreigner, he shall also be promptly informed of his right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national or which is otherwise entitled to receive such communication in accordance with international law or with the representative of the competent international organization, if he is a refugee or is otherwise under the protection of an intergovernmental organization.

[Basic Principles for the Treatment of Prisoners, General Assembly Resolution 45/111 of 14 December 1990, A/RES/45/111](#)

1. All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.

2. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. It is, however, desirable to respect the religious beliefs and cultural precepts of the group to which prisoners belong, whenever local conditions so require.
4. The responsibility of prisons for the custody of prisoners and for the protection of society against crime shall be discharged in keeping with a State's other social objectives and its fundamental responsibilities for promoting the well-being and development of all members of society.
5. Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.
6. All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality.
7. Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.
8. Conditions shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country's labour market and permit them to contribute to their own financial support and to that of their families.
9. Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.
10. With the participation and help of the community and social institutions, and with due regard to the interests of victims, favourable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions.
11. The above Principles shall be applied impartially.

[United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, \(the Bangkok Rules\), 6 October 2010, UN Res 2010/16, A/RES/65/229](#)

3.3 Human Rights Committee

3.3.1 General Comments

[General comment No. 35, liberty and security of person, 28 January 2013, CCPR/C/107/R.3](#)

18. Detention in the course of proceedings for the control of immigration is not per se arbitrary, but the detention must be justified as reasonable, necessary and proportionate in light of the circumstances, and reassessed as it extends in time. Asylum-seekers who unlawfully enter a State party's territory may be detained for a brief initial period in order to document their entry, record their claims, and determine their identity if it is in doubt. To detain them further while their claims are being resolved would be arbitrary absent particular reasons specific to the individual, such as an individualized likelihood of absconding, danger of crimes against others, or risk of acts against national security. The decision must consider relevant factors case-by-case, and not be based on a mandatory rule for a broad category; must take into account less invasive means of achieving the same ends, such as reporting obligations, sureties, or other conditions to prevent absconding; and must be subject to periodic reevaluation and judicial review. The decision must also take into account the needs of children and the mental health condition of those detained. Any necessary detention should take place in appropriate, sanitary, non-punitive facilities, and should not take place in prisons. Individuals must not be detained indefinitely on immigration control grounds if the State party is unable to carry out their expulsion.

3.3.2 Communications

- [A v. Australia](#), Communication No. 560/1993, 30 April 1997, CCPR/C/59/D/560/1993
→ *Excessive length of detention*
- [Jalloh v. the Netherlands](#), Communication No. 794/1998, 26 March 2002, CCPR/C/74/D/794/1998
→ *Detention justified because of risk of absconding*
- [C. v. Australia](#), Communication No. 900/1999, CCPR/C/74/D/900/1999
→ *Violation of Article 9 due to failure to assess alternatives to detention*
- [Madaffer v. Australia](#), Communication No. 1011/2001, CCPR/C/81/1011/2001
→ *Proportionality of detention*

- [Bakhtiyari v. Australia](#), Communication No. 1069/2002, 6 November 2003, CCPR/C/79/D/1069/2002
→ *Lack of consideration of alternatives to detention*
- [A.G.F.K. et al. v. Australia](#), Communication No. 2094/2011, CCPR/C/108/D/2094/2011
→ *Indefinite detention of persons in immigration facilities*

3.4 Working Group on Arbitrary Detention

[Report of the Working Group on Arbitrary Detention of 10 January 2008, A/HRC/7/4](#)

[Report of the Working Group on Arbitrary Detention of 28 December 1999, Deliberation No. 5 concerning the situation regarding immigrants and asylum-seekers, E/CN.4/2000/4](#)

I. Guarantees concerning persons held in custody

Principle 1: Any asylum-seeker or immigrant, when held for questioning at the border, or inside national territory in the case of illegal entry, must be informed at least orally, and in a language which he or she understands, of the nature of and grounds for the decision refusing entry at the border, or permission for temporary residence in the territory, that is being contemplated with respect to the person concerned.

Principle 2: Any asylum-seeker or immigrant must have the possibility, while in custody, of communicating with the outside world, including by telephone, fax or electronic mail, and of contacting a lawyer, a consular representative and relatives.

Principle 3: Any asylum-seeker or immigrant placed in custody must be brought promptly before a judicial or other authority.

Principle 4: Any asylum-seeker or immigrant, when placed in custody, must enter his or her signature in a register which is numbered and bound, or affords equivalent guarantees, indicating the person's identity, the grounds for the custody and the competent authority which decided on the measure, as well as the time and date of admission into and release from custody.

Principle 5: Any asylum-seeker or immigrant, upon admission to a centre for custody, must be informed of the internal regulations and, where appropriate, of the applicable disciplinary rules and any possibility of his or her being held incommunicado, as well as of the guarantees accompanying such a measure.

II. Guarantees concerning detention

Principle 6: The decision must be taken by a duly empowered authority with a sufficient level of responsibility and must be founded on criteria of legality established by the law.

Principle 7: A maximum period should be set by law and the custody may in no case be unlimited or of excessive length.

Principle 8: Notification of the custodial measure must be given in writing, in a language understood by the asylum-seeker or immigrant, stating the grounds for the measure; it shall set out the conditions under which the asylum-seeker or immigrant must be able to apply for a remedy to a judicial authority, which shall decide promptly on the lawfulness of the measure and, where appropriate, order the release of the person concerned.

Principle 9: Custody must be effected in a public establishment specifically intended for this purpose; when, for practical reasons, this is not the case, the asylum-seeker or immigrant must be placed in premises separate from those for persons imprisoned under criminal law.

Principle 10: The Office of the United Nations High Commissioner for Refugees (UNHCR), the International Committee of the Red Cross (ICRC) and, where appropriate, duly authorized non-governmental organizations must be allowed access to the places of custody.

[Report of the Working Group on Arbitrary Detention of 1 December 1998, E/CN.4/1999/63](#)

[Report of the Working Group on Arbitrary Detention of 19 December 1997, E/CN.4/1998/44](#)

3.5 UN Committee on Migrant Workers (CMW)

[General Comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, 28 August 2013, CMW/C/GC/2](#)

3.6 Rapporteur spécial sur les droits de l'homme des migrants

[Rapport sur la détention de migrants en situation irrégulière, 2 avril 2012, A/HRC/20/24](#)

[Rapport sur les droits de l'homme des migrants privées de liberté, 30 décembre 2002, E/CN.4/2003/85](#)

3.7 UNHCR

[Convention relating to the Status of Refugees, 1951](#)

Article 26 – Freedom of movement

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to aliens generally in the same circumstances.

Article 31 – Refugees unlawfully in the country of refuge

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

[UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012](#)

Guideline 1: The right to seek asylum must be respected

Guideline 2: The rights to liberty and security of person and to freedom of movement apply to asylum-seekers

Guideline 3: Detention must be in accordance with and authorised by law

Guideline 4: Detention must not be arbitrary, and any decision to detain must be based on an assessment of the individual's particular circumstances, according to the following:

4.1: Detention is an exceptional measure and can only be justified for a legitimate purpose

4.2: Detention can only be resorted to when it is determined to be necessary, reasonable in all the circumstances and proportionate to a legitimate purpose

4.3: Alternatives to detention need to be considered

Guideline 5: Detention must not be discriminatory

Guideline 6: Indefinite detention is arbitrary and maximum limits on detention should be established in law

Guideline 7: Decisions to detain or to extend detention must be subject to minimum procedural safeguards

Guideline 8: Conditions of detention must be humane and dignified

Guideline 9: The special circumstances and needs of particular asylum-seekers must be taken into account

Guideline 10: Detention should be subject to independent monitoring and inspection

[UNHCR Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons: Summary Conclusions, July 2011](#)