



Report of Various Size – Fieldwork research (FRANET)

Criminal Detention in the EU – Conditions and Monitoring

Country Report Malta

FRANET Contractor:	Aditus foundation
Author:	Dr. Carla Camilleri
Review:	Dr. David Zammit
Final Submission:	June 2018

DISCLAIMER: This document was commissioned under contract as background material for a comparative analysis by the European Union Agency for Fundamental Rights (FRA) for the project 'Criminal Detention – Conditions and Monitoring'. The information and views contained in the document do not necessarily reflect the views or the official position of the FRA. The document is made publicly available for transparency and information purposes only and does not constitute legal advice or legal opinion.

1. Cell space

- a) What is the national standard for cell space available to prisoners in m²? Is it regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?
- b) Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).
- c) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>

Please cite any relevant sources

No national standard is available for cell space. The Prisons Regulations¹ as the law states “reasonable amount of space, lighting and ventilation.” No publicly available information is found on how this phrase is interpreted and applied in practice².

Furthermore, Regulation 20 provides that the cell windows should allow the possibility of reading and working by natural light in normal conditions, and that it should be possible for fresh air to enter.

No information is available in relation to whether different standards apply to different detention regimes³.

The National Preventive Mechanism is the Corradino Correctional Facility Monitoring Board⁴, but none of its operations are not published or publicised.

2. Sanitary Facilities

- a) What is the national standard with regard to access to toilets? Are these located in cells? If not, do prisoners have access to these facilities without undue delay, even during the night? Do these facilities offer privacy to prisoners who use them?
- b) What is the national standard with regard to access to regularly cleaned shower/bathing facilities? How often is this access provided? Do these facilities offer privacy to prisoners who use them?
- c) Is the provision of cleanly sanitary facilities regulated by any legal instrument such as a legislative act, internal prison regulations, manuals, policy papers etc.?
- d) Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).
- e) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most

¹ Regulation 19(2), Prisons Regulations, Subsidiary Legislation 260.03, 1 October 1995, available at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9674&l=1>.

² Question sent via email to the Assistant Director, Department of Correctional Services. Furthermore, in European Court of Human Rights, Story and Others v. Malta, Application Nos. 56854/13, 57005/13, 57043/13, 29 October 2015, submissions made by the Government of Malta on these specific issues did not refer to any policy papers or other similar publications. Although details of practice were in fact provided, no documentary basis was provided.

³ Question sent via email to the Assistant Director, Department of Correctional Services.

⁴ See the site of the Monitoring Board here,

<https://www.gov.mt/en/Government/Government%20of%20Malta/Ministries%20and%20Entities/Officially%20Appointed%20Bodies/Pages/Boards/Board%20of%20Visitors%20of%20the%20Prisons.aspx>

recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>

Please cite any relevant sources

Regulation 23(3) of the Prisons Regulations⁵ requires each cell to be equipped with a toilet, with a sufficient quantity of water to keep this clean. Together with this toilet, other toilet facilities should be provided in other parts of the prison, according to Regulation 23(4), yet neither the Act nor the Regulations specify access rules.

In order for prisoners to comply with the obligation to keep clean, the Regulations require that they be provided with those items that are necessary for their health and cleanliness. In relation to access to shower/bathing facilities, the Regulations require these to be installed to enable prisoners to bath or shower, “at a temperate suitable to the climate”, following admission and then as frequently as decided by the Director of Prisons, with due consideration given to the season.

Regulation 23(2) sets a minimum national standard of at least once a week, in relation to bathing and showering.

Together with the above, each cell should be equipped with a wash hand basin with running water, in accordance with Regulation 23(3).

An August 2016 policy on trans, gender variant and intersex prisoners requires the safety and privacy of these inmates to be a particular consideration in the organisation of shower and changing facilities⁶.

No information is available in relation to whether different standards apply to different detention regimes⁷.

The National Preventive Mechanism is the Corradino Correctional Facility Monitoring Board, but none of its operations are not published or publicised.

3. Time out of cell

- a) What is the national standard set for time per day/week spent by prisoners outside of their cells:
 - a. Outdoors (within the boundary of the prison)?
 - b. Indoors in the common area?
- b) Are sports or other recreational and educational facilities available to prisoners? If so what types?
- c) Is time spent in cells regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?
- d) Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).
- e) Please, provide a link to the National Preventive Mechanism’s reports **from the reference period** (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). These

⁵ Prisons Regulations, Subsidiary Legislation 260.03, 1 October 1995, available at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9674&l=1>.

⁶ Ministry for Home Affairs and National Security, *Trans, Gender Variant and Intersex Inmates Policy: Correctional Services*, August 2016, available at [https://homeaffairs.gov.mt/en/media/Policies-Documents/Documents/Trans%20Gender%20Variant%20and%20Intersex%20Inmates%20Policy%20-%20August%202016%20\(Final-%20Final\).pdf](https://homeaffairs.gov.mt/en/media/Policies-Documents/Documents/Trans%20Gender%20Variant%20and%20Intersex%20Inmates%20Policy%20-%20August%202016%20(Final-%20Final).pdf)

⁷ Question sent via email to the Assistant Director, Department of Correctional Services.

reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>

Please cite any relevant sources

Regulation 28 of the Prisons Regulations⁸ sets a national minimum standard of not less than an hour per day (weather permitting) of outdoor activities, described as “*in the open air*”, with the possibility of the Director of Prisons reducing this time “*in exceptional circumstances*”, yet no information is available on how this latter phrase has been or may be interpreted. Yet this Regulation specifically refers to the prisoners being given exercise, rather than the prisoners spending leisure time outdoors. The Regulation does not mention any specific activities provided yet refers to ‘exercise and sport’⁹.

Furthermore, the Regulation also states that “*exercise consisting of physical training may be given indoors instead of in the open air.*”

No information is available in relation to whether different standards apply to different detention regimes¹⁰.

The National Preventive Mechanism is the Corradino Correctional Facility Monitoring Board, but none of its operations are not published or publicised.

4. Solitary confinement

- a) What is the national standard set regarding solitary confinement? Is it regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?
- b) Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).
- c) Please, provide a link to the National Preventive Mechanism’s reports **from the reference period** (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>

Please cite any relevant sources

Solitary confinement may be that imposed as a punishment by virtue of a court order¹¹, or that following an offence against discipline¹².

The former scenario is strictly regulated in the Criminal Code, where a description of the punishment is provided and limited to those situations where it is specifically imposed by law. A national minimum standard in relation to duration is stipulated as no longer than ten continuous days, with no less than two months between solitary confinement periods. The Criminal Code allows for exceptions to be made to this national standard in situations where, during these intervals between solitary confinement periods, there is an infringement of prison regulations or for the commission of an offence. Article 9(4) states that, in these situations, the confinement terms should be of “*short duration and that they shall not together exceed fifteen days in any one interval.*”

⁸ Prisons Regulations, Subsidiary Legislation 260.03, 1 October 1995, available at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9674&l=1>.

⁹ Question sent via email to the Assistant Director, Department of Correctional Services.

¹⁰ Question sent via email to the Assistant Director, Department of Correctional Services.

¹¹ Article 9, Criminal Code, Chapter 9 of the Laws of Malta, available at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574&l=1>.

¹² Regulation 82, Prisons Regulations.

Furthermore, Article 9(5) of the Criminal Code also states that where the number of terms is not specified in the law prescribing the solitary confinement punishment, the national minimum standard requires a maximum of twelve terms. Article 9(7) states that the court imposing solitary confinement may only impose it if it is satisfied that the convicted persons are medically fit to undergo solitary confinement, and such medical fitness should subsist throughout the duration of the solitary confinement.

Under the Prisons Regulations¹³, cellular confinement – including the above-mentioned solitary confinement imposed following a violation of prisons regulations or a commission of an offence – must be undergone in a cell meeting the Regulations' relevant standards. Although these standards are not defined, Regulation 82(1) refers to the same standards as for a normal cell. As with solitary confinement, the person's medical conditions should be fit to undergo the confinement.

No information is available in relation to whether different standards apply to different detention regimes¹⁴.

The National Preventive Mechanism is the Corradino Correctional Facility Monitoring Board, but none of its operations are not published or publicised.

5. Access to healthcare

- a) What is the national standard with regard to access to medical services in prisons? (*E.g. do prisoners have prompt access to medical services within prisons or externally? Do prisoners have access to dentists and opticians?*)
- b) Are there any special provisions relating to the provision of specialist care? (*E.g. for long-term diseases, for sick and elderly prisoners, the mentally ill, drug addicted prisoners etc.*)
- c) Is access to healthcare in prisons regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?
- d) Please indicate whether there are different standards applicable to different detention regimes.
- e) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>

Please cite any relevant sources

Regulations 31 to 39 of the Prisons Regulations¹⁵ regulate the prison Medical Service, established together with the Ministry responsible for health. According to Regulation 31, the Service is to be composed of registered medical practitioners who shall visit the prison on a daily basis for as long as required, and also to remain on call at other times during the day or night.

Regulation 31(5) further requires that the Service establishes an equipped infirmary on prison premises in order to provide medical services to persons who would not require hospitalisation but who otherwise would be unfit to remain in their cells. Persons requiring hospitalisation or treatment outside of prison should be transferred to hospital or specialised institution. Regulation 31(3) specifies that the Service should draw on those medical services available without charge to the outside community, in order to provide for the health of prisoners, meaning that prisoners are entitled to the same level of free health services as persons who are not prisoners. Regulation 31(4) states that a dentist from amongst the dentists forming part of the national health service should visit the prison at least once a week.

¹³ Prisons Regulations, Subsidiary Legislation 260.03, 1 October 1995, available at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9674&l=1>.

¹⁴ Question sent via email to the Assistant Director, Department of Correctional Services.

¹⁵ Prisons Regulations, Subsidiary Legislation 260.03, 1 October 1995, available at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9674&l=1>.

No national standard is specific in relation to access, yet Regulation 32 requires the Medical Service to “ensure the care of the physical and mental health of the prisoners”, stating that a doctor should see patients who are sick or require medical attention with a frequency as is reasonably required.

Regulation 33(1) requires that all prisoners undergo a medical examination as soon as possible after admission and prior to release.

Special arrangements are stipulated for pregnant women in Regulation 38, requiring the provision of prenatal care and the transfer of the women to hospital for care and delivery of the child.

Although the law does not stipulate particular provisions for persons with drug addiction problems, free community services are available. These are managed by the national agency in the area of substance abuse, Aġenzija Sedqa¹⁶, and the non-governmental organisation Caritas Malta¹⁷. An example of the services provided by the government is the Residential Drug Rehabilitation Programme (Komunitá Santa Marija)¹⁸.

The above-mentioned policy on trans, gender variant and intersex prisoners¹⁹ specifically requires such inmates to have access to those medical services related to their gender identity, gender expression and/or sex characteristics, such as hormones tablets/injections/gels. Furthermore, transition-related healthcare services should be provided as they would be so provided to persons outside of prison. The policy document highlights the vulnerability of such prisoners, emphasising the need of the Medical Services to ensure their access to those services needed to align their physical characteristics with their gender identity. Finally, the policy stresses the need to involve community-based organisations, including for the provision of mental health support.

No information is available in relation to whether different standards apply to different detention regimes²⁰.

The National Preventive Mechanism is the Corradino Correctional Facility Monitoring Board, but none of its operations are not published or publicised.

6. Special measures in place to protect juvenile prisoners.

- a) Are there any legal instruments, such as a legislative act, internal prison regulations, manuals, policy papers etc. regulating the separation of juvenile prisoners from adults? (e.g. a separate juvenile ward, or part of the building, canteen, common area etc.?)
- b) What age category falls under this specific juvenile prison regime?
- c) Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).
- d) Please, provide a link to the National Preventive Mechanism’s reports **from the reference period** (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>

¹⁶ For more information see the site of Aġenzija Sedqa at <https://fsws.gov.mt/en/sedqa/Pages/welcome-sedqa.aspx>.

¹⁷ For more information see the site of Caritas Malta at <https://caritasmalta.org/>.

¹⁸ Information available on the site of the Foundation for Social Welfare Services, <https://fsws.gov.mt/en/sedqa/Pages/Care-Services/Residential-Services.aspx>.

¹⁹ Ministry for Home Affairs and National Security, *Trans, Gender Variant and Intersex Inmates Policy: Correctional Services*, August 2016, available at [https://homeaffairs.gov.mt/en/media/Policies-Documents/Documents/Trans%20Gender%20Variant%20and%20Intersex%20Inmates%20Policy%20-%20August%202016%20\(Final-%20Final\).pdf](https://homeaffairs.gov.mt/en/media/Policies-Documents/Documents/Trans%20Gender%20Variant%20and%20Intersex%20Inmates%20Policy%20-%20August%202016%20(Final-%20Final).pdf)

²⁰ Question sent via email to the Assistant Director, Department of Correctional Services.

Please cite any relevant sources

Regulation 61 of the Prisons Regulations²¹ permits the Director of Prisons to grant prison leave to various groups of prisoners, and Regulation 61(e)ii refers specifically to young prisoners. The Regulation does not define the term ‘young prisoner’, although other publicly available information refers to prisoners under twenty-one years of age²². The same Regulation also states that the Director may allow young prisoners to spend all or part of their term in a rehabilitation institution. Young offenders may be housed at the Centre of Residential Restorative Services, having 16 cells for male prisoners and 6 for female prisoners²³.

Young prisoners are to be given particular attention in the provision of educational services, according to Regulation 46(2)²⁴.

The National Preventive Mechanism is the Corradino Correctional Facility Monitoring Board, but none of its operations are not published or publicised.

7. Special measures in place to protect prisoners from violence

- a) Are any special measures in place to protect prisoners against violence, including sexual violence? (E.g. are prisoners supervised by prison staff? Are there emergency call buttons? Do guards receive training in de-escalation? Do prisoners have access to a complaints mechanism?)
- b) Are there any special measures in place to protect LGBTI prisoners, who are particularly vulnerable to violence/sexual violence?
- c) Are these measures regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?
- d) Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.)..
- e) Please, provide a link to the National Preventive Mechanism’s reports from the reference period (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English) These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: <https://apt.ch/en/list-of--designated-npmby-regions-and-countries/>

Please cite any relevant sources

²¹ Prisons Regulations, Subsidiary Legislation 260.03, 1 October 1995, available at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9674&l=1>.

²² Times of Malta, *Imtaħleb facility for young offenders inaugurated, €1.6m correctional facility can house 50 people*, 28 April 2017, available at <https://www.timesofmalta.com/articles/view/20170428/local/imtahleb-facility-for-young-offenders-inaugurated.646520>.

²³ Times of Malta, *Imtaħleb facility for young offenders inaugurated, €1.6m correctional facility can house 50 people*, 28 April 2017, available at <https://www.timesofmalta.com/articles/view/20170428/local/imtahleb-facility-for-young-offenders-inaugurated.646520>.

²⁴ Question sent via email to the Assistant Director, Department of Correctional Services.

Furthermore, Regulation 10(4) requires that when prisoners are being moved between prisons, safeguards should be implemented to protect them from insult and curiosity.

In accordance with Regulation 17 of the Prisons Regulations²⁵, all prisoners may file complaints with the Director or the Monitoring Board, and any such meetings may be held in confidence. Furthermore, prisoners are also entitled to file complaints or requests to the responsible Minister, the President of the Republic or any internationally-recognised human rights body²⁶.

Regulation 38 requires special arrangements to be adopted for the safety of children, where these are kept in prison with their mothers until they turn one.

The prevention or acts of violence is one of the few situations wherein prison officers are authorised to use force, and this shall be used with proportionality²⁷.

Assault, endangering the health or safety of others and similar violent behaviour are offences against discipline according to Regulation 75. Persons found guilty of such offences by the Director of Prisons may face various punishments, including a caution, exclusion from associated work, stoppage of earnings, cellular confinement and forfeiture of the right to wear his/her own clothing.

Regulation 96 specifically states that one of the duties of prison officers is to ensure the safe custody of prisoners²⁸.

With specific references to LGBTIQ+ prisoners, a Ministry policy adopted in August 2016 contains several provisions that seek to ensure the safety of these prisoners²⁹. Allocation of trans, gender variant and intersex prisoners should be in accordance with the person's gender identity and/or gender expression. Where a trans, gender variant and/or intersex prisoner is not being kept in a division belonging to that of their affirmed gender identity, they should not be placed in shared cells. Whilst transgender prisoners should be allocated to the division corresponding to their affirmed gender identity, concerns of sexual assault or violence could lead to individual assessments of each situation.

The National Preventive Mechanism is the Corradino Correctional Facility Monitoring Board, but none of its operations are not published or publicised.

8. Responsible authorities

- a) What authority is responsible for the provision of additional information requested under Article 15 of the EAW Framework Decision? (*Please specify whether there a central authority deals with these requests, if yes, please provide contact details, such as the name of the institution, a website, physical and email addresses, and a telephone number. In the absence of a central authority, who deals with those requests?*)
- b) What authority is responsible for monitoring conditions of detention and putting forward recommendations?

²⁵ Prisons Regulations, Subsidiary Legislation 260.03, 1 October 1995, available at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9674&l=1>.

²⁶ Regulation 18.

²⁷ Regulation 71(1).

²⁸ Question sent via email to the Assistant Director, Department of Correctional Services.

²⁹ Ministry for Home Affairs and National Security, *Trans, Gender Variant and Intersex Inmates Policy: Correctional Services*, August 2016, available at [https://homeaffairs.gov.mt/en/media/Policies-Documents/Documents/Trans%20Gender%20Variant%20and%20Intersex%20Inmates%20Policy%20-%20August%202016%20\(Final-%20Final\).pdf](https://homeaffairs.gov.mt/en/media/Policies-Documents/Documents/Trans%20Gender%20Variant%20and%20Intersex%20Inmates%20Policy%20-%20August%202016%20(Final-%20Final).pdf)

Please cite any relevant sources

No information is as yet available on the EAW Framework Decision contact point³⁰.

The authority responsible for monitoring conditions of detention is the Corradino Correctional Facility Monitoring Board³¹.

³⁰ An email query was sent to the Office of the Attorney General.

³¹ See the site of the Monitoring Board here,

<https://www.gov.mt/en/Government/Government%20of%20Malta/Ministries%20and%20Entities/Officially%20Appointed%20Bodies/Pages/Boards/Board%20of%20Visitors%20of%20the%20Prisons.aspx>