

# Criminal Detention in the EU Conditions and Monitoring

Update of FRA's Criminal Detention Database  
(FRANET)

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**Contractor:** Helsinki Foundation for Human Rights

**Authors:** Maciej Kalisz, Filip Bakierski

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## Part I: National standards

### COVID-19 measures

As regards applicable measures related to COVID-19 in the field of detention, there are no provisions that would affect standards elaborated on in this report. Changes introduced with relation to the pandemic pertained to issues such as e.g. granting interruptions in the execution of penalty, visiting penitentiary units or employment of prisoners. None of the issues mentioned in this report have been addressed by Polish COVID-19 legislation.

#### 1. Cells

a) **Cell space:** What is the national standard for cell space available to detainees in m<sup>2</sup>? Are the calculation requirements spelled out by the CJEU in its *Dorobantu* ruling<sup>1</sup> observed?

Every prisoner in post-trial detention should be provided with at least 3 m<sup>2</sup>.<sup>2</sup> The same standard applies to pre-trial detention, as well as to police custody.<sup>3</sup> The director of the unit (prison or remand centre) may decide to place a prisoner, for up to 14 days, in a cell in which the actual surface available for one prisoner is lower than 3 m<sup>2</sup>, but not lower than 2 m<sup>2</sup>.<sup>4</sup> The decision may be made only, if the prisoners must be placed immediately in a penitentiary unit with no vacancies and if the prisoners belong to one of the groups prescribed by law.

As it has been emphasised in the guidelines issued by the General Director of Prison Service, while designing new penitentiary units or adapting the already existing ones, it should be taken into account that the national standard for cell space might be changed to 4 m<sup>2</sup> per detainee in the future.<sup>5</sup>

According to the order of the General Director of the Prison Service, the area occupied by sanitary facilities in penitentiary units is not taken into account when calculating the cell space.<sup>6</sup>

b) **Cell equipment, furniture and facilities:** Are there any national standards for cell equipment (heating, ventilation, cooling, etc.), furniture (bed, mattress, shelf, wardrobe, seating, table, etc.) and/or facilities (lighting, incl. windows, washbasin, toilet, shower etc.), including any measurements? If so, what do they require?

<sup>1</sup> For the CEU's calculation requirements please see: CJEU, [C-128/18, Dorobantu](#) [GC], Judgment of 15 October 2019, oper. part.

<sup>2</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 110(1).

<sup>3</sup> Poland, Minister of Internal Affairs, *Rozporządzenie w sprawie pomieszczeń przeznaczonych dla osób zatrzymanych lub doprowadzonych w celu wytrzeźwienia, pokoi przejściowych, tymczasowych pomieszczeń przejściowych i policyjnych izb dziecka, regulaminu pobytu w tych pomieszczeniach, pokojach i izbach oraz sposobu postępowania z zapisami obrazu z tych pomieszczeń, pokoi i izb*, 4 June 2012, § 8(1)(1).

<sup>4</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 110(2b).

<sup>5</sup> Poland, General Director of Prison Service, [Guidelines No 1/2019 on technical and protection requirements concerning residential pavilions in Prison Service organizational units](#) (*Wytyczne Nr 1/2019 w sprawie wymagań technicznych i ochronnych dla pawilonów zakwaterowania osadzonych w jednostkach organizacyjnych Służby Więziennej*), 17 June 2019, § 1(3).

<sup>6</sup> Poland, General Director of Prison Service, [Order No 7/2012 on calculating the capacity of penitentiary units](#) (*Zarządzenie 7/2012 w sprawie ustalania pojemności jednostek penitencjarnych*), 30 January 2012, § 4(4).

The Executive Penal Code stipulates that cells in penitentiary units should be appropriately equipped. The equipment should ensure a separate sleeping place for each detainee, proper hygienic conditions, sufficient air circulation and temperature adequate to the time of year, as well as lighting that allows to read and work.<sup>7</sup>

As for the furniture, according to the regulation of the Minister of Justice, a living cell in a penitentiary unit should be equipped with a bed for each detainee, and an adequate number of tables, lockers and stools (proportional to the number of persons).<sup>8</sup> The equipment of a rooms in police custody is almost identical (except for lockers).<sup>9</sup>

As for the other appliances, the guidelines of the Director General of Prison Service<sup>10</sup> require that every living cell:

- have a sanitary facility consisting of a toilet and a washbasin (with cold and hot water supply);<sup>11</sup>
- be equipped with central heating<sup>12</sup> and ventilation;<sup>13</sup>
- be lit with scattered light with a minimum illumination of 100 lx (200 lx for parts of the cell intended for work and reading).<sup>14</sup>

c) **Video-surveillance of cells:** Are there any national standards for video-surveillance of cells? If so, what do they require?

According to the Executive Penal Code, penitentiary units (prisons and remand centres) may be supervised with a CCTV system.<sup>15</sup> CCTV cameras can be placed in residential cells (including their sanitary parts), corridors, baths, visiting rooms, workplaces and exercise yards.<sup>16</sup> The prison director is responsible for deciding which places should be included in the video surveillance system.<sup>17</sup>

The provision of the Executive Penal Code allows to record image and sound.<sup>18</sup> Audio-recording of legally protected information (e.g. covered by lawyer-client privilege or the confidentiality of the confessional) is prohibited.<sup>19</sup> Recorded image captured in baths and sanitary facilities is processed, so that the detainees' intimacy is protected.<sup>20</sup> Unless the captured video and/or audio depicts the commission of prohibited act or is crucial for other safety reasons, the recordings are removed promptly.<sup>21</sup> Otherwise, the unit's director decides on how long it needs to be stored and in what manner it should be used.<sup>22</sup>

<sup>7</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 110(2).

<sup>8</sup> Poland, Minister of Justice, *Rozporządzenie w sprawie regulaminu organizacyjno-porządkowego wykonywania kary pozbawienia wolności*, 21 December 2016, § 29(1).

<sup>9</sup> Poland, Minister of Internal Affairs, *Rozporządzenie w sprawie pomieszczeń przeznaczonych dla osób zatrzymanych lub doprowadzonych w celu wytrzeźwienia, pokoi przejściowych, tymczasowych pomieszczeń przejściowych i policyjnych izb dziecka, regulaminu pobytu w tych pomieszczeniach, pokojach i izbach oraz sposobu postępowania z zapisami obrazu z tych pomieszczeń, pokoi i izb*, 4 June 2012, § 8(1)(7).

<sup>10</sup> Poland, General Director of Prison Service, [Guidelines No 1/2019 on technical and protection requirements concerning residential pavilions in Prison Service organizational units](#) (*Wytyczne Nr 1/2019 w sprawie wymagań technicznych i ochronnych dla pawilonów zakwaterowania osadzonych w jednostkach organizacyjnych Służby Więziennej*), 17 June 2019.

<sup>11</sup> *Ibid*, § 3(7).

<sup>12</sup> *Ibid*, § 4(1).

<sup>13</sup> *Ibid*, § 4(3).

<sup>14</sup> *Ibid*, § 4(5).

<sup>15</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 73a(1).

<sup>16</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 73a(2).

<sup>17</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 73a(8).

<sup>18</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 73a(1).

<sup>19</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 73a(4).

<sup>20</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 73a(5).

<sup>21</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 73a(6).

<sup>22</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 73a(7).

Technical aspects of audio-visual surveillance in penitentiary units (e.g. the types of recommended equipment) are described in detail in a regulation issued by the Minister of Justice.<sup>23</sup>

The standard is almost identical with regard to police custody.<sup>24</sup>

d) **Hygienic conditions in cells:** Are there any national standards with regard to cleaning and/or cleanliness of cells? If so, what do they require?

Maintaining the cleanliness of living cells is one of the basic duties of detainees in pre-trial and post-trial detention, according to the Executive Penal Code.<sup>25</sup> The same applies to persons in police custody.<sup>26</sup>

The regulation of the Minister of Justice stipulates only that there should be an adequate quantity of cleaning supplies available in every living cell in penitentiary units in order to maintain the cleanliness.<sup>27</sup> Prison Service should provide prisoners with sufficient resources to maintain the cleanliness of the cell, e.g. dishwashing liquid (200 ml), cleaning liquid (500 ml), cleaning sponge, toilet cleaning liquid and window cleaning liquid. Each cell should be equipped with a brush, a dustpan and a broom.<sup>28</sup>

The state of living cells' cleanliness in penitentiary units is supervised by Prison Service officials.<sup>29</sup>

The regulation of the Minister of Justice requires that each detainee placed in a prison or a remand centre should be provided with clothes, underwear, footwear and bed linen (if the person is employed – also clothes and footwear necessary for carrying out the work).<sup>30</sup> Clothes and underwear shall be adequate to the time of year: summer season (May-August) or winter season (November-February); during the remaining months, detainees can wear both summer or winter clothes.<sup>31</sup>

Pyjamas, nightgowns, towels and dish towels are changed at least once a week (or more often, depending on the needs).<sup>32</sup> There is no fixed frequency of clothes and footwear change – it happens depending on the needs. The change of bed linen takes place once

<sup>23</sup> Poland, Minister of Justice, [Regulation concerning the type of equipment and technical means used to transmit, playback and record image and sound from surveillance in penitentiary units](#) (*Rozporządzenie w sprawie rodzaju urządzeń i środków technicznych służących do przekazywania, odtwarzania i utrwalania obrazu lub dźwięku z monitoringu w zakładach karnych*), 16 October 2009.

<sup>24</sup> Poland, Minister of Internal Affairs, *Rozporządzenie w sprawie pomieszczeń przeznaczonych dla osób zatrzymanych lub doprowadzonych w celu wytrzeźwienia, pokoi przejściowych, tymczasowych pomieszczeń przejściowych i policyjnych izb dziecka, regulaminu pobytu w tych pomieszczeniach, pokojach i izbach oraz sposobu postępowania z zapisami obrazu z tych pomieszczeń, pokoi i izb*, 4 June 2012, §§ 14-15.

<sup>25</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 116(1)(2).

<sup>26</sup> Poland, Minister of Internal Affairs, *Rozporządzenie w sprawie pomieszczeń przeznaczonych dla osób zatrzymanych lub doprowadzonych w celu wytrzeźwienia, pokoi przejściowych, tymczasowych pomieszczeń przejściowych i policyjnych izb dziecka, regulaminu pobytu w tych pomieszczeniach, pokojach i izbach oraz sposobu postępowania z zapisami obrazu z tych pomieszczeń, pokoi i izb*, 4 June 2012, Appendix 1, § 8(5).

<sup>27</sup> Poland, Minister of Justice, *Rozporządzenie w sprawie regulaminu organizacyjno-porządkowego wykonywania kary pozbawienia wolności*, 21 December 2016, § 29(1).

<sup>28</sup> Poland, Minister of Justice, [Regulation on detention conditions for persons deprived of liberty in prisons and remand centers](#) (*Rozporządzenie Ministra Sprawiedliwości w sprawie warunków bytowych dla osób osadzonych w zakładach karnych i aresztach śledczych*), 19 December 2016.

<sup>29</sup> *Ibid*, § 35.

<sup>30</sup> Poland, Minister of Justice, [Regulation on detention conditions for persons deprived of liberty in prisons and remand centers](#) (*Rozporządzenie Ministra Sprawiedliwości w sprawie warunków bytowych dla osób osadzonych w zakładach karnych i aresztach śledczych*), 19 December 2016, § 1(1).

<sup>31</sup> Poland, Minister of Justice, [Regulation on detention conditions for persons deprived of liberty in prisons and remand centers](#) (*Rozporządzenie Ministra Sprawiedliwości w sprawie warunków bytowych dla osób osadzonych w zakładach karnych i aresztach śledczych*), 19 December 2016, § 4.

<sup>32</sup> Poland, Minister of Justice, [Regulation on detention conditions for persons deprived of liberty in prisons and remand centers](#) (*Rozporządzenie Ministra Sprawiedliwości w sprawie warunków bytowych dla osób osadzonych w zakładach karnych i aresztach śledczych*), 19 December 2016, § 6(1).

a fortnight (or more often, depending on the needs). Items that are not subject to be returned to the penitentiary unit are cleaned by detainees on their own.<sup>33</sup>

Persons in police custody in principle wear their own underwear, clothes and footwear.<sup>34</sup> During night-time, they are provided with a mattress, a pillow and a blanket (two blankets during autumn and winter) and linen.<sup>35</sup>

e) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

Standards applicable to different detention regimes (police custody, pre-trial and post-trial, as well as open, semi-open and closed) are uniform with regard to cells.

f) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 1. a) – e), including their respective legal basis.

The Executive Penal Code authorises detainees to file motions, complaints and requests to authorities, which execute the penalty of imprisonment or pre-trial detention.<sup>36</sup> Such motions, complaints and requests can pertain to every aspect of deprivation of liberty. If the unit's director does not agree with the motion or request, the detainee should be informed on the right to appeal to a director of a regional inspectorate of Prison Guard.

The Executive Penal Code also stipulates that detainees can challenge the legality of decisions issued by such authorities before a penitentiary court by filing a complaint within 7 days from being served the decision.<sup>37</sup> The penitentiary court can maintain in force, modify or revoke the decision, and its ruling is final. A complaint on placing a person in a cell where less than 3m<sup>2</sup> is available is heard by the court within 7 days (this time limit being only an instructive one and bearing no consequences in case it is exceeded by the court).<sup>38</sup>

Moreover, according to the Civil Code, each detainee is also entitled to seek redress for violation of personal rights with regard to conditions of deprivation of liberty before a civil court.<sup>39</sup> A claim should be brought within three years from the day when the detainee learned about the damage and about the person liable to redress it (or might have learned about it if he or she had exercised due diligence). However, such a time limit may not be longer than ten years from the day when the event causing the damage occurred.<sup>40</sup>

g) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding these aspects (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National

<sup>33</sup> Poland, Minister of Justice, [Regulation on detention conditions for persons deprived of liberty in prisons and remand centers](#) (*Rozporządzenie Ministra Sprawiedliwości w sprawie warunków bytowych dla osób osadzonych w zakładach karnych i aresztach śledczych*), 19 December 2016, § 6(2).

<sup>34</sup> Poland, Minister of Internal Affairs, *Rozporządzenie w sprawie pomieszczeń przeznaczonych dla osób zatrzymanych lub doprowadzonych w celu wytrzeźwienia, pokoi przejściowych, tymczasowych pomieszczeń przejściowych i policyjnych izb dziecka, regulaminu pobytu w tych pomieszczeniach, pokojach i izbach oraz sposobu postępowania z zapisami obrazu z tych pomieszczeń, pokoi i izb*, 4 June 2012, Annex 1, § 9(1).

<sup>35</sup> *Ibid*, § 9(6).

<sup>36</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 6(2).

<sup>37</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 7.

<sup>38</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 110(2f).

<sup>39</sup> Poland, Civil Code (*Kodeks cywilny*), 23 April 1964, Articles 23 and 24.

<sup>40</sup> Poland, Civil Code (*Kodeks cywilny*), 23 April 1964, Article 442<sup>1</sup>(1).

Preventive Mechanism. For ease of reference, a list of links can be found via the [OPCAT Database](#).

**1) Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2019](#) (Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2019 r.), 13 August 2020.**

*„Niestety, pomimo starań Krajowego Mechanizmu w przedmiocie zwiększenia metrażu celi mieszkalnej przypadającego na jednego więźnia, opisanego w raporcie rocznym za 2017 i 2018 rok, Ministerstwo Sprawiedliwości nie widzi potrzeby wprowadzenia takiej zmiany. W Polsce prawo zapewnia więźniowi minimum 3 m<sup>2</sup> powierzchni mieszkalnej w celi. Dopuszcza też sytuację umieszczania go poniżej tego standardu. W takich warunkach człowiek nie jest w stanie normalnie funkcjonować. Polska norma jest sprzeczna ze standardami międzynarodowymi i praktyką większości państw europejskich. O zapewnienie więźniom minimum 4 m<sup>2</sup> od 1996 r. apelują do polskich władz organy międzynarodowe: Europejski Komitet ds. Zapobiegania Torturom oraz Nieludzkiemu i Poniżającemu Traktowaniu albo Karaniu (CPT), Komitet ONZ Przeciwko Torturom (CAT), Podkomitet ONZ Przeciwko Torturom (SPT)”.<sup>41</sup>*

*“Unfortunately, despite the NMPT efforts to increase the cell size per capita described in the 2017 and 2018 Annual Reports, the Ministry of Justice does not see a need to make such changes. According to the regulations applicable in Poland, an inmate is guaranteed a minimum of 3 m<sup>2</sup> of cell area. The legislation also allows for a reduction in this standard. In such cases an individual is unable to function normally. The Polish standard is contrary to international standards and practices of the majority of the European countries. Since 1996 Polish authorities have been called by international organizations such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the UN Committee against Torture (CAT), the UN Sub-Committee against Torture (SPT), to ensure the minimum 4 m<sup>2</sup> of cell space to prisoners”.*

**2) Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2018](#) (Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2018 r.), 24 June 2019.**

No recommendations available.

**3) Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2017](#) (Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2017 r.), 13 December 2018.**

*„KMPT z niepokojem odnotował funkcjonowanie dwóch cel 13-osobowych. Takie cele nie zapewniają więźniom nawet minimum prywatności, prowadzą do ryzyka konfliktów, zastraszania i przemocy oraz sprzyjają rozwojowi subkultur przestępczych”.<sup>42</sup>*

<sup>41</sup> Poland, Commissioner for Human Rights, [National Mechanism for Prevention of Torture in Poland in 2019](#) (Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2019 r.), 2020, p. 79.

<sup>42</sup> Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2017](#) (Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2017 r.), 13 December 2018, p. 31.

"The NMPT, with concern, recorded the existence of two 13-person cells. Such cells fail to ensure even a minimum level of privacy; they lead to conflicts, threats and violence and are a breeding ground for the development of criminal subcultures".

## 2. Sanitary conditions

a) What is the national standard with regard to access to toilets? Are these located in cells? If not, do detainees have access to these facilities without undue delay, even during the night? Do these facilities have to offer privacy to detainees who use them and, if so, in how far?

The cells in closed penitentiary units have to be equipped with sanitary facilities.<sup>43</sup> In practice, most of the cells are equipped with sanitary annexes. Toilets are lacking only in units located in old buildings and in those cells that were set up in former common rooms, infirmaries and utility rooms.

Sanitary rooms (consisting of a shower, a washbasin and a toilet) are also mandatory in police custody.<sup>44</sup>

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 have to offer privacy to detainees who use them and, if so, in how far?

Each prisoner must be given certain required hygienic products each month.<sup>45</sup> The standard for access to warm water (understood as warm tap water) differs depending on the sex of prisoners. A female prisoner has to be provided with daily access to warm water (at least once per day). Male prisoners do not have to be provided with such a level of access – there is no standard with regard to male prisoners and the situation depends on internal regulations of penitentiary units.

With regard to women who are either in pre-trial<sup>46</sup> or post-trial detention<sup>47</sup>, they have a right to use warm water at least once a day, and the right to take a warm shower twice a week. Men in penitentiary units (prisons and remand centres) have to be provided with a warm shower only once a week.<sup>48</sup>

There is no standard concerning the frequency of showers for persons in police custody.

As indicated in the guidelines of the General Director of the Prison Service (applicable to pre-trial and post-trial detention), newly designed shower facilities should be

<sup>43</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 110(3).

<sup>44</sup> Poland, Minister of Internal Affairs, *Rozporządzenie w sprawie pomieszczeń przeznaczonych dla osób zatrzymanych lub doprowadzonych w celu wytrzeźwienia, pokoi przejściowych, tymczasowych pomieszczeń przejściowych i policyjnych izb dziecka, regulaminu pobytu w tych pomieszczeniach, pokojach i izbach oraz sposobu postępowania z zapisami obrazu z tych pomieszczeń, pokoi i izb*, 4 June 2012, § 4(1)(4).

<sup>45</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 102(1).

<sup>46</sup> Poland, Minister of Justice, *Rozporządzenie w sprawie regulaminu organizacyjno-porządkowego wykonywania tymczasowego aresztowania*, 22 December 2016, § 36(4).

<sup>47</sup> Poland, Minister of Justice, *Rozporządzenie w sprawie regulaminu organizacyjno-porządkowego wykonywania kary pozbawienia wolności*, 21 December 2016, § 31(4).

<sup>48</sup> Poland, Minister of Justice, *Rozporządzenie w sprawie regulaminu organizacyjno-porządkowego wykonywania tymczasowego aresztowania*, 22 December 2016, § 36(3); *Rozporządzenie w sprawie regulaminu organizacyjno-porządkowego wykonywania kary pozbawienia wolności*, 21 December 2016, § 31(3).

separated by walls that guarantee privacy to detainees.<sup>49</sup> No such standard is foreseen with regard to police custody.<sup>50</sup>

c) What are the national standards with regard to cleaning and cleanliness of sanitary facilities?

Polish law lacks legal provisions guaranteeing detainees the right to use sanitary facilities that are clean.

The duty to maintain the cleanliness of sanitary facilities remains on the detainees themselves (see 1.d: Hygienic conditions in cells).

d) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

The only difference in this regard pertains to sanitary facilities (toilets and washbasins). According to the Executive Penal Code, in semi-open and open units, such facilities can be placed outside the living cells.<sup>51</sup>

e) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 2. a) – d), including their respective legal basis.

The Executive Penal Code authorises detainees to file motions, complaints and requests to authorities which execute the penalty of imprisonment or pre-trial detention.<sup>52</sup> Such motions, complaints and requests can pertain to every aspect of deprivation of liberty. If the unit's director does not agree with the motion or request, the detainee should be informed on the right to appeal to a director of a regional inspectorate of Prison Guard.

The Executive Penal Code also stipulates that detainees can challenge the legality of decisions issued by such authorities before a penitentiary court by filing a complaint within 7 days from being served the decision.<sup>53</sup> The penitentiary court can maintain in force, modify or revoke the decision, and its ruling is final.

Moreover, according to the Civil Code, each detainee is also entitled to seek redress for violation of personal rights with regard to conditions of deprivation of liberty before a civil court.<sup>54</sup> A claim should be brought within three years from the day when the detainee learned about the damage and about the person liable to redress it (or might have learned about it if he or she had exercised due diligence). However, such a time limit may not be longer than ten years from the day when the event causing the damage occurred.<sup>55</sup>

f) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT

<sup>49</sup> Poland, General Director of Prison Service, [Guidelines No 1/2019 on technical and protection requirements concerning residential pavilions in Prison Service organizational units](#) (Wytyczne Nr 1/2019 w sprawie wymagań technicznych i ochronnych dla pawilonów zakwaterowania osadzonych w jednostkach organizacyjnych Służby Więziennej), 17 June 2019, § 3(6)(3)(e).

<sup>50</sup> Poland, Minister of Internal Affairs, *Rozporządzenie w sprawie pomieszczeń przeznaczonych dla osób zatrzymanych lub doprowadzonych w celu wytrzeźwienia, pokoi przejściowych, tymczasowych pomieszczeń przejściowych i policyjnych izb dziecka, regulaminu pobytu w tych pomieszczeniach, pokojach i izbach oraz sposobu postępowania z zapisami obrazu z tych pomieszczeń, pokoi i izb*, 4 June 2012, § 11.

<sup>51</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 110(3).

<sup>52</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 6(2).

<sup>53</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 7.

<sup>54</sup> Poland, Civil Code (*Kodeks cywilny*), 23 April 1964, Articles 23 and 24.

<sup>55</sup> Poland, Civil Code (*Kodeks cywilny*), 23 April 1964, Articles 442<sup>1</sup>.

reports from the reference period) and whether there are any recommendations regarding these aspects (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference, a list of links can be found via the [OPCAT Database](#).

**1) Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2019](#) (*Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2019 r.*), 13 August 2020.**

*„W niektórych jednostkach w celach mieszkalnych umywalki usytuowane były poza kącikami sanitarnymi i nieosłonięte od pozostałej części celi. (...) Rzecznik Praw Obywatelskich stoi na stanowisku, iż w celach, w których umywalka znajduje się poza wydzielonym pełną, trwałą zabudową kącikiem sanitarnym i jest ona jedynym tego typu urządzeniem w pomieszczeniu, osadzeni nie mają zapewnionych warunków intymności podczas wykonywania czynności związanych z utrzymaniem higieny osobistej”.<sup>56</sup>*

*"In some penitentiary facilities sinks in cells were located outside a toilet zone without any separator from the remaining part of the cell. (...) According to the Commissioner for Human Rights, in the cells in which a sink is located outside a separated toilet zone and it is the only device of that type in a cell, intimacy of inmates who want to wash themselves is not ensured".*

**2) Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2018](#) (*Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2018 r.*), 24 June 2019.**

No recommendations available.

**3) Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2017](#) (*Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2017 r.*), 13 December 2018.**

No recommendations available.

### 3. Time out of cell

- a) What is the national standard set for time per day/week spent by detainees outside of their cells:
- Outdoors (within the boundary of the prison)?
  - Indoors in the common area?

Cells in closed regimes are generally closed throughout the day and night. They may be opened only, if it does not threaten the safety of the penitentiary unit. As a result, most of the prisoners held in such a regime spend a vast majority of their days closed. They are allowed to move around the penitentiary unit premises only in an organized way,

<sup>56</sup> Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2019](#) (*Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2019 r.*), 13 August 2020, p. 85

under supervision of the prison service. Any educational, cultural or sport activities with their participation have to take place in the penitentiary unit, not outside. They are allowed to work outside the unit, but only with full supervision of the prison service.<sup>57</sup>

Cells in semi-closed regimes remain open throughout the day. They may be closed only at night. Prisoners are allowed to take part in educational, sport and cultural activities organized outside the unit.<sup>58</sup>

Cells in open regimes remain open 24 hours per day. Prisoners have a right to at least one hour of outdoor exercise. Outdoor exercises take place in exercising yards in the open air, under direct supervision of prison service officers.<sup>59</sup>

b) Do sports or other recreational and/or educational facilities have to be available to detainees? If so, what types?

The Executive Penal Code obliges in particular to create libraries (with books and press titles available for the prisoners) and to ensure that detainees have the possibility to use audio-visual equipment in common rooms or in living cells.<sup>60</sup>

c) Is there a national standard for time spent in cells? If so, what does it require?

The national standard on amount of time spent by prisoners in penitentiary units in their cells generally depends on the regime, in which prisoners serve their sentence. There are no specific amounts of time foreseen in the law, however.

In the closed regime, cells remain closed throughout the day and night. They may be opened only if it does not threaten the safety of the penitentiary unit. As a result, most of the prisoners held in such a regime spend a vast majority of their time locked up.<sup>61</sup> Cells in the semi-closed regime remain open throughout the day. They may be closed only at night.<sup>62</sup> Cells in the open regime remain open 24 hours per day.<sup>63</sup>

d) Are there any national standards with regard to activities and/or programmes that should be available to detainees when they are outside their cells? If so, what do they require?

According to the Executive Penal Code, conditions should be created in penitentiary units for enabling adequate ways of spending free time by the detainees.<sup>64</sup> In order to do so, the Code requires that certain types of activities should be available to the detainees, such as cultural, educational and sports ones, as well as activities aimed at increasing their social activity.

Regulations of the Minister of Justice provide for a possibility of organising cultural, educational, sports and other types of activities with the participation of external entities (e.g. NGOs) in penitentiary units.<sup>65</sup>

The Executive Penal Code stipulates that, as far as possible, detainees in post-trial detention should be offered, upon their consent, the possibility to perform work.<sup>66</sup> The

<sup>57</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 90.

<sup>58</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 91.

<sup>59</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 92.

<sup>60</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 135.

<sup>61</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 90.

<sup>62</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 91.

<sup>63</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 92.

<sup>64</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 135.

<sup>65</sup> Poland, Minister of Justice, *Rozporządzenie w sprawie regulaminu organizacyjno-porządkowego wykonywania tymczasowego aresztowania*, 22 December 2016, § 44; *Rozporządzenie w sprawie regulaminu organizacyjno-porządkowego wykonywania kary pozbawienia wolności*, 21 December 2016, § 43.

<sup>66</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 121(1).

employment should in principle be paid,<sup>67</sup> except for janitorial and ancillary works performed for penitentiary units or local government units not exceeding 90 hours per month.<sup>68</sup> Detainees serving life sentences in the closed regime can perform work only at the premises of the penitentiary unit.<sup>69</sup> Persons in pre-trial detention can be employed, following their consent, either by the remand centre where they are placed or outside the unit; in the former case, they are not entitled to any remuneration, whereas in the latter case an additional permit from the public prosecutor is required.<sup>70</sup> Detainees in remand centres are also obliged to perform janitorial work for their units.

e) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

The applicable standard depends on the regime, in which a detainee serves his or her sentence (open, semi-open or closed) – please see section 3.a.).

f) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 3. a) – e), including their respective legal basis.

The Executive Penal Code authorises detainees to file motions, complaints and requests to authorities which execute the penalty of imprisonment or pre-trial detention.<sup>71</sup> Such motions, complaints and requests can pertain to every aspect of deprivation of liberty. If the unit's director does not agree with the motion or request, the detainee should be informed on the right to appeal to a director of a regional inspectorate of Prison Guard. The Executive Penal Code also stipulates that detainees can challenge the legality of decisions issued by such authorities before a penitentiary court by filing a complaint within 7 days from being served the decision.<sup>72</sup> The penitentiary court can maintain in force, modify or revoke the decision, and its ruling is final.

Moreover, according to the Civil Code, each detainee is also entitled to seek redress for violation of personal rights with regard to conditions of deprivation of liberty before a civil court.<sup>73</sup> A claim should be brought within three years from the day when the detainee learned about the damage and about the person liable to redress it (or might have learned about it if he or she had exercised due diligence). However, such a time limit may not be longer than ten years from the day when the event causing the damage occurred.<sup>74</sup>

g) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding these aspects (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference, a list of links can be found via the [OPCAT Database](#).

**1) Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2019](#) (*Raport Rzecznika Praw***

<sup>67</sup> Ibid, Article 123(1).

<sup>68</sup> Ibid, Article 123a(1).

<sup>69</sup> Ibid, Article 121(10).

<sup>70</sup> Ibid, Article 218.

<sup>71</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 6(2).

<sup>72</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 7.

<sup>73</sup> Poland, Civil Code (*Kodeks cywilny*), 23 April 1964, Articles 23 and 24.

<sup>74</sup> Poland, Civil Code (*Kodeks cywilny*), 23 April 1964, Article 442<sup>1</sup>.

**Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2019 r.), 13 August 2020.**

*„Oferta zajęć adresowanych do więźniów jest bardzo uboga. Tymczasowo aresztowani mogą spędzać czas wolny w celach i świetlicach, oglądając telewizor, czytając udostępniane w bibliotece książki, grając w gry planszowe i „piłkarzyki”. W praktyce, jak wynikało z rozmów przeprowadzonych z wizytującymi, spędzają większość czasu w celi mieszkalnej, opuszczając ją tylko w czasie spaceru, który jest dla nich najbardziej atrakcyjną formą aktywności. Wprawdzie jednostki organizują różnego rodzaju ciekawe spotkania, koncerty czy spektakle, ale wydarzenia te mają charakter incydentalny”.*<sup>75</sup>

*"The offer of activities addressed to inmates is very poor. Inmates of pre-trial detention centres may spend their time in cells and in day centres, they can watch TV, read books from a library, they can play board games and table football. In practice, interviews with inmates during a visit revealed that they spend most of their time in cells and leave them only to take a walk, which is the most attractive form of activity for them. The facilities may organize various interesting meetings, concerts or performances, but such events are only incidental”.*

**2) Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2018](#) (Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2018 r.), 24 June 2019.**

No recommendations available.

**3) Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2017](#) (Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2017 r.), 13 December 2018.**

No recommendations available.

#### 4. Solitary confinement

a) What are the national standards regarding solitary confinement?

Solitary confinement is a disciplinary measure.<sup>76</sup> It involves placing a prisoner in a separate, specially designed cell for up to 28 days (14 days in the case of pre-trial detainees).<sup>77</sup> While other disciplinary measures may be applied to prisoners who have violated the order and disciplinary rules of a given unit, solitary confinement may only be imposed when the violation is serious.<sup>78</sup> During solitary confinement, prisoners remain separated from other prisoners and are denied their rights to: receive visits, make phone calls, use audio-visual and computer equipment, take part, together with

<sup>75</sup> Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2019](#) (Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2019 r.), 13 August 2020, p. 84.

<sup>76</sup> Poland, Executive Penal Code (Kodeks karny wykonawczy), 6 June 1997, Article 143(1)(8).

<sup>77</sup> Poland, Executive Penal Code (Kodeks karny wykonawczy), 6 June 1997, Article 222(2)(5).

<sup>78</sup> Poland, Executive Penal Code (Kodeks karny wykonawczy), 6 June 1997, Article 143(3).

other prisoners, in religious services (however, at their request they should be allowed to participate directly in a service, without a possibility of contacting other prisoners), take part in cultural, educational and sport activities (however, they may use books and press), purchase food and tobacco products, work outside the cell, educate themselves outside the cell, use their own clothing, footwear and tobacco products.<sup>79</sup>

Like in the case of other disciplinary measures, if the detainee committed more than one disciplinary offence before the penalty for any of them being executed, only one penalty is imposed but adequately more severe (meaning a longer period of confinement).<sup>80</sup> Moreover, consecutive penalties of solitary confinement (for different disciplinary counts) cannot be executed in such a manner that the next period of confinement would begin directly after the end of the previous one if their total length exceeds 28 days (14 days in pre-trial detention).<sup>81</sup> The law does not specify, however, how long this interval should be.

The period of solitary confinement, once specified in the decision on punishing a detainee, cannot be subject to prolongation.

Solitary confinement cells should be equipped with a bed, a table, a cabinet, a stool, a coat hanger, a litter bin, a broom and a toilet brush.<sup>82</sup>

b) Are there any national standards with regard to checking and/or monitoring the wellbeing of detainees in solitary confinement? If so, what do they require?

According to the Executive Penal Code, during the execution of solitary confinement the detainee's wellbeing (in particular his or her ability to remain in such regime) is monitored by a physician and a psychologist.<sup>83</sup> However, no minimum time intervals are foreseen by Polish law for the monitoring of the detainee's wellbeing. If the execution of the remaining part of the penalty is impossible due to the detainee's health, it should be suspended, postponed or changed to a less onerous one.<sup>84</sup>

c) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

The standards applicable to different detention regimes (pre-trial and post-trial) are uniform.

There is no disciplinary penalty of solitary confinement foreseen in the police custody regime.

d) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 4. a) - c), including their respective legal basis.

A solitary confinement measure does not have to be judicially reviewed before its execution in every case. Only if the period of confinement to be imposed should exceed 14 days, a permission of the penitentiary judge is required.<sup>85</sup> However, a penitentiary judge is authorised to control the administration of disciplinary penalties (including solitary confinement), in particular by suspending their execution for a time necessary

<sup>79</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 143(3).

<sup>80</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 146(1).

<sup>81</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 146(2).

<sup>82</sup> Poland, Minister of Justice, [Rozporządzenie w sprawie warunków bytowych osób osadzonych w zakładach karnych i aresztach śledczych](#), 19 December 2016, Annex 3.

<sup>83</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 148(3).

<sup>84</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 148(2).

<sup>85</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 145(3).

to investigate the circumstances, revoking decisions imposing such penalties as unjustified or remanding the case to the penitentiary unit's director for re-examination.<sup>86</sup> Although the penitentiary judge is not informed about the solitary confinement, he or she has access to the documents,<sup>87</sup> or can be informed by the detained person, defence counsel or other persons. The decision of the penitentiary judge is final and immediately enforceable.

Moreover, a detainee can challenge the decision imposing solitary confinement by filing a complaint to the penitentiary court within 7 days.<sup>88</sup> A penitentiary judge does not have to be involved first, before the challenge can be brought before the penitentiary court (the detainee can directly challenge the solitary confinement measure before the penitentiary court). The penitentiary court can maintain in force, revoke or modify the appealed decision. The ruling is final.<sup>89</sup>

Detainees are entitled to seek redress before civil courts with regard to the violation of personal rights caused by the execution of solitary confinement.<sup>90</sup> A claim should be brought within three years from the day when the detainee learned about the damage and about the person liable to redress it (or might have learned about it if he or she had exercised due diligence). However, such a time limit may not be longer than ten years from the day when the event causing the damage occurred.<sup>91</sup>

- e) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding this aspect (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference, a list of links can be found via the [OPCAT Database](#).

**1) Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2019](#) (*Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2019 r.*), 13 August 2020.**

*„W niektórych jednostkach penitencjarnych cele izolacyjne wykorzystywane były w innym celu niż wykonywanie kary dyscyplinarnej. Wprowadzie § 90 ust. 2 rozporządzenia Ministra Sprawiedliwości z dnia 17 października 2016 r. w sprawie sposobów ochrony jednostek organizacyjnych Służby Więziennej stanowi, że „w celu zapewnienia porządku, bezpieczeństwa lub powierzchni mieszkalnej, o której mowa w art. 110 § 2 kodeksu, dyrektor może podjąć decyzję o umieszczeniu w celi izolacyjnej osadzonego nieukaranego karą dyscyplinarną umieszczenia w takiej celi”, jednakże należy mieć na względzie, iż osadzenie w celi izolacyjnej łączy się z dodatkowymi dolegliwościami dla więźnia, do których należy m.in. mały metraż, związany z jej jednoosobowym charakterem oraz niezabudowanie kąpielowni sanitarnego”.*<sup>92</sup>

*„In some penitentiary units isolation cells are used for purposes other than the execution of a disciplinary penalty. Although § 90(2) of the Regulation of the*

<sup>86</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 148(1).

<sup>87</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 33(1).

<sup>88</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 144(5).

<sup>89</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 7(5).

<sup>90</sup> Poland, Civil Code (*Kodeks cywilny*), 23 April 1964, Articles 23 and 24.

<sup>91</sup> Poland, Civil Code (*Kodeks cywilny*), 23 April 1964, Article 442<sup>1</sup>(1).

<sup>92</sup> Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2019](#) (*Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2019 r.*), 13 August 2020, p. 86.

*Minister of Justice on ways of protecting organization units of Prison Guard (17 October 2016) stipulates that "in order to maintain order, safety or living space indicated in Article 110(2) of the code, the director can decide to place an inmate upon whom the disciplinary penalty of solitary confinement has not been imposed in an isolation cell", it should be borne in mind, however, that placing an inmate in such a cell is connected with additional burdens, such as e.g. its small surface and its sanitary corner not offering privacy".*

- 2) Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2018](#) (*Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2018 r.*), 24 June 2019.

No recommendations available.

- 3) Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2017](#) (*Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2017 r.*), 13 December 2018.

No recommendations available.

## 5. Access to healthcare

- a) What is the national standard with regard to access to medical services in prisons, including emergency care? (E.g.: Do detainees have prompt access to medical services within prisons and/or externally? Do detainees have access to dentists, opticians, etc.?) If so, what does it require?

Prisoners are entitled to free healthcare, medicine and hygienic products.<sup>93</sup> However, they do not have a right to select their own physician.<sup>94</sup> Only in particularly justified circumstances the unit's director may allow the detainee to be treated by the physician or entity of his or her choosing – please see section 5.e).

Detainees in pre-trial and post-trial detention are entitled only to such healthcare services that are necessary to remain healthy.<sup>95</sup> As clarified by the Appellate Court in Katowice, prison health service is not required to fulfil any (often exorbitant) expectations the detainees might have in this regard.<sup>96</sup>

According to the Executive Penal Code, emergency care (in particular where the life or health of the detainee is endangered) is provided by external entities in cooperation with prison medical service.<sup>97</sup>

<sup>93</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 115(1).

<sup>94</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 115(1a).

<sup>95</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 102(1).

<sup>96</sup> Poland, Appellate Court in Katowice (*Sąd Apelacyjny w Katowicach*), II AKz 659/02, 24 July 2002.

<sup>97</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 115(5)(1).

In police custody, persons are generally entitled to medical services, however, without specification as to its scope.<sup>98</sup> Every person admitted to police custody should be subject to medical examination and is entitled to necessary medical help, if needed.<sup>99</sup>

b) Are there any national standards concerning the availability of qualified medical and nursing personnel? If so, what do they require?

The availability of qualified medical personnel is described in internal regulations of each penitentiary unit (prison or remand centre). Services can be provided out of hours only, if there has been a rapid deterioration of health of the detainee (provided that a physician or dentist is still in the workplace). Some units provide detainees with 24-hour medical services.<sup>100</sup>

c) Are there any national standards for an initial medical examination upon deprivation of liberty or transfer of a detainees? If so, what do they require?

Every detainee should be provided with appropriate preliminary, periodic and check-up examinations. The preliminary (initial) examination should take place no later than 3 days after a detainee's admission. No later than 14 days after the admission, detainees should be provided with a radiological examination of their chest. The unit's physician may order any other necessary diagnostic examinations.<sup>101</sup>

In absence of specific standards regulating the detainee's privacy during and the confidentiality of the medical examination, it is to assume that the general rules concerning medical services apply.

d) Are there any national standards relating to the provision of specialist care? (E.g. for long-term diseases, for sick and elderly detainees, the mentally ill, drug addicted detainees, etc.) If so, what do they require?

According to the Executive Penal Code, specialist care, treatment or rehabilitation is provided by external entities in cooperation with prison medical service.<sup>102</sup> The decision on the referral for treatment in external entities is made by the institution's director, upon motion of the institution's head physician.<sup>103</sup>

e) Are there any national standards with regard to a medical treatment of the detainee's own choosing? If so, what do they require?

In particularly justified circumstances, according to the Executive Penal Code, the director of the penitentiary unit may, after obtaining the opinion of the unit's physician, permit the detainee to be treated by a physician or entity of his or her own choosing, at the expense of the detainee.<sup>104</sup>

<sup>98</sup> Poland, Minister of Internal Affairs, *Rozporządzenie w sprawie pomieszczeń przeznaczonych dla osób zatrzymanych lub doprowadzonych w celu wytrzeźwienia, pokoi przejściowych, tymczasowych pomieszczeń przejściowych i policyjnych izb dziecka, regulaminu pobytu w tych pomieszczeniach, pokojach i izbach oraz sposobu postępowania z zapisami obrazu z tych pomieszczeń, pokoi i izb*, 4 June 2012, Annex 1, § 10(3).

<sup>99</sup> Ibid, § 4(1).

<sup>100</sup> Poland, Minister of Justice, [Regulation on providing health services by medical entities for persons deprived of liberty](#) (*Rozporządzenie w sprawie udzielania świadczeń zdrowotnych przez podmioty lecznicze dla osób pozbawionych wolności*), 14 June 2012, § 7(2).

<sup>101</sup> Poland, Minister of Justice, [Regulation on providing health services by medical entities for persons deprived of liberty](#) (*Rozporządzenie w sprawie udzielania świadczeń zdrowotnych przez podmioty lecznicze dla osób pozbawionych wolności*), 14 June 2012, § 4.

<sup>102</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 115(5)(2).

<sup>103</sup> Poland, Minister of Justice and Minister of Health, [Rozporządzenie w sprawie szczegółowych warunków, zakresu i trybu współdziałania podmiotów leczniczych z podmiotami leczniczymi dla osób pozbawionych wolności w zakładach karnych i aresztach śledczych w zapewnieniu świadczeń zdrowotnych osobom pozbawionym wolności](#), 9 May 2012, § 3(1).

<sup>104</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 115(6).

f) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

The right to be provided with medical services without the presence of Prison Service officers does not apply to prisoners serving their sentences in closed units (a physician or a nurse may ask the officer to leave the room where medical services are provided).<sup>105</sup>

Whenever there are particular safety concerns, the physician or the nurse may ask Prison Service officers to be present during medical services provided to prisoners serving their sentences in semi-open and open regimes.<sup>106</sup>

g) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 5. a) – f), including their respective legal basis.

The Executive Penal Code authorises detainees to file motions, complaints and requests to authorities which execute the penalty of imprisonment or pre-trial detention.<sup>107</sup> Such motions, complaints and requests can pertain to every aspect of deprivation of liberty. If the unit's director does not agree with the motion or request, the detainee should be informed on the right to appeal to a director of a regional inspectorate of Prison Guard.

The Executive Penal Code also stipulates that detainees can challenge the legality of decisions issued by such authorities before a penitentiary court by filing a complaint within 7 days from being served the decision.<sup>108</sup> The penitentiary court can maintain in force, modify or revoke the decision, and its ruling is final.

Moreover, according to the Civil Code, each detainee is also entitled to seek redress for violation of personal rights with regard to conditions of deprivation of liberty before a civil court.<sup>109</sup> A claim should be brought within three years from the day when the detainee learned about the damage and about the person liable to redress it (or might have learned about it if he or she had exercised due diligence). However, such a time limit may not be longer than ten years from the day when the event causing the damage occurred.<sup>110</sup>

h) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding these aspects (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference a list of links can be found via the [OPCAT Database](#).

**1) Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2019](#) (*Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2019 r.*), 13 August 2020.**

*„Nie każda osoba umieszczana w jednostce poddawana jest badaniu lekarskiemu. Badani są tylko osadzeni „z wolności”, natomiast przetransportowani z innego zakładu karnego czy też aresztu śledczego już nie.*

<sup>105</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 115(7a).

<sup>106</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 115(8).

<sup>107</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 6(2).

<sup>108</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 7.

<sup>109</sup> Poland, Civil Code (*Kodeks cywilny*), 23 April 1964, Articles 23 and 24.

<sup>110</sup> Poland, Civil Code (*Kodeks cywilny*), 23 April 1964, Article 442<sup>1</sup>(1).

Wprawdzie pielęgniarka przeprowadza z nimi rozmowę wstępną i w razie potrzeby kieruje do lekarza, ale brak jest obligatoryjnego badania lekarskiego wszystkich nowo przybyłych połączonego z oględzinami ciała”.<sup>111</sup>

*"Not every person about to be detained is subject to a medical examination. Only those „newly” detained are examined; inmates who change penitentiary facilities are not. Although they are initially interviewed by a nurse who refers them to a doctor if necessary, there is no provision for obligatory physical examination of all first-time detainees, including inspection”.*

*„W opinii KMPT opieka psychologiczna w więzieniach nie jest wystarczająca. Standard wyznaczony przez Dyrektora Generalnego Służby Więziennej przewiduje zapewnienie jednego psychologa grupie 200 osadzonych. Wśród tak licznej grupy psychologowie nie są w stanie efektywnie wykonywać swoich działań”.*<sup>112</sup>

*„According to the NMPT, the delivery of psychological services in prisons is insufficient. The standard determined by the Director General of the Penitentiary Service provides for a provision of one psychologist to a group of 200 inmates. Having so many prisoners to attend to, psychologists are unable to deliver their services effectively”.*

*"Osoby niesamodzielne z powodu stanu zdrowia przebywające w miejscach detencji należą, w ocenie KMPT, do grupy ryzyka w obszarze tortur, niehumanego i poniżającego traktowania. Na osadzenie osób przewlekle chorych oraz z ograniczoną sprawnością ruchową w jednostkach penitencjarnych niebagatelny wpływ ma zmiana rozporządzenia Ministra Sprawiedliwości z dnia 23 czerwca 2015 r. w sprawie czynności administracyjnych związanych z wykonywaniem tymczasowego aresztowania oraz kar i środków przymusu skutkujących pozbawieniem wolności oraz dokumentowania tych czynności<sup>190</sup>, która spowodowała, że od dnia 1 lipca 2015 r. do jednostek penitencjarnych należy przyjmować także osoby wymagające natychmiastowego leczenia szpitalnego ze względu na bezpośrednie zagrożenie życia lub zdrowia lub kobiety od 28. tygodnia ciąży. Co więcej, problem ten nieodłącznie wiąże się ze zmianami demograficznymi zachodzącymi w Polsce. Jako społeczeństwo starzejące się jesteśmy narażeni w coraz większym stopniu na związane z tym faktem obniżanie sprawności psychofizycznej, zarówno wśród obywateli wolnych, jak również i tych pozbawionych wolności. Mając na uwadze mandat KMPT, przedstawiciele Krajowego Mechanizmu zwracają szczególną uwagę na sytuację więźniów, którzy mogą być leczeni w warunkach izolacji penitencjarnej, nie spełniają kryteriów orzeczenia o niepełnosprawności, lecz ze względu na ich stan somatyczny wymagają stałej pomocy współwięźniów. W polskim systemie penitencjarnym funkcjonuje tylko jeden oddział szpitalny dedykowany dla takich osób (...)"*<sup>113</sup>

*"According to NMPT, inmates with reduced physical capacity belong to a risk group in terms of torture, inhuman and degrading treatment. Imprisonment of those suffering from chronic reduction of physical capacity is impacted by the amended Ordinance of the Minister of Justice of 23 June 2015 concerning administrative actions related with the execution of pre-trial detention as well*

<sup>111</sup> Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2019](#) (Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2019 r.), 13 August 2020, p. 77.

<sup>112</sup> Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2019](#) (Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2019 r.), 13 August 2020, p. 81.

<sup>113</sup>

as penalties and coercion measures resulting in imprisonment and with documentation of those actions, as a consequence of which, since 1 July 2015 penitentiary facilities should also accept individuals who require instant hospitalization due to direct life- or health threat or women from the 28th week of pregnancy. Moreover, the problem is inseparably linked with demographic changes taking place in Poland. As an ageing society, we are facing the problem of decreasing cognitive and physical ability among both free and imprisoned citizens. Having regard to the NMPT mandate, representatives of the National Mechanism pay special attention to the situation of inmates who can be treated while in prison and who, while not fulfilling the disability requirements, require standing support of fellow inmates due to their health condition. There is only one hospital department within the Polish prison system, which is dedicated to such individuals (...)"

**2) Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2018](#) (Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2018 r.), 24 June 2019.**

*„Pomimo jednoznacznie brzmiącej regulacji prawnej, która stanowi o tym, że w zakładach karnych typu zamkniętego, świadczenia medyczne udzielane są bez asysty osób nie wykonujących zawodu medycznego, KMPT nadal spotyka się z sytuacjami, gdzie doprowadzający więźnia funkcjonariusze działu ochrony są obecni podczas badania lekarskiego, mimo iż personel medyczny nie prosi o taką obecność. (...) Taka sytuacja jest niewłaściwa z punktu widzenia obowiązujących przepisów prawa oraz osłabia prewencyjny charakter takiego badania”.*<sup>114</sup>

*„Despite an unambiguous regulation stipulating that in closed-type penitentiary facilities medical services are provided without the presence of non-medical staff, the NMPT still encounters situations where prison guards escorting the inmate remain present during the examination, although the medical staff does not ask for such presence. (...) Such a situation is inappropriate from the point of view of applicable provisions and undermines the protective character of the examination”.*

**3) Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2017](#) (Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2017 r.), 13 December 2018.**

No relevant findings available.

## 6. Special measures in place to protect young detainees

a) Are there any national standards with regard to the separation of young detainees from adults? If so, what do they require? (e.g. a separate juvenile ward, or part of the building, canteen, common area etc.?)

<sup>114</sup> Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2018](#) (Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2018 r.), 24 June 2019, p. 151.

Juvenile offenders are held in penitentiary units (prisons and remand centres) designed for young prisoners (those who are younger than 21 years old).<sup>115</sup> This means that, in practice, they are not separated from young adults.

With regard to police custody, persons younger than 18 years are held separately from adults.<sup>116</sup>

b) Please indicate the age categories of young persons falling under your country's (juvenile) detention regime.

A person under the age of 17 who has committed an offence is generally recognized not to be able to incur criminal liability or be imprisoned.<sup>117</sup> In case of severe crimes (murder, group rape, and deprivation of liberty), the minimum age of criminal responsibility might be set at the age of 15 years.<sup>118</sup> In such cases, a family court decides whether a juvenile might be tried as an adult.<sup>119</sup> Children who have committed an offence before their 17th birthday (in some cases 15th), may face educational measures, including deprivation of liberty for educational purposes and correctional measure – placement in a correctional facility.<sup>120</sup> In case of educational measures there is no minimum age. Such measures have been applied towards children as young as 6 years old. Correctional measures might, however, be applied only towards children who were at least 13 years old when committing an offence.<sup>121</sup>

c) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

The abovementioned standards are applicable to all detention regimes.

d) Please indicate any remedies available to young detainees in case of a breach or violation of the standards addressed under 6. a) – c), including their respective legal basis.

According to the Executive Penal Code, the legality of a decision on the detainee's classification (the choice of proper type of the penitentiary unit and system of serving the sentence) is controlled by the penitentiary court – either *proprio motu* or upon the complaint of the person concerned.<sup>122</sup> The complaint should be filed within 7 days after being served the decision.<sup>123</sup> The court's decision cannot be further challenged.<sup>124</sup>

With regard to detention conditions, young detainees can avail themselves of the remedies generally available to detainees – please see sections 1.f) and 4.d.).

e) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports

<sup>115</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 84(1).

<sup>116</sup> Poland, Minister of Internal Affairs, *Rozporządzenie w sprawie pomieszczeń przeznaczonych dla osób zatrzymanych lub doprowadzonych w celu wytrzeźwienia, pokoi przejściowych, tymczasowych pomieszczeń przejściowych i policyjnych izb dziecka, regulaminu pobytu w tych pomieszczeniach, pokojach i izbach oraz sposobu postępowania z zapisami obrazu z tych pomieszczeń, pokoi i izb*, 4 June 2012, Annex 1, § 7(1).

<sup>117</sup> Poland, Criminal Code (*Kodeks karny*), 6 June 1997, Article 10(1).

<sup>118</sup> Poland, Criminal Code (*Kodeks karny*), 6 June 1997, Article 10(2).

<sup>119</sup><sup>119</sup> Poland, Juvenile Act (*Ustawa o postępowaniu w sprawach nieletnich*), 26 October 1982, Articles 18(1) and 32k(1).

<sup>120</sup> Ibid, Articles 5 and 6.

<sup>121</sup> Ibid, Article 1(1)(2).

<sup>122</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 76(2).

<sup>123</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 7(3).

<sup>124</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 7(5).

from the reference period) and whether there are any recommendations regarding this aspect (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference a list of links can be found via the [OPCAT Database](#).

- 1) Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2019](#) (*Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2019 r.*), 13 August 2020.

No recommendations available.

- 2) Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2018](#) (*Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2018 r.*), 24 June 2019.

No recommendations available.

- 3) Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2017](#) (*Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2017 r.*), 13 December 2018.

No recommendations available.

## 7. Special measures in place to protect detainees from violence

- a) Are any special measures in place to protect detainees against violence from guards/prison staff, including sexual violence? (E.g.: Are there emergency call buttons? Do guards receive special training? Do detainees have access to a complaints mechanism?)

In penitentiary units (prisons and remand centres), the officials should maintain order and discipline.<sup>125</sup> Prison units may be supervised with a system of CCTV. CCTV cameras may be placed in residential cells, corridors, baths, visiting rooms, workplaces and exercise yards. The prison director is responsible for deciding which places should be included in the video surveillance system. All residential cells should be equipped with call buttons.

Prisoners should be classified in order to create adequate conditions in penitentiary units and guarantee prisoners' personal safety. During classification, several circumstances should be taken into account: gender, age, recidivism, deliberate nature of the crime committed by prisoners, the length of the sentence to be served, health conditions, addictions, the degree of prisoners' demoralization as well as the threat to society and the nature of the crime committed by the prisoners.

<sup>125</sup> Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 73(1).

In police custody, it is required that rooms should be equipped with emergency call buttons signalling that the health or life of detained persons is in danger.<sup>126</sup>

There is no special complaint mechanism available to persons in pre-trial and post-trial detention with regard to protection from violence from prison guards. Detainees are generally obliged to report any factor threatening their or their colleagues' safety (including violence from either guards or other detainees) to prison officials.<sup>127</sup> In the event of violence (especially on the part of a Prison Guard), it can also be reported to the prosecution. Moreover, if the danger resulted from a decision issued by the penitentiary unit's director, such decision can also be appealed against by the detainee to the penitentiary court, within 7 days from being served the decision.<sup>128</sup>

A member of the Prison Guard who acted violently can be held liable in disciplinary proceedings for inhumane treatment of detainees.<sup>129</sup> Regardless of disciplinary liability, such person could also be subject to criminal responsibility for the crime of mistreatment of detainees.<sup>130</sup> The perpetrator of this crime is subject to the penalty of deprivation of liberty for between 3 months and 5 years (or for between one year and 10 years in the case of acting with particular cruelty).

b) Are any special measures in place to protect detainees against violence from other detainees, including sexual violence? (E.g.: Are detainees supervised by prison staff? Are there emergency call buttons? Do guards receive training in de-escalation? Do detainees have access to a complaints mechanism?)

The only protection measure indicated in the Executive Penal Code is the placement of a prisoner (in pre-trial or post-trial detention) under special protection in conditions of increased isolation.<sup>131</sup> If such conditions are applied, a person, without the need to obtain their consent, is subject to monitoring of their health, is provided with psychological help, and the following limitations, typical for the closed regime of detention, apply:

- supervision of visits and conversations during visits;
- censorship of correspondence;
- monitoring of phone calls.

The increased isolation might also be connected, within prisoners' consent, with providing the prisoner with personal protection or with protection measures that are usually applied to prisoners serving their sentences in the dangerous detainee regime. The catalogue of possible protective measures requiring the detainees' consent is quite broad. The prison director may apply all of them or only selected ones. In particular, prison directors may decide to:

- place the prisoner in a cell supervised through CCTV (or supervise their behaviour in other prison premises through use of CCTV);
- place the prisoner in a cell equipped with necessary protection measures (strengthened bars or doors);

<sup>126</sup> Poland, Minister of Internal Affairs, *Rozporządzenie w sprawie pomieszczeń przeznaczonych dla osób zatrzymanych lub doprowadzonych w celu wytrzeźwienia, pokoi przejściowych, tymczasowych pomieszczeń przejściowych i policyjnych izb dziecka, regulaminu pobytu w tych pomieszczeniach, pokojach i izbach oraz sposobu postępowania z zapisami obrazu z tych pomieszczeń, pokoi i izb*, 4 June 2012, § 13(1).

<sup>127</sup> Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 108(2).

<sup>128</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 7.

<sup>129</sup> Poland, Act on Prison Guard (*Ustawa o Służbie Więziennej*), 9 April 2010, Article 230(3)(3).

<sup>130</sup> Poland, Criminal Code (*Kodeks karny*), 6 June 1997, Article 247(3).

<sup>131</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 88d.

- place the prisoner in a cell that remains closed 24h per day and is searched more often than other cells;
- limit the prisoner's ability to work, learn and participate in religious services, sport and educational activities only to those situations that take place in the ward, in which the prisoner is staying;
- order strip searches each time the prisoner is leaving or entering the cell;
- limit the prisoner's ability to move around prison premises only to necessary cases and only under strengthened supervision;
- order that the prisoner's outdoor exercises take place in designated yards, under strengthened supervision;
- order that the prisoner is able to receive visits only in designated places under strengthened supervision;
- order that the prisoner can receive visits only without direct contact between them and their relatives.<sup>132</sup>

The prisoner might be placed in conditions of increased isolation only, if there is a serious threat (or risk of such threat) to his life or health, connected with pending or completed criminal proceedings, in which the prisoner participated (as a witness, suspect, accused or victim). Thus, it cannot be applied whenever the threat is connected with circumstances not related to criminal proceedings, in particular prisoners' sexual orientation, race, religion or nationality.

The prison director includes special protection at the request of the court before which the criminal proceedings are pending, or the prosecutor who conducts or supervises the pre-trial proceedings. Moreover, the prison director may impose special protection on the prisoners upon their justified request.

Each time a prison director would like to impose protection measures, they should consult the court or prosecutor conducting criminal proceedings in the case of the prisoner. If such proceedings have already ended, they should consult the penitentiary judge.

The decision on protection measures specifies the reasons for applying them, their duration and the types of protective measures to be used in the case of any given prisoner. Whenever the duration of protective measures ends and there is still a threat to the prisoner's life or health, the director of the penitentiary unit extends the duration of the protection measures.

The prison director may cease to apply protection measures at the request of the judge or prosecutor (when the criminal proceedings are still pending, only if the risk or threat has expired), ex officio or at the request of the prisoner (after seeking the opinion of the judge or prosecutor).

In police custody, it is required that rooms should be equipped with emergency call buttons signalling that the health or life of detained persons is in danger.<sup>133</sup>

c) Are there any special measures in place to protect LGBTI detainees, who are particularly vulnerable to violence/sexual violence?

<sup>132</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 88d.

<sup>133</sup> Poland, Minister of Internal Affairs, *Rozporządzenie w sprawie pomieszczeń przeznaczonych dla osób zatrzymanych lub doprowadzonych w celu wytrzeźwienia, pokoi przejściowych, tymczasowych pomieszczeń przejściowych i policyjnych izb dziecka, regulaminu pobytu w tych pomieszczeniach, pokojach i izbach oraz sposobu postępowania z zapisami obrazu z tych pomieszczeń, pokoi i izb*, 4 June 2012, § 13(1).

There are no special measures aimed at protecting LGBTI detainees.

- d) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

Standards applicable to different detention regimes are uniform.

- e) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 7. a) – d), including their respective legal basis.

The penitentiary judge should always be notified (by the unit's director) when the protection measures are applied, extended or withdrawn with regard to a detainee, in order to safeguard the legality of the decision.<sup>134</sup>

The detainee is entitled to seek redress before a civil court for the violation of personal rights related to the conditions of imprisonment.<sup>135</sup> A claim should be brought within three years from the day when the detainee learned about the damage and about the person liable to redress it (or might have learned about it if he or she had exercised due diligence). However, such a time limit may not be longer than ten years from the day when the event causing the damage occurred.<sup>136</sup>

Detainees can also lodge a criminal complaint against persons (either prison guards or other detainees) who have committed violent acts to their detriment. There is no particular procedure for persons deprived of liberty foreseen in this regard, which means that the general rules concerning crime reporting apply. The Executive Penal Code stipulates only that detainees' correspondence with law enforcement authorities shall not be subject to censorship and should be served upon the addressee immediately.<sup>137</sup>

- f) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding this aspect (please provide the exact quotation in both, the national as well as in English language) These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference a list of links can be found via the [OPCAT Database](#).

- 1) Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2019](#) (*Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2019 r.*), 13 August 2020.**

No recommendations in this regard available.

- 2) Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2018](#) (*Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2018 r.*), 24 June 2019.**

<sup>134</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 88d(9).

<sup>135</sup> Poland, Civil Code (*Kodeks cywilny*), 23 April 1964, Articles 23 and 24.

<sup>136</sup> Poland, Civil Code (*Kodeks cywilny*), 23 April 1964, Article 442<sup>1</sup>(1).

<sup>137</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 8a(3).

No recommendations in this regard available.

**3) Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2017](#) (*Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2017 r.*), 13 December 2018.**

No recommendations in this regard available.

## 8. Women in detention

a) Are there any national standards for conditions of detention of women in general? If so, what do they require?

In Poland, national standards for detention conditions specifically for women exist with regard to the regime of detention, separation from male detainees, hygiene conditions, healthcare and pregnancy, as well as taking care of babies or children. In absence of any such standards specifically for female detainees, the general rules apply without discrimination.

According to the Executive Penal Code, in principle, women sentenced to deprivation of liberty serve their time in semi-open establishments. The level of a female inmate's demoralisation or safety issues can however be factors for placing her in a unit of a different regime (closed).<sup>138</sup>

Moreover, certain disciplinary penalties (including the prohibition of obtaining food parcels or solitary confinement) cannot be applied with regard to female inmates who are pregnant, breast-feeding or taking care of their children.<sup>139</sup>

There is also a possibility for the court to postpone the execution of the deprivation of liberty with respect to a pregnant woman for a period of up to 3 years upon the birth of the child.<sup>140</sup> This applies to pregnant women who are not yet deprived of their liberty. With regard to pregnant women who are already in post-trial detention, a penitentiary court can suspend their detention due to important family or personal circumstances; the provision does not mention expressly that pregnancy could be such a circumstance.<sup>141</sup>

b) Are there any national standards for holding and accommodating male and female detainees separate from each other? If so, what do they require?

The sex of detainees is the most crucial factor for their classification.<sup>142</sup> The Executive Penal Code stipulates expressly that women who serve their sentence or are placed in pre-trial detention are held separately from men.<sup>143</sup>

<sup>138</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 87(2).

<sup>139</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 143(2).

<sup>140</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 151(1).

<sup>141</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 153(2).

<sup>142</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 82(2)(1).

<sup>143</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 87(1).

The instruction of the General Director of the Prison Service clarifies that female detainees should be placed in penitentiary units for women or at least in separate wards.<sup>144</sup>

Separation of females from male detainees applies also with regard to police custody.<sup>145</sup>

c) Are there any national standards for special hygiene conditions and/or hygiene products for female detainees? If so, what do they require?

With regard to women who are either in pre-trial<sup>146</sup> or post-trial detention<sup>147</sup>, they have a right to use warm water at least once a day, and the right to take a warm shower twice a week.

The regulation of the Minister of Justice also stipulates that female detainees (in pre-trial or post-trial detention) should obtain sanitary packages (including, among others, sanitary pads) upon their request.<sup>148</sup>

The instruction of the General Director of Prison Service requires additionally that in penitentiary units for women a wider variety of certain hygienic products be available in the units' shops (without specifying which products it should be).<sup>149</sup>

No specific standards are foreseen with regard to females detained in police custody.

d) Are there any national standards for special healthcare for female detainees that respond to their specific needs, including i.e. pregnancy and post-natal treatment, and treatment/support of mother and child? If so, what do they require?

According to the Executive Penal Code, a pregnant or breast-feeding detainee should be provided with specialist care.<sup>150</sup>

Moreover, the regulations of the Minister of Justice<sup>151</sup> stipulate that two months before the estimated date of labour a pregnant detainee should be placed in the maternity ward of the penitentiary unit.

The same regulations also authorise the director of the unit to make necessary derogations from the ordinary rules of execution pre-trial or post-trial detention with regard to pregnant or breast-feeding women.<sup>152</sup>

<sup>144</sup> Poland, General Director of Prison Service, [Instruction No 2/2018 on proceeding with female detainees \(Instrukcja Nr 2/2018 w sprawie postępowania z osadzonymi kobietami\)](#), 21 November 2018, § 8(1).

<sup>145</sup> Poland, Minister of Internal Affairs, *Rozporządzenie w sprawie pomieszczeń przeznaczonych dla osób zatrzymanych lub doprowadzonych w celu wytrzeźwienia, pokoi przejściowych, tymczasowych pomieszczeń przejściowych i policyjnych izb dziecka, regulaminu pobytu w tych pomieszczeniach, pokojach i izbach oraz sposobu postępowania z zapisami obrazu z tych pomieszczeń, pokoi i izb*, 4 June 2012, Annex 1, § 7(1).

<sup>146</sup> Poland, Minister of Justice, *Rozporządzenie w sprawie regulaminu organizacyjno-porządkowego wykonywania tymczasowego aresztowania*, 22 December 2016, § 36(4).

<sup>147</sup> Poland, Minister of Justice, *Rozporządzenie w sprawie regulaminu organizacyjno-porządkowego wykonywania kary pozbawienia wolności*, 21 December 2016, § 31(4).

<sup>148</sup> Poland, Minister of Justice, *Rozporządzenie w sprawie warunków bytowych osób osadzonych w zakładach karnych i aresztach śledczych*, 19 December 2016, Appendix 4.

<sup>149</sup> Poland, General Director of Prison Service, [Instruction No 2/2018 on proceeding with female detainees \(Instrukcja Nr 2/2018 w sprawie postępowania z osadzonymi kobietami\)](#), 21 November 2018, § 6(2).

<sup>150</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 87(3).

<sup>151</sup> Poland, Minister of Justice, *Rozporządzenie w sprawie regulaminu organizacyjno-porządkowego wykonywania tymczasowego aresztowania*, 22 December 2016, § 33(2); *Rozporządzenie w sprawie regulaminu organizacyjno-porządkowego wykonywania kary pozbawienia wolności*, 21 December 2016, § 28(2).

<sup>152</sup> Ibid.

The instruction of the General Director of Prison Service requires that female detainees have access to gynaecological healthcare, however, without specifying the frequency or regularity of it.<sup>153</sup>

- e) Are there any national standards on pregnant detainees in terms of special prison cells for pregnant detainees and/or special facilities for female detainees with babies or young children? If so, what do they require?

In order to enable taking care of the child by its mother who is deprived of liberty, the Executive Penal Code allows to create special facilities for female detainees with babies and children operating at certain prisons.<sup>154</sup> A child can stay at such a facility until attaining the age of 3, unless there are particular educational or health reasons for separating him or her from the mother or modifying the length of stay. Decisions in this regard, based on the medical or psychological opinion, are made by a family court.

The functioning of such facilities is described in detail in the regulation of the Minister of Justice.<sup>155</sup> Female detainees are admitted on the basis of an application to the director of the prison at which the facility operates, and after the approval of a family and care court.<sup>156</sup> It is also necessary to obtain the consent of the child's father in order to place a child in the facility. The facilities should be furnished with equipment as close as possible to home environment and consist of, among others, bedrooms for mothers and their children and rooms for nursing and educational activities.<sup>157</sup> Prison service officials at such facilities do not wear uniforms but casual clothes.<sup>158</sup> The functioning of facilities for mothers and children is supervised by educational-upbringing teams, whose members are appointed by the director.<sup>159</sup>

A female detainee with child admitted to the facility should be provided with certain goods for the child, such as baby and child clothes (both summer and winter ones), shoes, towels, bottles, sooters, blankets and linen.<sup>160</sup> The costs of any other commodities should be born by the detainees.

- f) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

The standards regarding women are uniform for both pre-trial and post-trial detention. In post-trial detention, they are applicable to the semi-open regime, which is the default system for serving a sentence by female convicts.

Rules concerning the execution of post-trial detention in the closed regime<sup>161</sup> do not affect the abovementioned standards.

- g) Please indicate any remedies available to female detainees in case of a breach or violation of the standards addressed under 8. a) – f), including their respective legal basis.

<sup>153</sup> Poland, General Director of Prison Service, [Instruction No 2/2018 on proceeding with female detainees \(Instrukcja Nr 2/2018 w sprawie postępowania z osadzonymi kobietami\)](#), 21 November 2018, § 6(1)(1).

<sup>154</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 87(4).

<sup>155</sup> Poland, Minister of Justice, *Rozporządzenie w sprawie trybu przyjmowania dzieci matek pozbawionych wolności do domów dla matki i dziecka przy wskazanych zakładach karnych oraz szczegółowych zasad organizowania i działania tych placówek*, 17 September 2003.

<sup>156</sup> *Ibid*, § 3.

<sup>157</sup> *Ibid*, § 10.

<sup>158</sup> *Ibid*, § 11.

<sup>159</sup> *Ibid*, § 12.

<sup>160</sup> *Ibid*, Annex 2.

<sup>161</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 90.

According to the Executive Penal Code, the legality of a decision on the detainee's classification (the choice of proper type of the penitentiary unit and system of serving the sentence) is controlled by the penitentiary court – either *proprio motu* or upon the complaint of the person concerned.<sup>162</sup> The complaint should be filed within 7 days after being served the decision.<sup>163</sup> The court's decision cannot be further challenged.<sup>164</sup>

When it comes to detention conditions, the general remedies are available to female detainees in general, including pregnant, breastfeeding and caring female detainees, without discrimination. According to the Civil Code, each detainee is entitled to seek redress for violation of personal rights with regard to conditions of deprivation of liberty before a civil court.<sup>165</sup> A claim should be brought within three years from the day when the detainee learned about the damage and about the person liable to redress it (or might have learned about it if he or she had exercised due diligence). However, such a time limit may not be longer than ten years from the day when the event causing the damage occurred.<sup>166</sup>

h) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 May 2018 to 15 April 2021, if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding this aspect (please provide the exact quotation in both, the national as well as in English language) These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference a list of links can be found via the [OPCAT Database](#).

**1) Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2019](#) (*Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2019 r.*), 13 August 2020.**

No recommendations available.

**2) Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2018](#) (*Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2018 r.*), 24 June 2019.**

No recommendations available.

**3) Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2017](#) (*Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2017 r.*), 13 December 2018.**

No recommendations available.

## 9. Nutrition

<sup>162</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 76(2).

<sup>163</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 7(3).

<sup>164</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 7(5).

<sup>165</sup> Poland, Civil Code (*Kodeks cywilny*), 23 April 1964, Articles 23 and 24.

<sup>166</sup> Poland, Civil Code (*Kodeks cywilny*), 23 April 1964, Article 442<sup>1</sup>(1).

a) Are there any national standards with regard to nutrition in detention in general? If so, what do they require?

According to the Executive Penal Code, a person placed in a prison or a remand centre has a general right to nutrition that is appropriate in the light of the need to remain healthy.<sup>167</sup>

Meals and beverages served to detainees in prisons and remand centres should be of appropriate nutritional value, considering the type of work conducted by each person and his or her age, as well as (if possible) their religious and cultural requirements.<sup>168</sup>

The types of meals and beverages provided to detainees in penitentiary units, their nutritional and energy value, and their minimal daily cost are defined in detail by the regulation of the Minister of Justice.<sup>169</sup> In particular, the regulation foresees<sup>170</sup> the following types of meals:

- 1) basic meals (type P);
- 2) meals for detainees under the age of 18 (type M);
- 3) three types of therapeutic meals:
  - easily digested meals (type L),
  - diabetes meals (type Lc),
  - individual meals (type Li);
- 4) meals for detainees performing work in particularly burdensome conditions (type Pf);
- 5) meals considering cultural or religious restrictions.

Each type of meal is served with a beverage, in particular water, tea or coffee substitute.<sup>171</sup> A detainee who resides in a room where the temperature is higher than 28 degrees Celsius is entitled to additional beverages.<sup>172</sup>

Meals type P, M and therapeutic ones should contain between 10% and 15% proteins, below 30% fat and between 50% and 65% carbohydrates.<sup>173</sup> The daily energetic value of meals should be 2600 kcal (2800 kcal for detainees below the age of 18).<sup>174</sup> The energetic value of an additional meal (Pf) is at least 1000 kcal.<sup>175</sup>

A daily cost of meals per detainee is:<sup>176</sup>

- a) PLN 4,00 – meals type P;
- b) PLN 4,40 – meals type M;
- c) PLN 4,80 – meals type L;
- d) PLN 5,70 – meals type Lc;
- e) PLN 5,80 – meals type Li;

<sup>167</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 102(1).

<sup>168</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 109(1).

<sup>169</sup> Poland, Minister of Justice, [Regulation on the nutrition of detainees in prisons and remand centres](#) (*Rozporządzenie w sprawie wyżywienia osadzonych w zakładach karnych i aresztach śledczych*), 19 February 2016.

<sup>170</sup> *Ibid.*, § 2(1).

<sup>171</sup> *Ibid.*, § 2(2).

<sup>172</sup> *Ibid.*, § 2(4).

<sup>173</sup> *Ibid.*, § 3(1).

<sup>174</sup> *Ibid.*, § 3(2).

<sup>175</sup> *Ibid.*, § 3(3).

<sup>176</sup> *Ibid.*, § 5(1).

f) PLN 3,20 – meals type Pf.
b) Are there any national standards with regard to frequency and regularity of provision of meals (warm and cold)? If so, what do they require?
<p>The Executive Penal Code stipulates that a person placed in prison or remand centre should receive three meals and beverages per day, and that at least one of the meals should be warm.<sup>177</sup> In case the detainee is outside the unit and the warm meal cannot be provided, he or she should obtain a packed lunch instead.<sup>178</sup></p> <p>The time and place where meals should be consumed are defined by internal operating rules, issued by a director of each penitentiary establishment.<sup>179</sup></p> <p>A similar rule, requiring the provision of three meals (at least one warm) and beverages per day, applies to detention in police custody.<sup>180</sup></p>
c) Are there any national standards with regard to healthy food, special diets or dietary restrictions? If so, what needs to be provided to detainees?
<p>With regard to pre-trial and post-trial detention, the Executive Penal Code stipulates that, where the health of the detainee requires so, the nutrition should be adjusted according to a doctor's recommendations.<sup>181</sup></p> <p>The regulation of the Minister of Justice specifies that there are several special diets available to detainees in prisons and remand centres, in particular: a diet for juveniles (persons below the age of 18), three types of therapeutic diets (an easily digested one; a diabetes one; an individually adjusted one) and a diet considering cultural and religious restrictions.<sup>182</sup> For each type of diet, a daily nutritional and energy value is established, but the regulation does not specify in detail what particular meals can be served.</p> <p>Moreover, the regulation requires that fruits and vegetables are included in the everyday diet in a specified quantity.<sup>183</sup></p>
d) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).
<p>The standards regarding nutrition are uniform for both pre-trial and post-trial detention. Moreover, the same principles are applicable to open, semi-open and closed detention regime.</p>
e) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 9. a) – d), including their respective legal basis.

<sup>177</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 109(1).

<sup>178</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 109(2).

<sup>179</sup> Poland, Minister of Justice, *Rozporządzenie w sprawie regulaminu organizacyjno-porządkowego wykonywania kary pozbawienia wolności*, 21 December 2016, § 14(2)(3).

<sup>180</sup> Poland, Minister of Internal Affairs, *Rozporządzenie w sprawie pomieszczeń przeznaczonych dla osób zatrzymanych lub doprowadzonych w celu wytrzeźwienia, pokoi przejściowych, tymczasowych pomieszczeń przejściowych i policyjnych izb dziecka, regulaminu pobytu w tych pomieszczeniach, pokojach i izbach oraz sposobu postępowania z zapisami obrazu z tych pomieszczeń, pokoi i izb*, 4 June 2012, § 10(1)(1).

<sup>181</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 109(1).

<sup>182</sup> Poland, Minister of Justice, *Rozporządzenie w sprawie wyżywienia osadzonych w zakładach karnych i aresztach śledczych*, 19 February 2016, § 2.

<sup>183</sup> Poland, Minister of Justice, *Rozporządzenie w sprawie wyżywienia osadzonych w zakładach karnych i aresztach śledczych*, 19 February 2016, § 5.

The Executive Penal Code authorises detainees to file motions, complaints and requests to authorities which execute the penalty of imprisonment or pre-trial detention.<sup>184</sup> Such motions, complaints and requests can pertain to every aspect of deprivation of liberty. If the unit's director does not agree to the motion or request, the detainee should be informed on the right to appeal to a director of a regional inspectorate of the Prison Guard.

The Executive Penal Code also stipulates that detainees can challenge the legality of decisions issued by such authorities before a penitentiary court by filing a complaint within 7 days from being served the decision.<sup>185</sup> The penitentiary court can maintain in force, modify or revoke the decision, and its ruling is final.

Moreover, according to the Civil Code, each detainee is also entitled to seek redress for violation of personal rights with regard to conditions of deprivation of liberty before a civil court.<sup>186</sup> A claim should be brought within three years from the day when the detainee learned about the damage and about the person liable to redress it (or might have learned about it if he or she had exercised due diligence). However, such a time limit may not be longer than ten years from the day when the event causing the damage occurred.<sup>187</sup>

- f) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 May 2018 to 15 April 2021, if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding these aspect (please provide the exact quotation in both, the national as well as in English language) These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference a list of links can be found via the [OPCAT Database](#).

**1) Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2019](#) (*Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2019 r.*), 13 August 2020.**

No recommendations available.

**2) Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2018](#) (*Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2018 r.*), 24 June 2019.**

No recommendations available.

**3) Poland, Commissioner for Human Rights, [National Mechanism for the Prevention of Torture in Poland in 2017](#) (*Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji Tortur w 2017 r.*), 13 December 2018.**

No recommendations available.

<sup>184</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 6(2).

<sup>185</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 7.

<sup>186</sup> Poland, Civil Code (*Kodeks cywilny*), 23 April 1964, Articles 23 and 24.

<sup>187</sup> Poland, Civil Code (*Kodeks cywilny*), 23 April 1964, Article 442<sup>1</sup>(1).

## Part II: National jurisprudence

Poland, Appellate Court in Katowice (*Sąd Apelacyjny w Katowicach*), V ACa 269/18, 9 November 2020.

<b>Thematic area</b>	Sanitary conditions; access to toilets/privacy.
<b>Decision date</b>	9.11.2020
<b>Reference details</b>	Poland, Appellate Court in Katowice ( <i>Sąd Apelacyjny w Katowicach</i> ), V ACa 269/18, 9 November 2020  Hyperlink:  <a href="http://orzeczenia.ms.gov.pl/details/\$N/151500000002503_V_A_Ca_000269_2018_Uz_2020-11-09_003">http://orzeczenia.ms.gov.pl/details/\$N/151500000002503_V_A_Ca_000269_2018_Uz_2020-11-09_003</a>
<b>Key facts of the case</b>	The prisoner demanded compensation from the Treasury of State in the amount of PLN 100,000 for inhumane conditions in the prison. In the lawsuit, the prisoner indicated that a sanitary facility located in his cell did not provide him with the appropriate level of intimacy. As the prisoner pointed out, a sanitary corner in his cell, which was separated from its rest with a wall of 1,3 meter height, does not ensure unhindered use of sanitary facilities, including the toilet; such an arrangement of a sanitary corner cannot constitute a sufficient barrier to odors or sounds.
<b>Main reasoning/argumentation</b>	The sanitary facility (containing toilet), insufficiently separated from the rest of the cell, interferes with the right to intimacy, causes discomfort and violates the prisoner's sense of dignity.
<b>Key issues (concepts, interpretations) clarified by the case</b>	The case clarifies the conditions of the sanitary facilities located in cells – as pointed out by the Court, the use of the sanitary facilities in the presence of a fellow prisoner cannot arouse a feeling of humiliation. Separating the corner only by a wall of 1,3-meter height is not enough to provide the appropriate sense of intimacy.
<b>Results (sanctions) and key consequences or implications of the case</b>	The Court upheld the prisoner's claim and awarded him compensation in the amount of PLN 10,000.  As indicated by the Court, a sanitary facility separated from the rest of the cell only by a wall of a height of 1,3 meter, violates the prisoner's privacy, which affects his personal rights.
<b>Key quotation in original language and translated into English with reference details</b>	<i>‘..przepisy krajowego prawa karnego wykonawczego nakazują takie ukształtowanie kącika sanitarnego w celi mieszkalnej jednostki penitencjarnej, żeby korzystanie z niego było nieskrępowane dla osoby osadzonej w tej celi.’</i> <i>^..the provisions of national executive criminal law require that the sanitary facility in the cell should be designed in such a way that its use is uninhibited by the person imprisoned in that cell.’</i>  <i>‘..kącik sanitarny znajdujący się w celi mieszkalnej, który jest odgradzony od jej pozostałej części ściankami o wysokości 130</i>

	<p><i>cm, nie zapewnia nieskrępowanego korzystania z urządzeń sanitarnych, w tym z toalety.'</i></p> <p><i>'..a sanitary corner located in a cell, which is separated from its rest by a wall of a height of 1,3 meter, does not ensure unhindered use of sanitary facilities, including the toilet.'</i></p>
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Poland, Appellate Court in Warsaw (*Sąd Apelacyjny w Warszawie*), I ACa 1010/17, 13 December 2018.

<b>Thematic area</b>	Cells; Healthcare;
<b>Decision date</b>	13.12.2018
<b>Reference details</b>	<p>Poland, Appellate Court in Warsaw (<i>Sąd Apelacyjny w Warszawie</i>), I ACa 1010/17, 13 December 2018</p> <p>Hyperlink:</p> <p><a href="http://orzeczenia.ms.gov.pl/details/\$N/15450000000503_I_A_Ca_001010_2017_Uz_2018-12-13_001">http://orzeczenia.ms.gov.pl/details/\$N/15450000000503_I_A_Ca_001010_2017_Uz_2018-12-13_001</a></p>
<b>Key facts of the case</b>	The prisoner demanded compensation from the Treasury of State in the amount of PLN 150,000 for harm caused by the fact that despite the existence of certain premises, he did not serve the initial part of his sentence in the therapeutic system. Before the imprisonment, the prisoner was in a psychiatric hospital due to his mental problems, which resulted in, inter alia, numerous suicide attempts.
<b>Main reasoning/argumentation</b>	If there are justified reasons, in particular, when the prisoner has a specific certificate of disability issued by an authorized entity, it is the duty of the prison to provide him with the possibility of serving his sentence in the therapeutic system.
<b>Key issues (concepts, interpretations) clarified by the case</b>	The case clarifies consequences of failure to provide prisoners with an adequate system of serving the sentence of imprisonment; serving a sentence by a prisoner under normal conditions, contrary to the fact that there were grounds for serving a sentence in the therapeutic system, violate the personal rights of the prisoner.
<b>Results (sanctions) and key consequences or implications of the case</b>	<p>The Court upheld the prisoner's claim and awarded him compensation in the amount of PLN 3,000.</p> <p>As indicated by the Court, serving a sentence by a prisoner under normal conditions, contrary to the fact that there were grounds for serving a sentence in the therapeutic system, violate the personal rights of the prisoner. Failure to ensure the possibility of serving a sentence of imprisonment in the therapeutic system is a display of instrumental and inhumane treatment of a prisoner,</p>

	which is contrary to art. 3 of the Penal Code and art. 4 § 1 of the Executive Penal Code.
<b>Key quotation in original language and translated into English with reference details</b>	<p><i>'Rekompensacie podlega krzywda, sprowadzająca się do jego silnie negatywnych odczuć związanych z przebywaniem w warunkach i w celach do tego nieprzystosowanych wraz z innymi współosadzonymi.'</i></p> <p><i>'Compensation is subject to harm caused by strong negative feelings related to staying in conditions and cells not adapted to it, together with other inmates.'</i></p> <p><i>'Niezapewnienie powodowi możliwości odbywania kary pozbawienia wolności w systemie terapeutycznym stanowi przejaw instrumentalnego i niehumanitarnego traktowania osadzonego..'</i></p> <p><i>'Failure to provide the claimant with the possibility of serving a sentence of imprisonment in the therapeutic system is a manifestation of instrumental and inhumane treatment.'</i></p>

Poland, Appellate Court in Katowice (*Sąd Apelacyjny w Katowicach*), I ACa 297/18, 26 October 2018.

<b>Thematic area</b>	Cells; Cell facilities.
<b>Decision date</b>	26.10.2018
<b>Reference details</b>	<p>Poland, Appellate Court in Katowice (<i>Sąd Apelacyjny w Katowicach</i>), I ACa 297/18, 26 October 2018</p> <p>Hyperlink:  <a href="http://orzeczenia.ms.gov.pl/details/\$N/15150000000503_I_A_Ca_000297_2018_Uz_2018-10-26_002">http://orzeczenia.ms.gov.pl/details/\$N/15150000000503_I_A_Ca_000297_2018_Uz_2018-10-26_002</a></p>
<b>Key facts of the case</b>	<p>The prisoner demanded compensation from the Treasury of State in the amount of PLN 100,000 for inhumane conditions in the prison. In the lawsuit, the prisoner claimed that he was held in an overcrowded and insufficiently lit cell, in which the sanitary corner did not provide sufficient intimacy. As the prisoner pointed out, the sanitary corner was separated only by a board from the rest of the room, and hence there was an unpleasant smell in the cell. The plaintiff was detained with a HCV hepatitis carrier and periodically with smokers, while identifying himself as a non-smoker.</p>

<b>Main reasoning/argumentation</b>	In order to prove the violation of the prisoner's dignity, it is not enough to prove that he lives in poor living conditions. It is also necessary to prove that the suffering of a prisoner related to serving a sentence of imprisonment exceeds the permissible level of suffering related to the imprisonment.
<b>Key issues (concepts, interpretations) clarified by the case</b>	The case clarifies that serving a sentence of imprisonment is inherently associated with suffering and humiliation, and only exceeding a certain level of these ailments may result in the necessity of providing legal protection.
<b>Results (sanctions) and key consequences or implications of the case</b>	The Court dismissed the prisoner's lawsuit, finding that his claims were not sufficiently justified.  As the Court pointed out, poor living conditions of prisoners do not automatically violate their dignity - serving a sentence of imprisonment must involve a certain level of suffering. In order to recognize that the dignity of the prisoner has been violated, it must be proved that this limit of suffering has been exceeded.
<b>Key quotation in original language and translated into English with reference details</b>	<i>'Nawet złe warunki bytowe nie stanowią automatycznie naruszenia godności lub czci więźnia. Dopiero gdyby cierpienia powoda i ewentualne upokorzenia przekraczałyby konieczny element cierpienia wpisanego w odbywanie kary pozbawienia wolności, możnaby mówić o naruszeniu godności skazanego, skutkującej koniecznością zapewnienia ochrony prawnej.'</i>  <i>'Even poor living conditions do not automatically violate the prisoner's dignity or honor. Only if the plaintiff's suffering and possible humiliation exceeded the necessary element of suffering inherent in serving the sentence of imprisonment, one could speak of a violation of the dignity of the convict, resulting in the need to provide legal protection.'</i>

Poland, Appellate Court in Białystok (Sąd Apelacyjny w Białymstoku), I ACa 230/18, 13 July 2018.

<b>Thematic area</b>	Cells; Cell facilities; degrading treatment; actions endangering prisoner's physical and mental health.
<b>Decision date</b>	13.07.2018
<b>Reference details</b>	Poland, Appellate Court in Białystok (Sąd Apelacyjny w Białymstoku), I ACa 230/18, 13 July 2018  Hyperlink:  <a href="http://orzeczenia.ms.gov.pl/content/\$N/150500000000503_I_A_Ca_000230_2018_Uz_2018-07-13_004">http://orzeczenia.ms.gov.pl/content/\$N/150500000000503_I_A_Ca_000230_2018_Uz_2018-07-13_004</a>
<b>Key facts of the case</b>	The prisoner demanded compensation from the Treasury of State in the amount of PLN 200,000 for inhumane conditions in the

	<p>prison. In the lawsuit, the prisoner indicated that while serving his sentence, he was exposed to degrading treatment, lack of privacy and intimacy, and actions endangering his physical and mental health. The prisoner asserted that he was kept in small, dirty and ill-equipped cells and that, during his imprisonment, his health, including his mental health, deteriorated. He also claimed that he was exposed to noise related to the renovation of the prison and supposed to eat dirty meals. In addition, he complained about the lack of adequate living space, proper ventilation and hot water in his cell.</p>
<p><b>Main reasoning/argumentation</b></p>	<p>As indicated by the court, under Polish law, the right to imprisonment in dignified conditions is inherently linked to the dignity of every human being.</p> <p>Moreover, as emphasized by the court, the standard of living in a prison should be such that the treatment of a person deprived of liberty cannot be degrading, inhumane, and the limitations and ailments that he has to endure cannot exceed the necessary.</p>
<p><b>Key issues (concepts, interpretations) clarified by the case</b></p>	<p>The case clarifies the conditions of imprisonment that ensure respect for the dignity of prisoners - the treatment of a person deprived of liberty cannot be degrading, inhumane, and the limitations and ailments that s/he has to endure cannot exceed the necessary.</p>
<p><b>Results (sanctions) and key consequences or implications of the case</b></p>	<p>The Court dismissed the prisoner's lawsuit, finding that his claims were not sufficiently justified.</p> <p>As indicated by the Court, when determining the degree of severity of the penalty, it must be noted that a person deprived of liberty by the mere fact of imprisonment does not lose the fundamental rights guaranteed by the Constitution and acts of international law, however, serving a sentence of imprisonment is associated with unavoidable suffering resulting from its protective tasks and its purpose.</p>
<p><b>Key quotation in original language and translated into English with reference details</b></p>	<p><i>'Założenie dla określenia wymaganego poziomu jest takie, by traktowanie człowieka pozbawionego wolności nie było poniżające, niehumanitarne a ograniczenia i dolegliwości, które musi on znosić, nie przekraczały koniecznego rozmiaru.'</i></p> <p><i>'The assumption for determining the required level is that the treatment of a person deprived of liberty cannot be degrading, inhumane, and that the limitations and ailments that he has to endure do not exceed the necessary size.'</i></p> <p><i>'Podstawą uznania, że doszło do naruszenia dobra osobistego, nie może być subiektywne odczucie osoby uważającej się za pokrzywdzoną. Decydujące znaczenie w tym przypadku mają obiektywne kryteria, do których zalicza się reakcje, jakie wywołują w społeczeństwie określone zagrożenia lub naruszenia, a także całokształt okoliczności w sprawie'</i></p>

	<i>'The basis for recognizing that there has been a violation of a personal right may not be the subjective feeling of the person claiming to be the victim. In this case, objective criteria are decisive, including reactions that evoke specific threats or violations in society, as well as the overall circumstances of the case.'</i>
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Poland, Appellate Court in Katowice (*Sąd Apelacyjny w Katowicach*), I ACa 620/19, 20 December 2019.

<b>Thematic area</b>	Access to healthcare; Emergency care.
<b>Decision date</b>	20.12.2019
<b>Reference details</b>	Poland, Appellate Court in Katowice ( <i>Sąd Apelacyjny w Katowicach</i> ), I ACa 620/19, 20 December 2019  Hyperlink:  <a href="http://orzeczenia.ms.gov.pl/details/\$N/151500000000503_I_A_Ca_000620_2019_Uz_2019-12-20_002">http://orzeczenia.ms.gov.pl/details/\$N/151500000000503_I_A_Ca_000620_2019_Uz_2019-12-20_002</a>
<b>Key facts of the case</b>	The inmate, before being sent to prison, suffered from gastritis with Helicobacter Pylori infection and from bronchial asthma. On September 29, 2013, he suffered a heart attack - the nurse did not recognize the ailment as a heart attack and called an ambulance with a delay of several hours. Accordingly, the prisoner demanded compensation from the Treasury of State for his later health problems caused by, in his opinion, improper service of the prison's authorities.
<b>Main reasoning/argumentation</b>	As pointed out by the Court, the prisoner's claim is unfounded, as his symptoms did not indicate a heart attack, and it cannot be said that his subsequent health problems were caused by this attack.  The Court also indicated that in emergency situations, when it is necessary to provide immediate health services, there are no obstacles to using assistance from other healthcare providers.
<b>Key issues (concepts, interpretations) clarified by the case</b>	The case clarifies the principles of granting compensation to prisoners to the detriment of the State Treasury for failure to ensure the proper access to healthcare in prison.
<b>Results (sanctions) and key consequences or implications of the case</b>	The Court dismissed the prisoner's lawsuit, finding that the health care provided by the authorities of the prison was sufficient.  However, as emphasized by the Court, health services are provided to prisoners by certain medical entities dedicated for

	<p>inmates, but in emergency situations, when it is necessary to provide immediate health services, there are no obstacles to use assistance from other healthcare providers.</p>
<p><b>Key quotation in original language and translated into English with reference details</b></p>	<p><i>'Skarb Państwa ma obowiązek zapewnić osadzonym dostęp do świadczeń zdrowotnych i naruszenie tego obowiązku należy traktować jako zachowanie niezgodne z prawem, potencjalnie wyczerpujące dyspozycję art. 417 § 1 Kodeksu Cywilnego'</i></p> <p><i>"The State Treasury is obliged to provide inmates with access to health services and a breach of this obligation should be treated as illegal behaviour, potentially exhausting the disposition of art. 417(1) of the Civil Code."</i></p> <p>[Art. 417(1) of the Civil Code regulates the principles of the state's liability for damages caused by unlawful acts or omissions in the exercise of public authority.]</p>