

# **Criminal Detention in the EU: Conditions and Monitoring**

Update of FRA's Criminal Detention Database

(FRANET)

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## Table of Contents

Part I: National standards .....	6
1. Cells .....	6
a. Cell space .....	6
b. Access to natural light and fresh air, cell equipment, furniture, and facilities.....	7
c. Video-surveillance of cells .....	8
d. NPM assessment.....	9
2. Allocation of detainees .....	12
a. Geographical allocation .....	12
b. Allocation within detention facilities .....	12
c. NPM assessment.....	13
3. Hygiene and sanitary conditions (note – section 11 contains specific questions concerning female detainees) .....	14
a. Access to toilets .....	14
b. Access to showers and warm and running water.....	15
c. Access to sanitary products .....	15
d. Hygienic conditions in cells.....	15
e. NPM assessment.....	16
4. Nutrition.....	18
a. Quality and quantity of food.....	18
b. Drinking water.....	19
c. Dietary requirements.....	20
d. NPM assessment.....	20
5. Time spent outside the cell and outdoors .....	22
a. Time spent outdoors.....	22
b. Time spent indoors .....	23
c. Recreational facilities.....	23
d. Educational activities .....	23
e. NPM assessment.....	23
6. Solitary confinement.....	24
a. Placement in solitary confinement .....	24
b. Monitoring of detainees .....	25
c. NPM assessment.....	25
7. Work and education of detainees to promote social reintegration.....	27

a.	General measures to promote social reintegration .....	27
b.	Access to work .....	27
c.	Access to education .....	28
d.	NPM assessment.....	28
8.	Healthcare (note – section 11 contains specific questions concerning female detainees).....	29
a.	Access to healthcare .....	29
b.	Availability of medical staff.....	30
c.	Medical examination upon admission .....	30
d.	Preventive care .....	30
e.	Specialised care.....	30
f.	Treatment of the detainee’s choosing.....	31
g.	NPM assessment.....	31
9.	Prevention of violence and ill-treatment.....	36
a.	Protection from violence by prison staff .....	36
b.	Protection from violence by other detainees .....	36
c.	NPM assessment.....	38
10.	Contact with the outside world .....	41
a.	Visits .....	41
b.	Correspondence.....	42
c.	Visits with children.....	42
d.	NPM assessment.....	42
11.	Special measures for female detainees .....	45
a.	General conditions of detention for women and girls.....	45
b.	Separation from men .....	45
c.	Hygiene .....	46
d.	Healthcare.....	46
e.	Pregnancy and women with babies or young children.....	46
f.	NPM assessment.....	47
12.	Special measures for foreign nationals.....	48
a.	General measures for foreign nationals .....	48
b.	Interpretation and translation .....	48
c.	NPM assessment.....	48
13.	Special measures relating to detention of children and young adults/juvenile detention regime	50

a.	Age groups .....	50
b.	General measures for detained children and young adults .....	51
c.	Separation from adults .....	51
d.	NPM assessment.....	51
14.	Special measures to protect detainees with disabilities or serious medical conditions .....	52
a.	Care in detention .....	52
b.	Continuity of care.....	52
c.	Reasonable accommodation and accessibility .....	52
d.	NPM assessment.....	52
15.	Specific measures to protect detainees with special needs or other vulnerabilities .....	54
a.	Protection of LGBTI detainees .....	54
b.	Protection of trans detainees .....	54
c.	Protection of other vulnerable detainees.....	55
d.	NPM assessment.....	55
16.	Specific measures to address radicalisation in prisons.....	59
a.	General measures to prevent radicalisation.....	59
b.	Risk assessments.....	59
c.	Training of staff.....	59
d.	Deradicalisation measures.....	59
e.	NPM assessment.....	59
17.	Inspections and monitoring .....	60
a.	Inspections .....	60
b.	Access to detention facilities by national authorities.....	62
c.	Access to detention facilities by international bodies .....	62
d.	NPM assessment.....	63
18.	Access to remedy .....	64
a.	Legal remedies .....	64
b.	Legal assistance.....	65
c.	Request and complaints.....	65
d.	Independent authority.....	66
e.	NPM assessment.....	66
Part II: National case-law .....		68

Poland, Appellate Court in Białystok (*Sąd Apelacyjny w Białymstoku*), case no. I ACa 493/20, 21 June 2021 68

Poland, Appellate Court in Kraków (*Sąd Apelacyjny w Krakowie*), case no. II AKzw 1096/21, 19  
October 2021 ..... 70

## Part I: National standards

### 1. Cells

#### a. Cell space

According to the current Polish standard stipulated in the Executive Penal Code (*Kodeks karny wykonawczy*), the cell area per person must not be less than 3 m<sup>2</sup>. The statutory standard applies to both pre-trial<sup>1</sup> and post-trial<sup>2</sup> detention (with a similar requirement for police custody based on other piece of legislation<sup>3</sup>) and has not changed since the 2021 update. For the purpose of calculation, the area in a residential cell does not include the window recess and the radiator recess, as well as the area outside the internal grilles and the separate sanitary corners.

The standard is reflected in the current 2023 guidelines of the Director General of the Prison Service, which apply to the construction of new, adaptation and conversion of residential pavilions in penitentiary units. As the guidelines state, the area of multi-bedded residential cells should take into account the possibility of amending the regulations to increase the standard to 4 m<sup>2</sup> per person. They also stipulate that cells for pre-trial detainees and prisoners serving sentences in closed-type establishments should have a maximum capacity of 4 persons, and 6 persons in semi-open-type establishments. The surface area per person in them may be 10% or 12-15% more than the standard, respectively.<sup>4</sup> The guidelines therefore indicate that efforts should be made to increase the space in residential cells beyond the statutory requirement of 3 m<sup>2</sup>.

In certain circumstances, the director of the unit (prison in post-trial detention or remand centre in pre-trial detention) may place an inmate for a limited period of time, not exceeding 90 days, in a residential cell in which the area per person is less than 3 m<sup>2</sup>, but not less than 2 m<sup>2</sup>. This is possible in the case of:

- introduction of one of the 3 extraordinary measures (state of emergency, state of natural disaster, martial law);
- the declaration of a state of epidemiological emergency or a state of epidemic in the location of the unit or the occurrence of such state within the unit;
- the need to prevent the occurrence of another event posing an immediate threat to the security of the inmates or the security of the unit, or to prevent the consequences of such an event.<sup>5</sup>

In addition, a person for whom immediate deprivation of liberty is necessary may be placed for a limited period of time, not exceeding 14 days (this period may be extended with the agreement of the

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<sup>1</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 209.

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

<sup>3</sup> Poland, Minister of Internal Affairs, Regulation on rooms intended for persons detained or brought in for the purpose of sobriety, temporary rooms, temporary holding rooms and police children's chambers, the rules of stay in these rooms and chambers and the manner of handling image recordings from these rooms and chambers (*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, Director General of Prison Service, Guidelines No. 1/2023 on technical and protective requirements for inmate accommodation pavilions in organisational units of the Prison Service ([Wytyczne nr 1/2023 w sprawie wymagań technicznych i ochronnych dla pawilonów zakwaterowania osadzonych w jednostkach organizacyjnych Służby Więziennej](#)), 14 February 2023.

<sup>5</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 101(2a).

penitentiary judge up to 28 days), in the conditions described above if the unit has no vacancies in residential cells and, in addition, the person meets one of the following criteria:

- a prison sentence of more than 2 years;
- recidivism;
- conviction for a sexual offence;
- arbitrary departure from prison;
- failure to return from leave to the penitentiary unit on time;
- pre-trial detention.<sup>6</sup>

When issuing a decision to place a person in a cell that does not meet the 3 m<sup>2</sup> standard, the risk of worsening the conditions of detention should be minimised and the aim should be to place the person in a proper residential cell quickly.<sup>7</sup>

#### b. Access to natural light and fresh air, cell equipment, furniture, and facilities

According to the Executive Penal Code, every person placed in pre-trial or post-trial detention has the right to, among others, adequate living conditions, housing and hygiene conditions.<sup>8</sup>

The Executive Penal Code stipulates that cells shall be provided with appropriate accommodation equipment to ensure a separate place to sleep for each inmate. Moreover, cells shall be provided with adequate conditions of hygiene, sufficient air supply and temperature and lighting appropriate to the season, according to the standards set for living quarters.<sup>9</sup>

The living cells in prisons<sup>10</sup> and remand centres<sup>11</sup> shall be equipped with a bed for each inmate, a sufficient number of tables, cupboards and stools for the number of inmates, and means of keeping the cell clean. The necessary sanitary facilities shall be situated in such a way as to ensure their unobstructed use.

Detailed technical requirements for residential pavilions in penitentiary units (prisons and remand centres) are regulated by the 2023 guidelines of the Director General of the Prison Service.<sup>12</sup> They provide in particular that:

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<sup>6</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 101(2b).

<sup>7</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 101(2d).

<sup>8</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 102(1).

<sup>9</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 110(2).

<sup>10</sup> Poland, Minister of Justice, Regulation on the rules of organisation and order of execution of prison sentences (*Rozporządzenie w sprawie regulaminu organizacyjno-porządkowego wykonywania kary pozbawienia wolności*), 23 December 2023, § 25(1).

<sup>11</sup> Poland, Minister of Justice, Regulation on the rules of organisation and order of execution of pre-trial detention (*Rozporządzenie w sprawie regulaminu organizacyjno-porządkowego wykonywania tymczasowego aresztowania*), 23 December 2023, § 21.

<sup>12</sup> Poland, Director General of Prison Service, Guidelines No. 1/2023 on technical and protective requirements for inmate accommodation pavilions in organisational units of the Prison Service ([Wyttyczne nr 1/2023 w sprawie wymagań technicznych i ochronnych dla pawilonów zakwaterowania osadzonych w jednostkach organizacyjnych Służby Więziennej](#)), 14 February 2023.

- living cells are to be equipped with sanitary facilities consisting of a toilet and washbasin with hot and cold water supply (these should be enclosed by a durable floor-to-ceiling wall, with provision for the necessary ventilation);
- showers located in sanitary junctions of the residential cells are permitted, with provision for remote central control of water temperature and shower delivery time;
- residential pavilions should be equipped with a central heating system, designed in accordance with the current regulations for residential construction;
- all rooms in housing pavilions should be equipped with ventilation;
- diffuse lighting should be provided in the accommodation cells, with an intensity of not less than 100 lux (200 lux in the reading and writing areas).

As regards police custody, rooms for detainees should be equipped with single bunks or free lying mattresses covered with washable cloth, and tables, stools or benches without sharp edges, fixed to the floor or wall. In addition, they should provide ventilation that ensures sufficient airflow and a temperature appropriate to the season according to the standards set for living quarters, as well as adequate lighting for reading and writing.<sup>13</sup>

### c. Video-surveillance of cells

The Executive Penal Code allows the use of video-surveillance of cells in prisons and remand centres.<sup>14</sup> Penitentiary units may be monitored by an internal system of video or audio recording equipment, including CCTV.

Monitoring, which ensures that the behaviour of the inmate can be observed, may be used in particular in the accommodation cells including the sanitary area, in the bathing rooms, in the areas designated for visits, in the places of employment of the prisoners, in the communication paths, in the walking areas, as well as for the observation of the prison area outside the buildings, including the line of the external fence.<sup>15</sup>

The monitoring and audio recording may not include information covered by the secrecy of the confession or a legally protected secret (e.g. lawyer-client privilege).<sup>16</sup>

The image from the CCTV cameras installed in the part of the residential cell intended for sanitary and hygienic purposes and in the baths shall be transmitted in such a manner that the intimate parts of the inmates' body and the intimate physiological activities performed by them are not shown.<sup>17</sup>

The recorded image or sound, which does not contain information indicating that an offence has been committed or is not relevant to the security of the unit or the security of the inmate, shall be destroyed

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<sup>13</sup> Poland, Minister of Internal Affairs, Regulation on rooms intended for persons detained or brought in for the purpose of sobriety, temporary rooms, temporary holding rooms and police children's chambers, the rules of stay in these rooms and chambers and the manner of handling image recordings from these rooms and chambers (*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(4) and (7).

<sup>14</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 73a(1).

<sup>15</sup> *Ibid*, Article 73a(2).

<sup>16</sup> *Ibid*, Article 73a(4).

<sup>17</sup> *Ibid*, Article 73a(5).



without delay. Otherwise, the director of the prison shall decide on the duration of its storage and the manner of its use.<sup>18</sup>

The use of monitoring in specific places and rooms shall be decided by the director of the penitentiary facility with a view to ensuring order and security in the unit.<sup>19</sup>

As regards police custody, the room for detained persons may be equipped with monitoring equipment, including for observation and image recording, operating on a 24-hour basis.<sup>20</sup> A closed-circuit television system can be used to transmit, reproduce and record images in a room. A CCTV camera set equipped with a function preventing the intimate parts of the body of the person placed in the room and the performance of intimate physiological activities from being shown should be used to transmit images from the parts of the sanitary room used for personal hygiene, in particular showers and toilets.

#### d. NPM assessment

- 1) Poland, Commissioner for Human Rights, Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2022, 29 November 2023

*„Krajowy Mechanizm Prewencji Tortur od lat apeluje do władz o wprowadzenie odpowiednich zmian legislacyjnych, które doprowadzą do zwiększenia standardu minimalnego metrażu celi mieszkalnej przypadającego na jednego więźnia. Polskie przepisy zapewniają więźniowi minimum 3 m<sup>2</sup> powierzchni mieszkalnej w celi. Dopuszczają też możliwość umieszczenia osoby w celi poniżej 3 m<sup>2</sup> w określonych okolicznościach. Norma ta stoi jednak w sprzeczności zarówno z międzynarodowymi standardami, jak i praktyką stosowaną przez większość państw europejskich. Rekomendowany przez CPT standard minimalny dla państw Rady Europy wynosi 6 m<sup>2</sup> powierzchni mieszkalnej w celi jednoosobowej oraz 4 m<sup>2</sup> powierzchni mieszkalnej w celi wieloosobowej (do metrażu nie wlicza się kącika sanitarnego). Ponadto każda cela przeznaczona do zamieszkania przez osadzonych powinna mieć przynajmniej 2 m między ścianami celi oraz 2,5 m między podłogą a sufitem. SPT w raporcie z wizyty w Polsce w 2018 r. zalecił władzom podniesienie minimalnego standardu powierzchni mieszkalnej w przeliczeniu na jednego więźnia do poziomu wskazywanego przez CPT. Polska powinna również dokonać pod tym kątem przeglądu oficjalnej pojemności jednostek penitencjarnych. Zdaniem CAT Polska powinna podjąć działania, w tym zwiększające pojemność więzień, w celu zapewnienia zgodności z europejskim standardem co najmniej czterech metrów kwadratowych po powierzchni mieszkalnej dla każdego zatrzymanego. Ciągłe nie został w pełni rozwiązany problem tzw. cel wieloosobowych i nadal zdarzają się jednostki, które dysponują celami ponad dziesięcioosobowymi. W jednym z wizytowanych zakładów karnych funkcjonowały przede wszystkim cele wieloosobowe: 1 cela 8-osobowa, 11 cel 11-osobowych oraz 18 cel 12-osobowych. Tylko dwie cele były mniejsze niż 7-osobowe. W innej wizytowanej jednostce znajdowały się z kolei 22 cele 16-osobowe oraz 1 cela 15-osobowa. Zdaniem CPT duże cele wieloosobowe*

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<sup>18</sup> Ibid, Article 73a(6) and (7).

<sup>19</sup> Ibid, Article 73a(8).

<sup>20</sup> Poland, Minister of Internal Affairs, Regulation on rooms intended for persons detained or brought in for the purpose of sobriety, temporary rooms, temporary holding rooms and police children's chambers, the rules of stay in these rooms and chambers and the manner of handling image recordings from these rooms and chambers (*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 and 15(4).

*nieodłącznie wiążą się z brakiem prywatności życia codziennego osadzonych. Ponadto istnieje wysokie ryzyko zastraszenia i przemocy, rozwoju subkultur przestępczych. Utrudnione zaś jest lub nawet niemożliwe sprawowanie właściwej kontroli przez personel penitencjarny. Poza tym w takiej sytuacji łatwiej o znaczne pogorszenie panujących warunków na skutek przeciążenia wspólnych urządzeń, takich jak umywalki czy toalety, a także niewystarczającej wentylacji.”*

*“For years, the National Mechanism for the Prevention of Torture has been appealing to the authorities to introduce appropriate legislative changes that will lead to an increase in the standard of the minimum residential cell space per prisoner. Polish legislation provides a prisoner with a minimum of 3 m<sup>2</sup> of living space in a cell. They also allow for the possibility of placing a person in a cell below 3 m<sup>2</sup> under certain circumstances. However, this standard contradicts both international standards and the practice of most European countries. The minimum standard recommended by the CPT for the Council of Europe countries is 6 m<sup>2</sup> of living space in a single-person cell and 4 m<sup>2</sup> of living space in a multi-person cell (a sanitary corner is not included in the metric). In addition, each cell intended to be inhabited by inmates should have at least 2 m between cell walls and 2.5 m between floor and ceiling. The SPT, in its report on the 2018 visit to Poland, recommended that the authorities raise the minimum standard of living space per prisoner to the level indicated by the CPT. Poland should also review the official capacity of penitentiary units in this regard. According to the CAT, Poland should take measures, including increasing the capacity of prisons, to ensure compliance with the European standard of at least four square metres of living space per detainee. The problem of so-called multi-bed cells has still not been fully resolved and there are still units that have cells with more than ten persons. In one of the prisons visited, mainly multi-person cells were in operation: 1 8-bed cell, 11 11-bed cells and 18 12-bed cells. Only two cells were smaller than 7-person cells. In another unit visited, on the other hand, there were 22 16-bed cells and 1 15-bed cell. According to the CPT, large multi-bed cells are inherently associated with a lack of privacy in the daily lives of detainees. Moreover, there is a high risk of intimidation and violence, the development of criminal subcultures. In turn, it is difficult or even impossible for correctional staff to exercise proper control. In addition, in such a situation it is easier for the prevailing conditions to deteriorate significantly due to overloading of common facilities, such as washbasins and toilets, and insufficient ventilation.”*  
(pp. 68-69)

- 2) Poland, Commissioner for Human Rights, Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2021, 28 July 2022

*As regards cell space, the current regulations on the space available to inmates in living cells constitute a systemic problem – which is regularly indicated in the reports of the NPM in Poland. While the standard of 3 m<sup>2</sup> per person (excluding the area of the sanitary corner) derives from national law, it is not in line with CPT and SPT recommendations. As indicated by the CPT, there should be, respectively, 4 m<sup>2</sup> per inmate in a multi-bed cell and 6 m<sup>2</sup> in a single-bed cell. The above problem requires a change in the law and a correction of the official capacity of prison units. It has already been signalled to the Minister of Justice by the Commissioner for Human Rights. Failure to ensure the above standard significantly*

*increases the risk of violating the prohibition of torture, inhuman and degrading treatment set out in Article 3 ECHR and of legal accountability before the European Court of Human Rights.*<sup>21</sup>

*Moreover, the NPM draws attention to the problems associated with the use of window coverings in most of the penitentiary units visited, which can result in reduced access to light and impede access to fresh air. The NPM recognises the need for safety and organisational and technical solutions in building windows, but CPT recommendations should also be borne in mind. According to these, the use of such measures should be exceptional and, in any event, should not involve depriving detainees of natural light and fresh air (the enjoyment of which is an essential element of life to which every detainee is entitled). With the above in mind, the NPM recommends reviewing the appropriateness of the use of window coverings in penitentiary units and leave them only in those places where they are necessary for safety reasons. In the case of older-type coverings, it is recommended that they be replaced with ones that will not inhibit air circulation in the residential cells. In addition, the architecture of some living cells means that the windows are located below the ceiling (e.g. at a height of about 4 m), which makes access to them and the possibility of ventilating the cell difficult.*<sup>22</sup>

*When it comes to the furnishings of residential cells, the NPM often encounters situations during visits where the accommodation equipment is outdated or heavily used. In particular, worn out mattresses can be pointed out here. It also happens that insects, e.g. bedbugs, are present in some residential cells.*<sup>23</sup>

*With regard to the use of monitoring of residential cells, the NPM pointed out, first, the problem of the impossibility, from 1 January 2023 [the date an amendment to the law came into force – ed.], to challenge the placement in a monitored cell under the procedure provided for in Article 7 of the Executive Penal Code [this provision provides a general basis for challenging decisions concerning, inter alia, conditions of imprisonment or pre-trial detention before the penitentiary court – ed.]. Second, the NPM is also aware of the practice of not informing the inmates on the reasons and the duration of such placement. Third, while the view from the surveillance cameras generally contains masking points to cover the intimate zones of the detainees, these points are often too small or transparent (translucent) and do not guarantee privacy. On the other hand, the NPM increasingly encounters situations where the common spaces where detainees are housed (e.g. the common room, the hairdressing room, the Skype room and the work areas inside the establishments) are not monitored or the monitoring does not cover them in their entirety because there are blind spots; the NPM is increasingly receiving signals that incidents of violence against persons deprived of their liberty by officers are occurring in such places.*<sup>24</sup>

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<sup>21</sup> Member 1 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>22</sup> Member 2 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>23</sup> Member 1 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>24</sup> Member 2 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

## 2. Allocation of detainees

### a. Geographical allocation

The Executive Penal Code in its current wording does not provide any standards in this regard. In particular, location of the inmate's home is not taken into consideration when deciding in which penitentiary unit he or she will serve the sentence.<sup>25</sup>

As an exception to the above rule, prisoners with permanent custody of children who are in foster care should, as far as possible, be incarcerated in the appropriate prisons closest to the children's place of residence.<sup>26</sup>

### b. Allocation within detention facilities

In order to create conditions conducive to the individual treatment of detainees, to prevent harmful influences of demoralised detainees on the others and to ensure the personal safety of all detainees, the choice of the appropriate system of punishment, the type of prison and the distribution of persons deprived of their liberty inside the prison – they shall be classified.<sup>27</sup>

In the classification of prisoners the following should be taken into account:

- 1) gender;
- 2) age;
- 3) previous imprisonment;
- 4) the intentionality or unintentionality of the act;
- 5) the length of the remaining term of imprisonment to be served;
- 6) the state of physical and mental health, including the degree of dependence on a psychoactive substance;
- 7) degree of demoralisation and social danger;
- 8) the type of offence committed;
- 9) the convicted person's attitude to the offence committed.

Based on the classification, prison sentences are served in the following types of penitentiary units:

- 1) juvenile prisons;
- 2) prisons for persons serving their sentence for the first time;
- 3) prisons for recidivists;
- 4) military prisons.

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<sup>25</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 100.

<sup>26</sup> *Ibid*, Article 87a(2).

<sup>27</sup> *Ibid*, Article 82(1).

All of the four types of units can function as closed, semi-open and open ones.

In a juvenile prison, convicted prisoners who have not attained the age of 21 shall serve their sentence; in justified cases, a convicted person may serve their sentence in a juvenile prison after he/she has attained the age of 21. If it is justified by the needs of influence, a first-time adult prisoner who is distinguished by his/her good conduct may, with their consent, serve his/her sentence in a juvenile correctional facility; he or she shall then enjoy the same rights as a juvenile.<sup>28</sup>

In a prison for persons serving their sentence for the first time, convicted prisoners serving a substitute sentence of deprivation of liberty pronounced in the same case can be imprisoned. Juveniles convicted of aggravated murder may serve their sentence in such prison if educational and re-socialisation considerations so warrant.<sup>29</sup>

Adults sentenced for an intentional offence to a custodial sentence or a substitute custodial sentence who have previously served such a sentence shall serve their sentence in a recidivist penitentiary, unless special rehabilitation considerations support their being sent to a first-time prison.<sup>30</sup>

Women serve their sentences separately from men.<sup>31</sup>

When it comes to pre-trial detention, detainees should be placed in remand centre in a way that prevents them from demoralising each other. In particular, unpunished persons should be separated from those previously serving a custodial sentence and juveniles from adults, unless special educational considerations favour the placement of an adult with a juvenile or juveniles, with the proviso that the placement of an adult with a juvenile or juveniles who are under 18 years of age, as well as the placement of a juvenile with juveniles who are under 18 years of age, may only take place if this is not contrary to the welfare of that juvenile or juveniles.<sup>32</sup>

### c. NPM assessment

- 1) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2022](#), 29 November 2023

No recommendations in this regard.

- 2) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2021](#), 28 July 2022

No recommendations in this regard.

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<sup>28</sup> Article 84.

<sup>29</sup> Article 85.

<sup>30</sup> Article 86.

<sup>31</sup> Article 87.

<sup>32</sup> Article 212(1).

*The NPM receives numerous signals regarding the incarceration of persons deprived of their liberty in penitentiary units significantly distant from their place of residence, which may consequently lead to difficulties in maintaining contact with their families (in particular in the form of visits). This problem affects women in particular, as there are fewer wards or prison units dedicated to them.*<sup>33</sup>

*The problem of inmates serving their sentences of imprisonment in prisons located far from their place of residence was described, inter alia, in the Commissioner for Human Rights' general address to the Minister of Justice of 21 February 2024.*<sup>34</sup> *The Commissioner for Human Rights indicated that the requirement to place prisoners in the appropriate prison closest to their place of residence was abolished by the 2012 amendments to the Executive Penal Code, which translated, according to the NPM's conclusions from the visitations, into a particularly difficult situation for women in this regard, caused by the insufficient number of women's wards in penitentiary units (27 in total, out of which 4 for female detainees in pre-trial detention). In complaints addressed to the Office of the Commissioner for Human Rights, female inmates have repeatedly raised problems resulting from the lack of places for women in penitentiary units, such as: refusal of incarceration in a unit closer to home; incarceration at a long distance from home and the impossibility of visitation for this reason by elderly and sick parents; the impossibility of being incarcerated in a unit where there is a chance of gaining paid employment; the family's lack of financial means to travel; and the lack of contact with their children in foster care due to the long distance between the penitentiary unit and these places; the serving of a custodial sentence in closed-type wards despite the decision of the penitentiary commission to a semi-open unit; placing the detainee in an isolation cell located in the pavilion for men, which caused her feeling of insecurity.*

*The above problem was also described in the NPM report on the visit to the external ward in Lubliniec belonging to the Penitentiary Facility in Herby.*<sup>35</sup>

### 3. Hygiene and sanitary conditions (note – section 11 contains specific questions concerning female detainees)

#### a. Access to toilets

As indicated in the 2021 report, residential cells in closed penitentiary units (prisons and remand centres) have to be equipped with sanitary facilities, enclosed by a durable floor-to-ceiling wall guaranteeing privacy. Therefore, they can be accessed 24 hours a day. Sanitary facilities in semi-open and open penitentiary facilities may be located outside the residential cells.<sup>36</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.

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<sup>33</sup> Member 2 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>34</sup> Poland, Commissioner for Human Rights, [General address to the Minister of Justice](#), 21 February 2024.

<sup>35</sup> Poland, National Preventive Mechanism, [Report of the National Torture Prevention Mechanism on the visit of the External Ward in Lubliniec of the Penitentiary Facility in Herby](#), 22 January 2024, pp. 5-10.

<sup>36</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 110(3).

Separate sanitary rooms (consisting of a shower, a washbasin and a toilet) are also mandatory in police custody.<sup>37</sup>

#### b. Access to showers and warm and running water

According to the Executive Penal Code, access to adequate hygienic conditions is a right of a person incarcerated in a prison or remand centre.<sup>38</sup>

Each person placed in either pre-trial<sup>39</sup> or post-trial<sup>40</sup> detention is entitled to a warm shower at least once a week. The frequency of bathing is correspondingly higher for those employed in dirt-intensive jobs. For sick persons, this frequency is determined in consultation with the doctor.

For women, the frequency of warm showers is at least two per week. They are also guaranteed access to hot tap water once a day (no such standard applies to male inmates).<sup>41</sup>

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

#### c. Access to sanitary products

According to the Minister of Justice's regulation of 2016, the monthly norm for hygiene products for persons in pre-trial or post-trial detention is:

- toilet soap: 100 g for men, 200 g for women;
- hygiene packages for women: 1;
- shaving cream for men: 40 g;
- shaving knives for men: 2;
- laundry detergent: 200 g;
- toothbrushes: 1 per 3 months;
- toothpaste: 60 g;
- toilet paper: 2 rolls;
- shampoo: 100 ml.<sup>42</sup>

#### d. Hygienic conditions in cells

As described in the 2021 report, 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>43</sup> The same applies to persons in police custody.<sup>44</sup>

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<sup>37</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>38</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 102(1).

<sup>39</sup> Pre art. 23(3)

<sup>40</sup> Post art. 27(3)

<sup>41</sup> Pre art 23(4), post art 27(4)

<sup>42</sup> Poland, Minister of Justice, Regulation on the living conditions of inmates in penitentiary institutions and pre-trial detention centres (*Rozporządzenie w sprawie warunków bytowych osób osadzonych w zakładach karnych i aresztach śledczych*), 19 December 2016, Annex 1, Table 4.

<sup>43</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 116(1)(2).

<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, Appendix 1, § 8(5).

The regulations of the Minister of Justice stipulate 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>45</sup><sup>46</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>47</sup>

The state of living cells' cleanliness in penitentiary units is supervised by Prison Service officials.<sup>48</sup>

The 2016 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>49</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>50</sup>

Pyjamas, nightgowns, towels and dish towels are changed at least once a week (or more often, depending on the needs).<sup>51</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 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>52</sup>

Persons in police custody in principle wear their own underwear, clothes and footwear.<sup>53</sup> During night-time, they are provided with a mattress, a pillow and a blanket (two blankets during autumn and winter) and linen.<sup>54</sup>

#### e. NPM assessment

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<sup>45</sup> Poland, Minister of Justice, *Rozporządzenie w sprawie regulaminu organizacyjno-porządkowego wykonywania kary pozbawienia wolności*, 23 December 2022, § 25(1).

<sup>46</sup> Poland, Minister of Justice, *Rozporządzenie w sprawie regulaminu organizacyjno-porządkowego wykonywania tymczasowego aresztowania*, 23 December 2022, § 21.

<sup>47</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>48</sup> *Ibid*, § 35.

<sup>49</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>50</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>51</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).

<sup>52</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>53</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>54</sup> *Ibid*, § 9(6).



- 1) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2022](#), 29 November 2023

*„Kolejnym nierozwiązanym w pełni problemem pozostaje kwestia niezabudowanych lub niewłaściwie osłoniętych kącików sanitarnych. Podczas wizytacji realizowanych w 2022 r. dotyczyło to np. cel przejściowych oraz izolacyjnych. W jednym z zakładów karnych aż 79 cel posiadało nie w pełni zabudowane kąciki sanitarne. W ocenie KMPT rozwiązania te naruszają podstawowe prawo osadzonego do zagwarantowania intymności podczas wykonywania czynności fizjologicznych. Należy zaznaczyć, że zgodnie z przepisami prawa krajowego urządkowania sanitarne sytuuje się w sposób zapewniający ich niekrępujące użytkowanie. Ponadto zgodnie z międzynarodowymi standardami więźniowie powinni mieć do stęp do zapewniających prywatność sanitariatów.”*

*“Another problem that has not been fully addressed remains the issue of uncovered or inadequately covered sanitary corners. During the visits carried out in 2022, this was the case, for example, in transit and isolation cells. In one prison, as many as 79 cells had sanitary corners that were not fully enclosed. In the opinion of the KMPT, these solutions violate the fundamental right of the inmate to guaranteed intimacy when performing physiological activities. It should be noted that, in accordance with national law, sanitary facilities shall be situated in such a way as to ensure their unobstructed use. Moreover, in accordance with international standards, prisoners should have access to sanitary facilities that ensure privacy.” (p. 87-88)*

- 2) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2021](#), 28 July 2022

*According to the NPM, hygienic and sanitary conditions in most penitentiary units need to be improved. In prison of the closed type, toilets are located in the cells. However, in cells with multiple inmates (7 and more inmates) there is a problem with access to the toilet as required. In addition, not in all penitentiary units the sanitary corners are fully enclosed and it happens that the washbasins are located outside the sanitary corner, which makes it difficult to perform hygienic activities in privacy conditions (the use of the bath is possible 2 times a week). In older penitentiary units, there are some baths with traces of dampness on the walls. Unfenced (uncovered) shower stalls are also a problem.<sup>55</sup>*

*In the context of hygiene care, an important aspect is the issue of hygiene packages received by detainees once a month. In the opinion of the NPM – and of the detainees themselves – these packages are clearly insufficient. In a situation where detainees do not have the possibility to receive assistance from outsiders, a problem arises, as the Prison Service is not willing to make more hygiene products available in every such situation. As emphasised by the NPM, the problem described above occurs each time in all the visited units. An additional issue raised during the visits to women's wards is the insufficient number of sanitary pads received from the Prison Service (10-20 per month). It is also worth drawing attention to the systemic problem described, inter alia, in the NPM report on the visit to Penitentiary Facility in*

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<sup>55</sup> Member 1 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

*Herby*<sup>56</sup>; from the interviews conducted with convicted women (or women in pre-trial detention), it appears that it is rare to receive an additional packet of sanitary pads.<sup>57</sup>

It is also worth noting that access to the bathhouse is sometimes difficult, e.g. in one of the visited units the detainees, in order to go to and from the bathhouse, have to go outside which, in the autumn and winter period, may pose a risk of falling ill. For this reason, some interviewees indicated that they deliberately do not use the bathhouse and only wash in the sanitary corner so as not to risk catching a cold.<sup>58</sup>

## 4. Nutrition

### a. Quality and quantity of food

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>59</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>60</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>61</sup> In particular, the regulation foresees<sup>62</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.

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<sup>56</sup> Poland, National Preventive Mechanism, [Report of the National Torture Prevention Mechanism on the visit of the Penitentiary Facility in Herby](#), 22 January 2024, pp. 15-16.

<sup>57</sup> Member 2 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>58</sup> Member 2 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>59</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 102(1).

<sup>60</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 109(1).

<sup>61</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>62</sup> *Ibid*, § 2(1).

Each type of meal is served with a beverage, in particular water, tea or coffee substitute.<sup>63</sup> A detainee who resides in a room where the temperature is higher than 28 degrees Celsius is entitled to additional beverages.<sup>64</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>65</sup> The daily energetic value of meals should be 2600 kcal (2800 kcal for detainees below the age of 18).<sup>66</sup> The energetic value of an additional meal (Pf) is at least 1000 kcal.<sup>67</sup>

A daily cost of meals per detainee is:<sup>68</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;
- f) PLN 3,20 – meals type Pf.

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>69</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>70</sup>

The time and place where meals should be consumed are defined by internal operating rules, issued by a director of each penitentiary establishment.

A similar rule, requiring the provision of three meals (at least one warm) and beverages per day, applies to detention in police custody.<sup>71</sup>

#### b. Drinking water

No rules in this regard could be identified.

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<sup>63</sup> Ibid, § 2(2).

<sup>64</sup> Ibid, § 2(4).

<sup>65</sup> Ibid, § 3(1).

<sup>66</sup> Ibid, § 3(2).

<sup>67</sup> Ibid, § 3(3).

<sup>68</sup> Ibid, § 5(1).

<sup>69</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 109(1).

<sup>70</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 109(2).

<sup>71</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).

### c. Dietary requirements

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>72</sup>

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>73</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.

Moreover, the regulation requires that fruits and vegetables are included in the everyday diet in a specified quantity.<sup>74</sup>

### d. NPM assessment

- 1) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2022](#), 29 November 2023

*„W trakcie wizytacji prewencyjnej jednego z zakładów karnych KMPT zidentyfikował problem, który może wywierać istotny wpływ na warunki odbywania kary pozbawienia wolności, jak również może skutkować naruszeniem zakazu niehumanitarnego i poniżającego traktowania określonego w art. 3 Europejskiej Konwencji Praw Człowieka. W wizytowanej jednostce oferta kantyny była uboga, a niektóre produkty spożywcze odpowiednie dla osób ze specjalnymi potrzebami żywieniowymi, m.in. z określonymi nietolerancjami pokarmowymi (np. laktoza, gluten), były niedostępne. W związku z wprowadzeniem tzw. e-paczek żywieniowych osadzeni oraz ich najbliżsi mogą składać zamówienia jedynie na produkty dostępne w ofercie podmiotu prowadzącego więzienną kantynę. Nie ma zatem możliwości otrzymania produktów żywnościowych spoza zakładu karnego, które respektowałyby specjalne potrzeby żywieniowe niektórych osadzonych. Biorąc pod uwagę zarówno ofertę kantyny, jak i obowiązujące przepisy Kodeksu karnego wykonawczego, osoby korzystające z konkretnych diet oraz cierpiące na nietolerancje pokarmowe „uzależnione” są jedynie od posiłków otrzymywanych w jednostce penitencjarnej. Z oczywistych względów, takich jak np. wykonywanie pracy fizycznej, występowanie chorób, wiek, przyzwyczajenia żywieniowe czy odmienne zapotrzebowanie energetyczne, w indywidualnych przypadkach wyżywienie więzienne może okazać się niewystarczające. Możliwość otrzymywania przez osadzonych paczek żywnościowych zakupionych jedynie za pośrednictwem zakładu karnego (kantyny) wprowadzona została nowelizacją Kodeksu karnego wykonawczego, która weszła w życie z dniem 1 lipca 2015 r. Przyjęte rozwiązanie wzbudziło wątpliwości Rzecznika m.in. w zakresie dotyczącym możliwości przekazywania paczek jedynie przez osoby najbliższe. W ocenie RPO zawężanie tego grona jedynie do osób najbliższych nosi znamiona dyskryminacji, szczególnie w stosunku do osadzonych, którzy nie posiadają bliskich lub nie utrzymują z nimi kontaktów. Co więcej, do Biura RPO wpływają od więźniów*

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<sup>72</sup> Poland, Executive Penal Code (Kodeks karny wykonawczy), 6 June 1997, Article 109(1).

<sup>73</sup> Poland, Minister of Justice, *Rozporządzenie w sprawie żywienia osadzonych w zakładach karnych i aresztach śledczych*, 19 February 2016, § 2.

<sup>74</sup> Poland, Minister of Justice, *Rozporządzenie w sprawie żywienia osadzonych w zakładach karnych i aresztach śledczych*, 19 February 2016, § 5.

skargi dotyczące realizacji w praktyce prawa do otrzymywania e-paczek, w szczególności wskazujące na terminowość ich dostarczania, jak i możliwość zamawiania chociażby świeżych owoców i warzyw. W ocenie Rzecznika każdej osobie pozbawionej wolności powinno się zagwarantować równy dostęp do możliwości dokonywania zakupów za pośrednictwem zakładu karnego, jak również otrzymywania paczek żywnościowych zakupionych przez najbliższych. Obecnie ze względu na ograniczoną ofertę spożywczą podmiotów prowadzących obrót e-paczkami, uprawnienie to jest niemożliwe do zrealizowania w przypadku osadzonych z nietolerancjami pokarmowymi lub korzystających z innych diet. Tym samym naruszane jest prawo do humanitarnego sposobu odbywania kary pozbawienia wolności. Mając powyższe na uwadze, Rzecznik zwrócił się do Dyrektora Generalnego SW z prośbą o zajęcie stanowiska wobec przedstawionego problemu oraz o poinformowanie o podjętych w tej sprawie działaniach.”

„During a preventive visit to one of the prisons, the NPM identified a problem that may have a significant impact on the conditions of imprisonment, as well as a potential violation of the prohibition of inhuman and degrading treatment set out in Article 3 of the European Convention on Human Rights. In the visited unit, the canteen offer was poor and some food products suitable for persons with special dietary needs, including those with certain food intolerances (e.g. lactose, gluten), were unavailable. Due to the introduction of the so-called e-food packages, inmates and their relatives can only place orders for products available in the offer of the entity running the prison canteen. It is therefore not possible to receive food products from outside the prison that would respect the special dietary needs of some inmates. Taking into account both the offer of the canteen and the applicable provisions of the Executive Penal Code, persons on specific diets and those suffering from food intolerances are "dependent" only on the meals received in the penitentiary unit. For obvious reasons, such as, for example, the performance of physical work, the presence of illnesses, age, dietary habits or different energy needs, prison meals may not be sufficient in individual cases. The possibility for prisoners to receive food parcels purchased only through the prison (canteen) was introduced by an amendment to the Executive Penal Code, which entered into force on 1 July 2015. The adopted solution raised the Ombudsman's doubts, inter alia, concerning the possibility of handing over parcels only by the closest persons. In the Ombudsman's opinion, narrowing this group only to the closest persons bears the hallmarks of discrimination, especially in relation to inmates who do not have relatives or do not maintain contact with them. Moreover, the Office of the Ombudsman has received complaints from prisoners concerning the realisation in practice of their right to receive e-packages, in particular pointing to the timeliness of their delivery and the possibility to order, for example, fresh fruit and vegetables. In the Ombudsman's view, every person deprived of liberty should be guaranteed equal access to the possibility of making purchases through the prison, as well as receiving food parcels purchased by their loved ones. At present, due to the limited range of foodstuffs offered by e-packet traders, this entitlement is not feasible in the case of detainees with food intolerances or those on other diets. The right to a humane way of serving a prison sentence is thus violated. In view of the above, the Ombudsman requested the Director General of the Prison Service to take a position on the problem presented and to report on the actions taken in this case.” (pp. 20-21)

- 2) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2021](#), 28 July 2022

*According to the NPM, the nutritional standards in penitentiary units are insufficient. Repeatedly in conversations with prisoners, there are indications that the portions served by the Prison Service are too small. Those inmates whose financial situation allows them to do so or who have external assistance are able to make up for these shortfalls by shopping in the canteen.<sup>75</sup>*

*The Regulation of the Minister of Justice of 19 February 2016 on the feeding of inmates in penal institutions and detention centres, defining in § 5 the minimum daily cost of meals and beverages served to inmates, has not changed despite inflation and the related increase in the prices of food products against the background of 8 years since its enactment. This circumstance significantly reduces the quality of food served to inmates.<sup>76</sup>*

*Whereas vegetables are served in the form of salad for lunch, fruits are absent in the food portions (except for the diabetic diet). There are also frequent reports of mouldy bread, stale sausages and rotten potatoes; recommendations concerning the serving of stale meals appeared, inter alia, in the reports on the inspection of Penitentiary Facility No. 1 in Grudziądz<sup>77</sup> and Penitentiary Facility in Iława<sup>78</sup>. There is also a problem with the availability of certain types of products in the canteen (e.g. gluten-free, vegan). This issue was raised by the NPM in its general address<sup>79</sup> of 9 February 2022.<sup>80</sup>*

*The NPM also perceives a problem with the issuing of meals prepared with religious and cultural requirements to inmates [§ 2(1)(4) of the Regulation of the Minister of Justice of 19 February 2016 on meals for inmates in penal institutions and detention centres]. This manifests itself, inter alia, in the dispensing of products containing pork to persons of the Muslim faith and the failure to take Ramadan into account when dispensing hot meals (inmates observing Ramadan have to wait until sunset and consume a cold meal, which is usually dispensed around 1 p.m.).<sup>81</sup>*

## 5. Time spent outside the cell and outdoors

### a. Time spent outdoors

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

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<sup>75</sup> Member 1 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>76</sup> Member 1 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>77</sup> Poland, National Preventive Mechanism, [Report of the National Torture Prevention Mechanism on the visit of the Penitentiary Facility No. 1 in Grudziądz](#), 17 May 2024, p. 75.

<sup>78</sup> Poland, National Preventive Mechanism, [Report of the National Torture Prevention Mechanism on the visit of the Penitentiary Facility in Iława](#), 31 January 2022, p. 15.

<sup>79</sup> Poland, Commissioner for Human Rights, [Więżniowie mają prawo do diet wegetariańskiej czy religijnych. Wystąpienie RPO do Służby Więziennej](#), 11 February 2022.

<sup>80</sup> Member 1 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>81</sup> Member 2 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

unit premises only in an organized way, 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>82</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>83</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>84</sup>

#### b. Time spent indoors

No rules in this regard could be identified.

#### c. Recreational facilities

According to the Executive Penal Code, in prisons, conditions are created for detainees to spend their free time appropriately. For this purpose, cultural and educational, physical education and sports activities are organised and social activity of detainees is stimulated.<sup>85</sup>

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.

#### d. Educational activities

The Executive Penal Code stipulates that in each prison, in particular, there shall be a lending library of books and newspapers for the detainees and there shall be the possibility to use audiovisual equipment in the common rooms and in the residential cells. When using these facilities, the detainees shall not disturb the established order in the establishment.<sup>86</sup>

#### e. NPM assessment

- 1) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2022](#), 29 November 2023

*„W kilku wizytowanych jednostkach wizytujący zwrócili uwagę na place spacerowe, które ze wszystkich stron osłonięte były wysokim betonowym murem z rozpiętą na górze siatką, bez możliwości widoku horyzontalnego. Zazwyczaj wyposażone były jedynie w ławkę i fragmentaryczne zadaszenie. Brak było sprzętu do ćwiczeń czy innego wyposażenia umożliwiającego aktywność fizyczną na świeżym powietrzu. Wielu osadzonych sygnalizowało, iż często nie wychodzą na spacer, bo czują się na nich jak w klatce i nie czują na nich większej różnicy od przebywania w celi.”*

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<sup>82</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 90.

<sup>83</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 91.

<sup>84</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 92.

<sup>85</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 135(1).

<sup>86</sup> Ibid, Article 135(2).

*“In several of the units visited, the visitors noted the walking plazas, which were sheltered on all sides by a high concrete wall with a net stretched over the top, with no possibility of a horizontal view. They were usually only equipped with a bench and a fragmentary canopy. There was a lack of exercise equipment or other equipment to enable outdoor physical activity. Many detainees indicated that they often do not go out for walks because they feel caged and do not feel much difference on them from being in a cell.”* (p. 88)

- 2) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2021](#), 28 July 2022

*In the opinion of the NPM, the time spent by the detainees outside the residential cell is clearly insufficient. Prisoners have the possibility to take an hour walk once a day, to go to the dayroom on average once/twice a week for about an hour each. Prisoners in employment or studying may spend more time outside the cell. Persons in pre-trial detention are in a particularly difficult situation in terms of the activities carried out, as they only have the option of an hour's walk and an outing to a day-care centre. It is worth noting that it is not uncommon for pre-trial detention to last for a relatively long time (e.g. continuously for two years). Convicted prisoners (Article 88b of the Executive Penal Code) and pre-trial detainees (Article 212a of the Executive Penal Code) with the "N" [dangerous – ed.] status are in the most difficult situation. Despite the fact that Articles 88b and 212b of the Executive Penal Code provide for this group of detainees the possibility to work, study, directly participate in religious services, as well as enjoy cultural and educational activities, develop physical culture and sports, the NPM's experience shows that these types of activities are realised very rarely. For example, in one of the units visited, an inmate with "N" status did not benefit from a walk for a year and a half, although he claimed to have expressed his wish to do so; the unit's records showed that this detainee had not gone for a walk for the entire period prior to the NPM's visit. According to the NPM, this state of affairs is due to the need to take more precautions, more Prison Service officers and to stop the traffic in the ward where this inmate is detained, which, combined with staff shortages in the Prison Service, has this exact effect.<sup>87</sup>*

## 6. Solitary confinement

### a. Placement in solitary confinement

According to the Executive Penal Code, solitary confinement is a disciplinary measure.<sup>88</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>89</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>90</sup>

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<sup>87</sup> Member 1 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>88</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 143(1)(8).

<sup>89</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 222(2)(5).

<sup>90</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 143(3).



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 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>91</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>92</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>93</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 does not apply to women who are pregnant, nursing or caring for their own children in maternity or childcare homes.

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>94</sup>

#### b. Monitoring of detainees

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>95</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>96</sup>

General rules concerning the video surveillance of penitentiary units apply to solitary confinement.<sup>97</sup>

#### c. NPM assessment

- 1) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2022](#), 29 November 2023

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<sup>91</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 143(3).

<sup>92</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 146(1).

<sup>93</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 146(2).

<sup>94</sup> Poland, Minister of Justice, [Rozporządzenie w sprawie warunków bytowych osób osadzonych w zakładach karnych i aresztach śledczych](#), 19 December 2016, Annex 3.

<sup>95</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 148(3).

<sup>96</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 148(2).

<sup>97</sup> *Ibid*, Article 73a.

„Brak personelu medycznego wpływa również na efektywność dokumentowania obrażeń, do jakich mogło dojść poza godzinami pracy ambulatorium. Utrudnia też sprawowanie właściwego nadzoru nad osadzonymi umieszczonymi w celi izolacyjnej. (...) Optymalnym rozwiązaniem byłoby zapewnienie całodobowej obecności w jednostce pielęgniarki lub ratownika medycznego.”

“The lack of medical staff also affects the effectiveness of documenting injuries that may have occurred outside of ambulatory hours. It also hinders the exercise of proper supervision of detainees placed in an isolation cell. (...) The optimal solution would be to have a nurse or paramedic present in the unit 24 hours a day.” (p. 82)

- 2) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2021](#), 28 July 2022

No recommendations in this regard.

*During its visits, the NPM does not observe the practice of continuously extending the period of detention of inmates by placing them in solitary confinement cells as a disciplinary punishment [according to Articles 143(1)(8) and 222(2)(5) of the Executive Penal Code]. Usually, inmates are released from isolation cells before the expiry of 14 days. Placing convicts in isolation cells for a period exceeding 14 days [which, pursuant to Article 145(3) of the Executive Penal Code, requires the consent of the penitentiary judge] is extremely rare.<sup>98</sup>*

*However, it does happen that, in the opinion of the NPM, the reasons for imposing a disciplinary sanction of placing inmates in a solitary confinement cell for up to 14 days [Article 222(2)(5) of the Executive Penal Code] or up to 28 days [Article 143(1)(8)] are questionable. The NPM takes the view that the punishment of solitary confinement of a prisoner should be regarded as a tool of last resort, which should be used rarely and only when all other forms of influence have failed. This issue is described in more detail in the NPM report<sup>99</sup> on the visit of Penitentiary Facility No. 1 in Grudziądz.<sup>100</sup>*

*It should be noted that the seclusion of detainees may also consist in the granting of "N" [dangerous – ed.] status. In this case, the NPM sees the practice of automatic extension of the decision of the penitentiary commission to maintain the "N" status [Article 76(1)(7) and Article 212a(1) of the Executive Penal Code]. According to these provisions, the "N" status must be reviewed every 3 months, but there are cases in which it is extended for years. The NPM would like to point out that it does not question the legitimacy of granting such a status when the detainee actually poses a serious threat to society or to the security of the unit, but it has doubts as to whether maintaining this status for many years is based on a thorough analysis as to whether the danger from a particular detainee still exists and whether it is*

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<sup>98</sup> Member 1 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>99</sup> Poland, National Preventive Mechanism, [Report of the National Torture Prevention Mechanism on the visit of Penitentiary Facility No. 1 in Grudziądz](#), 17 May 2024, pp. 47-51.

<sup>100</sup> Member 1 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

*of such intensity; as emphasised by the NPM, automatic extension of the "N" status contradicts the principle of individualisation of the execution of punishment and pre-trial detention.*<sup>101</sup>

## 7. Work and education of detainees to promote social reintegration

### a. General measures to promote social reintegration

The Executive Penal Code stipulates that the execution of the sentence of deprivation of liberty is aimed at arousing in the convicted prisoner the will to cooperate in the formation of his/her socially desirable attitudes, in particular the sense of responsibility and the need to comply with the legal order and thus to refrain from returning to crime.

In order to achieve this objective, individualised influence on convicted prisoners shall be carried out within the framework of the punishment execution systems, in various types of penitentiary institutions.

In the influence on convicted prisoners, while respecting their rights and requiring them to fulfil their obligations, consideration shall be given, in the first place, to work, especially promoting the acquisition of appropriate professional qualifications, teaching, cultural, educational and sporting activities, maintaining contact with the family and the outside world, and therapeutic measures.<sup>102</sup>

### b. Access to work

According to the Executive Penal Code, convicted prisoners shall be provided with work as far as possible.<sup>103</sup> They shall be employed on the basis of an employment referral or be allowed to perform gainful employment under an employment contract.

The convicted prisoners shall be employed with the consent and under the conditions determined by the director of the penitentiary institution, ensuring the proper course of serving the sentence of imprisonment. Failure by the convicted prisoner or the employing entity to comply with the terms and conditions of employment as determined by the director of the prison shall be grounds for withdrawal of consent. The prisoner and the employing entity shall be notified in writing of the withdrawal of the consent.

The director of the prison may revoke the consent to employ the prisoner or to perform gainful employment by them for reasons related to the functioning of the prison, in particular to its security. The prisoner and the employing entity shall be notified in writing of the withdrawal of consent.

In making referrals for work, account shall be taken, as far as possible, of the prisoner's profession, education, interests and personal needs.

The prisoner's work shall be paid. The rules for remuneration for work shall be laid down in an agreement concluded by the director of the prison or in a contract concluded by the prisoner. The remuneration to which a prisoner employed full-time shall be entitled shall be determined in a manner

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<sup>101</sup> Member 2 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>102</sup> Poland, Executive Penal Code, 6 June 1997, Article 67.

<sup>103</sup> Poland, Executive Penal Code, 6 June 1997, Article 121.

ensuring that the amount of at least the minimum remuneration for work is reached, when working a full monthly working time or performing a full monthly standard of work.<sup>104</sup>

#### c. Access to education

Compulsory primary education is provided in prisons, and secondary education and vocational courses are also available. Vocational course training may be fully or partially paid.<sup>105</sup>

Priority in obtaining the opportunity to be taught in secondary school and vocational courses is given to convicted prisoners who do not have a learned profession or will not be able to practice it after serving their sentence, and who are under 21 years of age.

Necessary textbooks and teaching aids shall be provided free of charge to prisoners without sufficient funds.

Prisoners may, with the approval of the director of the unit, study in schools outside the prison if they meet the generally applicable requirements in public education, behave correctly and do not endanger the law and order.<sup>106</sup>

#### d. NPM assessment

- 1) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2022](#), 29 November 2023

No recommendations in this regard.

- 2) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2021](#), 28 July 2022

No recommendations in this regard.

*According to the NPM, the level of employment of detainees, in particular paid employment, is insufficient. In interviews with NPM representatives, detainees signal the problem of lack of availability of work – mainly paid work. For example, during the NPM visitation of Penal Facility in Czarne in 2022, 552 convicts were employed (including 384 paid) while the total capacity of the establishment was 1575 places, which gives about 35% of employment in general and about 24% of paid employment. On the other hand, 876 convicts were employed (including 421 in paid employment) while there were 1,164 inmates in the unit during the visitation of Penal Facility No. 1 in Grudziądz in 2023; this means that the level of employment was approximately 75%, with paid work provided by approximately 36% of the inmates. The low rate of paid employment of inmates may reflect on their family situation, inter alia due*

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<sup>104</sup> Ibid, Article 123.

<sup>105</sup> Ibid, Article 130(1).

<sup>106</sup> Ibid, Article 131(1).

to the maintenance obligations. Another problem in the area of employment is the fact that female inmates are offered a much smaller variety of jobs compared to male ones.<sup>107</sup>

*It should also be emphasised that according to Article 110b of the Executive Penal Code, introduced in 2022, in the event that an inmate obtains permission from the director of the prison to have electronic or electrical equipment in his cell, every person in that cell is obliged to pay a flat monthly fee in connection with the use of that equipment. The experience of the NPM shows that detainees in unpaid employment are, as a rule, not exempted from paying this fee on the basis of Article 110b(5) of the Executive Penal Code. Such a state of affairs may lead to a situation in which an inmate is released from prison with an debt resulting from non-payment of these fees, because during the whole time of serving the sentence he or she did not have the financial capacity to pay this due amount on an ongoing basis (such cases were encountered by the NPM during visits).<sup>108</sup>*

*In the context of the education of persons deprived of their liberty, the NPM has no major reservations about the programme offer for male detainees. There are continuing education centres [centra kształcenia ustawicznego – ed.] in various places in Poland where men can be educated in various fields of study. The situation is completely different in the case of female prisoners, as the only continuing education centre in Poland intended for female prisoners is located in Penal Facility No. 1 in Grudziądz. What is more, in the case of male detainees, there is a possibility to complete BA and MA studies within the branch of the Catholic University of Lublin operating in the Remand Centre in Lublin. Such an opportunity is not available to women deprived of liberty. Obviously, the population of women deprived of liberty is much smaller than the population of men, however, the location of the only dedicated continuing education centre for women in Grudziądz significantly limits their access to education. Many times female convicts have to choose between family life (proximity to family, children, etc.) and education taking place in a place far away from their place of residence.<sup>109</sup>*

## 8. Healthcare (note – section 11 contains specific questions concerning female detainees)

### a. Access to healthcare

Pursuant to the Executive Penal Code, prisoners are entitled to free healthcare, medicine and hygienic products.<sup>110</sup> However, they do not have a right to select their own physician.<sup>111</sup> Only in particularly justified circumstances the penitentiary unit's director may allow the inmate to be treated by the physician or entity of his or her choice.

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<sup>107</sup> Member 1 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>108</sup> Member 1 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>109</sup> Member 2 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>110</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 115(1).

<sup>111</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 115(1a).

Detainees in pre-trial and post-trial detention are entitled only to such healthcare services that are necessary to remain healthy.<sup>112</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>113</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>114</sup>

In police custody, persons are generally entitled to medical services, however, without specification as to its scope.<sup>115</sup> Every person admitted to police custody should be subject to medical examination and is entitled to necessary medical help, if needed.<sup>116</sup>

#### b. Availability of medical staff

As indicated in the 2021 report, 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>117</sup>

#### c. Medical examination upon admission

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 to the unit. 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>118</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. Preventive care

No standards in this regard could be identified.

#### e. Specialised care

According to the Executive Penal Code, specialist care, treatment or rehabilitation is provided by external entities in cooperation with prison medical service.<sup>119</sup> The decision on the referral for treatment

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<sup>112</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 102(1).

<sup>113</sup> Poland, Appellate Court in Katowice (*Sąd Apelacyjny w Katowicach*), II AKz 659/02, 24 July 2002.

<sup>114</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 115(5)(1).

<sup>115</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>116</sup> *Ibid.*, § 4(1).

<sup>117</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>118</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>119</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 115(5)(2).

in external entities is made by the institution's director, upon motion of the institution's head physician.<sup>120</sup>

#### f. Treatment of the detainee's choosing

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>121</sup>

#### g. NPM assessment

- 1) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2022](#), 29 November 2023

*„We wszystkich wizytowanych jednostkach penitencjarnych przedstawiciele KMPT zdiagnozowali szereg problemów oraz nieprawidłowości związanych z szeroko rozumianą kwestią opieki medycznej. Dotyczyły one następujących obszarów:*

*1) Niewystarczającej obsady lekarskiej i pielęgniarskiej. Większość jednostek mierzy się z brakami kadrowymi oraz długim okresem oczekiwania na przyjęcia planowe do lekarza ogólnego. Ponadto lekarze specjaliści pracują zazwyczaj w ramach niepełnych etatów, co również skutkuje długim oczekiwaniem na poradę medyczną. W ocenie Krajowego Mechanizmu liczba zatrudnionych lekarzy w zakładach karnych i aresztach śledczych oraz długość ich czasu pracy jest niewystarczająca w stosunku do liczby osadzonych. W ciągu ostatnich kilku lat obserwowany jest również spadek liczby personelu pielęgniarskiego w jednostkach penitencjarnych. Mimo wielokrotnie ponawianych ogłoszeń i rozmów prowadzonych z kandydatami i kandydatkami na to stanowisko, brak jest chętnych do podjęcia pracy. Z uzyskanych przez KMPT informacji wynika, iż główny problem stanowi niekonkurencyjne, w stosunku do poza więziennych placówek ochrony zdrowia, wynagrodzenie oraz trudne warunki pracy.*

*2) Braku całodobowej opieki medycznej świadczonej przez personel pielęgniarski lub ratownika medycznego. W większości wizytowanych jednostek penitencjarnych pielęgniarki oraz ratownicy medyczni pracują od poniedziałku do piątku w godzinach pracy administracji zakładu. W weekendy oraz popołudniami w nagłych wypadkach wzywany jest zespół ratownictwa medycznego. W ocenie KMPT brak na miejscu wykwalifikowanego personelu medycznego stanowi sytuację wysokiego ryzyka. Personel niemedyczny musi bowiem dokonać oceny, czy wezwanie pogotowia ratunkowego jest konieczne, co stwarza ryzyko błędu i niebezpieczeństwa dla zdrowia osadzonych. W takiej sytuacji konieczność oczekiwania na przyjazd karetki pogotowia opóźnia moment rozpoczęcia interwencji medycznej. Taka sytuacja może ponadto doprowadzić do niepotrzebnego cierpienia osadzonego, gdy np. funkcjonariusz błędnie uzna, że więzień symuluje dolegliwości bólowe i nie potrzebuje leków i/lub interwencji medycznej. Brak personelu medycznego wpływa również na efektywność dokumentowania obrażeń, do jakich mogło dojść poza godzinami pracy ambulatorium. Utrudnia też sprawowanie właściwego nadzoru nad osadzonymi umieszczonymi w celi izolacyjnej. Nadto jednym z przejawów*

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<sup>120</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>121</sup> Poland, Executive Penal Code (Kodeks karny wykonawczy), 6 June 1997, Article 115(6).

niedostatku obsady pielęgniarskiej jest m.in. to, iż leki w godzinach wieczornych i w dni wolne od pracy – kiedy nie ma już pielęgniarek – wydawane są osadzonym przez funkcjonariuszy działu ochrony. Dotyczy to także dystrybucji leków psychotropowych i leczenia substytucyjnego Metadonem. Jest to wprawdzie rozwiązanie zgodne z par. 9 pkt 7 rozporządzenia Ministra Sprawiedliwości z dnia 14 czerwca 2012 r. w sprawie udzielania świadczeń zdrowotnych przez podmioty lecznicze dla osób pozbawionych wolności, ale niebezpieczne dla zdrowia i życia osadzonych.

Optymalnym rozwiązaniem byłoby zapewnienie całodobowej obecności w jednostce pielęgniarki lub ratownika medycznego. Jest to standard wskazywany przez CPT w raporcie z wizyty w Polsce w 2017 r. Komitet zalecił, by w jednostkach penitencjarnych przez cały czas (także nocą i w weekendy) obecna była osoba potrafiąca udzielić pierwszej pomocy, w tym przeszkolona w administrowaniu resuscytacji krążeniowo-oddechowej oraz używaniu defibrylatora. Taką osobą powinna być wykwalifikowana pielęgniarka.

3/ Przeprowadzania badania w obecności funkcjonariuszy. Świadczenia zdrowotne mogą być udzielane w obecności funkcjonariusza niewykonującego zawodu medycznego na wniosek osoby udzielającej świadczenia zdrowotnego, jeżeli jest to konieczne do zapewnienia jej bezpieczeństwa. Tymczasem wciąż zasadą pozostaje obecność funkcjonariuszy w trakcie badań. Nierzadko dzieje się tak nawet w przypadkach badań bardzo inwazyjnych. Jeden z osadzonych zgłosił przedstawicielce KMPT, iż miał wykonywaną kolonoskopię w obecności funkcjonariuszy. Z jego relacji wynikało, że brak było nawet parawanu, który zapewniłby mu jakąkolwiek intymność.

Niezależne badanie medyczne stanowi minimalną gwarancję prewencji tortur. Aby mogła ona zadziałać właściwie, konieczne jest zapewnienie poufności takiego badania. Tylko bowiem w ten sposób możliwe jest zbudowanie odpowiedniej relacji na linii pacjent – lekarz i zainicjowanie efektywnej dyskusji na temat sposobu traktowania, posiadanych obrażeń, ich przyczyn i stanu zdrowia. Obecność personelu ochronnego może zniechęcać osadzonego do przekazywania lekarzowi jakichkolwiek informacji w tym zakresie, utrudniać zbudowanie atmosfery zaufania i mieć szkodliwy wpływ na ustalenia medyczne.

4/ Długiego czasu oczekiwania na konsultacje psychiatryczne. Średni czas oczekiwania na konsultację psychiatryczną wynosi kilka miesięcy. W jednej z wizytowanych jednostek ten czas wynosił około trzech miesięcy i w czasie prowadzonej wizytacji oczekiwało na nią 200 osadzonych. Zważywszy na rosnącą liczbę osadzonych borykających się z zaburzeniami psychicznymi, w tym korzystających z tego powodu z farmakoterapii i wymagających systematycznego monitorowania, jest to sytuacja alarmująca.

5/ Przeprowadzania badań medycznych w kajdankach. Analiza monitoringu w trakcie jednej z prowadzonych wizytacji wykazała, iż jeden z osadzonych miał przeprowadzane badanie lekarskie, pozostając w jego trakcie w kajdankach założonych na ręce. Podkreślenia wymaga fakt, iż podczas badania obecni byli także funkcjonariusze SW. Ponadto zdarzały się przypadki, kiedy osadzeni w trakcie hospitalizacji w wolnościowej służbie zdrowia przykuwani byli kajdankami do łóżek szpitalnych. Jeden z rozmówców opisywał, że ze względów zdrowotnych został przetransportowany do szpitala, gdzie całą noc spędził na łóżku, pozostając w kajdankach zespolonych. Dopiero nad ranem po zmianie służby zostały mu one zdjęte. Następnie został przypięty kajdankami jedną ręką do łóżka. Zgodnie ze stanowiskiem CPT tego typu praktyki są niedopuszczalne. Stosowanie kajdanek (w tym kajdanek na nogi) podczas badania lub konsultacji lekarskiej jest praktyką naruszającą godność więźnia, utrudniającą rozwój właściwej relacji lekarza z pacjentem i szkodliwą dla obiektywnych ustaleń medycznych.”



*"In all the penitentiary units visited, the representatives of the KMPT diagnosed a number of problems and irregularities related to the broad issue of medical care. These included the following areas:*

*1) Insufficient medical and nursing staffing. Most units face staff shortages and long waiting times for elective GP appointments. In addition, specialist doctors usually work on a part-time basis, which also results in long waiting times for medical advice. In the assessment of the National Mechanism, the number of employed doctors in prisons and detention centers and the length of their working hours is insufficient in relation to the number of inmates. A decrease in the number of nursing staff in penitentiary units has also been observed over the last few years. Despite repeated advertisements and interviews conducted with candidates for this position, there are no persons willing to take up the job. According to information obtained by the KMPT, the main problem is the uncompetitive, in relation to non-prison health care facilities, remuneration and difficult working conditions.*

*2) Lack of 24-hour medical care provided by nursing staff or paramedics In most of the penitentiary units visited, nurses and paramedics work from Monday to Friday during the working hours of the prison administration. At weekends and in the afternoons, a medical emergency team is called in case of emergencies. In the opinion of the KMPT, the lack of qualified medical staff on site constitutes a high-risk situation. This is because non-medical staff have to assess whether a call for an ambulance is necessary, which creates a risk of error and danger to the health of the detainees. In such a situation, having to wait for the arrival of an ambulance delays the moment when medical intervention can begin. Such a situation may furthermore lead to unnecessary suffering for the detainee when, for example, the officer mistakenly believes that the detainee is simulating a painful condition and does not need medication and/or medical intervention. The lack of medical staff also affects the effectiveness of documenting injuries that may have occurred outside of outpatient hours. It also hinders the exercise of proper supervision of detainees placed in an isolation cell. In addition, one of the manifestations of the shortage of nursing staff is, inter alia, that medicines in the evenings and on non-working days - when there are no nurses - are dispensed to inmates by security officers. This also applies to the distribution of psychotropic drugs and methadone substitution treatment. Admittedly, this is a solution in accordance with para. 9(7) of the Regulation of the Minister of Justice of 14 June 2012 on the provision of health services by medical entities for persons deprived of liberty, but dangerous for the health and life of the detainees.*

*The optimal solution would be to ensure a 24-hour presence of a nurse or paramedic in the unit. This is the standard indicated by the CPT in its report on the 2017 visit to Poland. The Committee recommended that a person capable of administering first aid, including training in administering cardiopulmonary resuscitation and the use of a defibrillator, should be present in penitentiary units at all times (including nights and weekends). Such a person should be a qualified nurse.*

*3/ To carry out the examination in the presence of officers. Health services may be provided in the presence of a non-medical officer at the request of the person providing the health service, if this is necessary to ensure their safety. Meanwhile, the presence of officers during examinations still remains the rule. This is not uncommon even in cases of very invasive examinations. One detainee reported to the KMPT representative that he had a colonoscopy performed in the presence of officers. His account indicated that there was not even a screen to provide him with any intimacy.*

*An independent medical examination is the minimum guarantee for the prevention of torture. For it to work properly, it is necessary to ensure the confidentiality of such an examination. For this is the only way in which a proper patient-doctor relationship can be built and an effective discussion can be initiated about the treatment, the injuries sustained, their causes and their condition. The presence of security personnel may discourage the detainee from providing the doctor with any information in this regard, hinder the building of an atmosphere of trust and have a detrimental effect on the medical findings.*

*4/ Long waiting times for psychiatric consultations. The average waiting time for a psychiatric consultation is several months. In one of the units visited, this time was about three months and there were 200 detainees waiting at the time of the visit. Given the increasing number of detainees struggling with mental disorders, including those receiving pharmacotherapy for this reason and requiring systematic monitoring, this is an alarming situation.*

*5/ Conducting medical examinations in handcuffs. The analysis of the monitoring during one of the conducted visits showed that one of the detainees had a medical examination conducted while remaining in handcuffs on his hands during the examination. It should be emphasised that Prison Service officers were also present during the examination. In addition, there were cases where detainees were handcuffed to hospital beds during their hospitalisation in the free health service. One interviewee described that, for health reasons, he was transported to hospital, where he spent the whole night on the bed, remaining in combination handcuffs. Only in the morning after a change of duty were they removed from him. He was then handcuffed to the bed with one hand. According to the CPT's position, this type of practice is unacceptable. The use of handcuffs (including leg shackles) during a medical examination or consultation is a practice that violates the dignity of the prisoner, hinders the development of a proper doctor-patient relationship and is detrimental to objective medical findings." (pp. 81-83)*

- 2) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2021](#), 28 July 2022

*„Świadczenia zdrowotne mogą być udzielane w obecności funkcjonariusza niewykonującego zawodu medycznego na wniosek osoby udzielającej świadczenia zdrowotnego, jeżeli jest to konieczne do zapewnienia jej bezpieczeństwa. Pomimo tego Krajowy Mechanizm Prewencji Tortur z niepokojem obserwuje, że zasadą pozostaje jednak obecność funkcjonariuszy w trakcie badań. KMPT przypomina, że wszystkie badania medyczne osadzonych (zarówno tuż po przyjęciu, jak i na późniejszym etapie) powinny być przeprowadzane poza zasięgiem słuchu funkcjonariuszy Służby Więziennej, a także poza zasięgiem wzroku, chyba że lekarz w danej sprawie zgłosił zastrzeżenie. Jest to kluczowe z punktu widzenia prewencji tortur, ponieważ tylko zagwarantowanie poufności może pozwolić osadzonym czuć się wystarczająco swobodnie, by zgłosić lekarzowi, że był niewłaściwie traktowany.”*

*“Health services may be provided in the presence of a non-medical officer at the request of the person providing the health service, if this is necessary to ensure their safety. Despite this, the National Torture Prevention Mechanism observes with concern that the presence of officers during examinations*

nevertheless remains the rule. The NPMT recalls that all medical examinations of detainees (both immediately after admission and at a later stage) should be conducted out of hearing range of Prison Service officers and out of sight, unless a doctor in the case has raised an objection. This is crucial from the point of view of torture prevention, as only by guaranteeing confidentiality can detainees feel comfortable enough to report to the doctor that they have been mistreated.” (p. 56)

The NPM observes cases where inmates' access to medical care is illusory. Detainees have the possibility to see a doctor every day, however, practice shows that the waiting time for a medical examination is often up to several weeks (in the case of specialist doctors, the waiting time is even longer). Of course, the waiting time to see a doctor and specialist outside penitentiary units can also be long, but persons deprived of liberty cannot shorten the waiting time by going elsewhere or privately, according to Article 115 of the Executive Penal Code. Moreover, detainees depend on the opinion of only one doctor as a rule and have a significantly limited possibility to verify it with another doctor. There is also repeated information from detainees that most of their ailments are treated only with popular painkillers.<sup>122</sup>

In the opinion of the NPM, the confidentiality of contact with the doctor also has an impact on the access of persons deprived of liberty to health care. Pursuant to Article 115(8) of the Executive Penal Code, health care services may be provided to a prisoner in the presence of a non-medical officer at the request of the person providing the health care if this is necessary to ensure his or her safety. The NPM observes cases in which, despite the absence of a signal from the doctor that he or she wishes to carry out the examination in the presence of a non-medical officer, the consultation takes place in the presence of the officer or with the door open. In such a case, a detainee who has been subjected to violence by Prison Service officers is very likely not to report this to the doctor. Moreover, the inmate may be ashamed to talk about his/her complaints in the presence of an officer. In the opinion of the NPM, an alarming situation is also the cases reported by detainees that, on many occasions, medical examinations are carried out in handcuffs.<sup>123</sup>

The NPM is also concerned about reports of incidents of ill-treatment of detainees allegedly perpetrated by medical personnel (e.g. the use of insulting terms or expressions with a clear sexual overtone towards female detainees<sup>124</sup>).<sup>125</sup>

The issue of prisoners' access to hospital care is further developed under Section 14.

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<sup>122</sup> Member 1 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>123</sup> Member 2 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>124</sup> Poland, National Preventive Mechanism, [Report of the National Torture Prevention Mechanism on the visit of Penitentiary Facility No. 1 in Grudziądz](#), 17 May 2024, p. 60.

<sup>125</sup> Member 2 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

## 9. Prevention of violence and ill-treatment

### a. Protection from violence by prison staff

In penitentiary units (prisons and remand centres), the officials should maintain order and discipline.<sup>126</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.

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>127</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>128</sup> In the event of violence (especially on the part of a Prison Service officer), 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>129</sup>

A member of the Prison Service who acted violently can be held liable in disciplinary proceedings for inhumane treatment of detainees.<sup>130</sup> Regardless of disciplinary liability, such person could also be subject to criminal responsibility for the crime of mistreatment of detainees.<sup>131</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. Protection from violence by other detainees

The only protection measure indicated in the Executive Penal Code is the placement of a detainee (in pre-trial or post-trial detention) under special protection in conditions of increased isolation.<sup>132</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:

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<sup>126</sup> Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 73(1).

<sup>127</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>128</sup> Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 108(2).

<sup>129</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 7.

<sup>130</sup> Poland, Act on Prison Guard (*Ustawa o Służbie Więziennej*), 9 April 2010, Article 230(3)(3).

<sup>131</sup> Poland, Criminal Code (*Kodeks karny*), 6 June 1997, Article 247(3).

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

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

The increased isolation might also be connected, within the detainee's consent, with providing the him/her 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 unit's director may apply all of them or only selected ones. In particular, the 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);
- 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>133</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.

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<sup>133</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 88d.

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>134</sup>

### c. NPM assessment

- 1) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2022](#), 29 November 2023

*„Nie każda osoba umieszczana w jednostce penitencjarnej poddawana jest badaniu lekarskiemu. Obligatoryjnie badani są tylko osadzeni przyjmowani „z wolności”, natomiast przetransportowani z innego zakładu karnego bądź aresztu śledczego – nie. Zazwyczaj procedura ogranicza się do wywiadu przeprowadzonego przez pielęgniarkę i ewentualnego skierowania do lekarza, ale brak jest obligatoryjnego badania lekarskiego wszystkich nowo przybyłych, połączonego z oględzinami ciała. Taka praktyka tworzy poważną lukę w systemie zapobiegania torturom i złemu traktowaniu. Niezależnie bowiem od badania medycznego przed transportem, brak badania po przybyciu do jednostki uniemożliwia wykrycie śladów przemocy, do której mogło dojść w czasie konwoju. Ponadto doświadczenie KMPT pokazuje, iż badanie przez lekarza ma nierzadko powierzchowny charakter i ogranicza się do zebrania wywiadu od pacjenta, bez przeprowadzenia oglądu ciała (badania fizycznego). Ograniczenie się przez personel medyczny do zebrania wywiadu od pacjenta bez oglądu ciała uniemożliwia wykrycie oznak przemocy i sprawia, że ta minimalna gwarancja prewencji tortur nie funkcjonuje.”*

*“Not every person placed in a penitentiary unit undergoes a medical examination. Only detainees admitted "from liberty" are compulsorily examined, while those transported from another prison or remand centre are not. Usually, the procedure is limited to an interview by a nurse and a possible referral to a doctor, but there is no compulsory medical examination of all new arrivals, combined with a visual*

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<sup>134</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).

*inspection of the body. This practice creates a serious gap in the system for the prevention of torture and ill-treatment. Indeed, regardless of the medical examination prior to transport, the lack of an examination upon arrival at the unit prevents the detection of traces of violence that may have occurred during the convoy. Moreover, the NPM's experience shows that the medical examination by a doctor is often superficial and limited to taking a history of the patient, without performing a body inspection (physical examination). The limitation by medical personnel to taking a history from the patient without viewing the body makes it impossible to detect signs of violence and renders this minimum guarantee of torture prevention inoperative.” (p. 70)*

- 2) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2021](#), 28 July 2022

*„Wciąż aktualny pozostaje również problem braku procedur określających sposób postępowania, gdy więzień zgłosi, że padł ofiarą tortur lub przemocy albo gdy zachodzi podejrzenie stosowania tortur lub przemocy wobec więźnia. Brak jasnego systemu działania prowadzi do naruszeń, które ujawniane są podczas kolejnych wizyt Krajowego Mechanizmu Prewencji Tortur w jednostkach penitencjarnych.”*

*“The lack of procedures defining how to proceed also remains an issue, when a prisoner reports that he or she has been subjected to torture or violence or when there is a suspicion of torture or violence against a prisoner. The lack of a clear system of action leads to violations that are revealed during subsequent visits of the National Torture Prevention Mechanism to penitentiary units.” (p. 51)*

*For the past 1.5 years or so, the NPM has observed a significant increase in reports by inmates of physical and psychological violence against them in various penitentiary units.<sup>135</sup> Even in cases where detainees report to the staff of the unit or to law enforcement authorities that violence is being used against them, they have little chance of proving their allegations. Signals received by the NPM indicate that incidents of violence are most often perpetrated in unmonitored areas (common rooms, storerooms, bathing vestibules, baths, the room of the warden, psychologist, ward duty rooms and even corridors). The CCTV recordings provide an opportunity to observe the state in which a detainee leaves an unmonitored room and his/her possible injuries (e.g. caused by a beating). However, the NPM draws attention to the fact that, in accordance with §3(6) of the Regulation of the Minister of Justice of 16 October 2009 on the type of equipment and technical means for transmitting, reproducing and recording images or sounds from monitoring in penal institutions, the capacity of the recording device carriers allows for the storage and playback of the recorded image or sound for 7 days, after which the recorded image or sound is automatically destroyed. In turn, according to Article 73a(6) of the Executive Penal Code, the recorded image or sound which does not contain information indicating that an offence has been committed or is not important for the security of the prison or the security of the convicted person, shall be immediately destroyed. The recording of an image or sound in a situation where it is important for the security of the prison or the security of the convicted person is subject to a decision by the director of the prison on the*

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<sup>135</sup> See further: NPM reports from monitoring visits in penitentiary units in [Barczewo](#), [Tarnów](#), [Potulice](#), [Łowicz](#), [Grudziądz](#), [Sztum](#). In the visit reports of the indicated penitentiary units, descriptions of the ill-treatment of detainees can be found in the chapter entitled "Treatment" (*Traktowanie*).

duration of its storage and the manner of its use [Article 73a(7) of the Executive Penal Code]. This problem is described in more detail in the NPM reports on the visit to Penal Facility in Łowicz<sup>136</sup> and Penal Facility No. 1 in Grudziądz<sup>137</sup>. It is also worth noting the general address of 14 November 2023 to the Director General of the Prison Service<sup>138</sup> on the procedure for securing monitoring at the request of an inmate.<sup>139</sup>

In the opinion of the NPM, one of the mechanisms for the prevention of torture is training, which is analysed each time by NPM representatives during visits. The NPM has reservations about the quantity and quality of the training provided. The vast majority of trainings are internal trainings, conducted within a given unit by its staff (e.g. by a psychologist or an educator). In the NPM's opinion, there is a lack of specialised training conducted by external entities emphasising the issues of: international human rights standards, discrimination (inter alia on the grounds of disability, age, sexual orientation and gender identity, origin), interpersonal communication, de-escalation of tension in conflict situations, ways of coping with stress, counteracting professional burnout, dealing with persons requiring special supervision and working with vulnerable groups (e.g. with elderly people, people with disabilities, people with incomplete mobility, people with mental disorders, somatically ill people or people from the LGBT+ community), as well as practical use of the Istanbul Protocol in daily work.<sup>140</sup>

The risk of inappropriate treatment of detainees may also result from the numerous staff shortages in the Prison Service – especially in the security department. Overworked, overburdened with additional tasks, frustrated and burned-out officers can move much more easily towards inappropriate behaviour towards detainees.<sup>141</sup>

A mechanism for filing complaints, both internally and to external entities, exists, however, the NPM observes that many people who are very likely to have experienced violence in a particular unit are afraid to report these violations anywhere. This is because it should be remembered that once a prisoner has reported any violation by an officer of the unit in which he or she is detained, he or she is still in that unit, and therefore has direct contact with the potential aggressor. This is because there is no procedure in place to separate the potential victim (e.g. by transfer to another penitentiary unit) from the officer who may have abused them. Detainees' concerns are also compounded by numerous reports that official correspondence they provide (e.g. to the Office of the Commissioner for Human Rights or to the public prosecution units) is read and then destroyed. Indeed, the NPM has received numerous signals indicating that complaints sent by detainees have not reached their addressees.<sup>142</sup>

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<sup>136</sup> Poland, National Preventive Mechanism, [Report of the National Torture Prevention Mechanism on the visit of Penitentiary Facility in Łowicz](#), 21 June 2023, pp. 13-14.

<sup>137</sup> Poland, National Preventive Mechanism, [Report of the National Torture Prevention Mechanism on the visit of Penitentiary Facility No. 1 in Grudziądz](#), 17 May 2024, pp. 36-37.

<sup>138</sup> Poland, Commissioner for Human Rights, [Wystąpienie do Dyrektora Generalnego Służby Więziennej w sprawie procedury zabezpieczenia monitoringu na wniosek osadzonego](#), 14 November 2023.

<sup>139</sup> Member 1 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>140</sup> Member 2 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>141</sup> Member 2 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>142</sup> Member 1 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.



*Another problem in the context of reporting and documenting incidents of violence against inmates in penitentiary units is the lack of an automatic procedure for medical staff to notify law enforcement authorities of observed injuries.*<sup>143</sup>

*In the context of the question of whether complaints are handled appropriately, the NPM is not in a position to comment on this issue, as it is not the body that handles inmate complaints. In the Office of the Commissioner for Human Rights, the team dealing with this issue is the Enforcement Team [Zespół Wykonywania Kar – ed.].*<sup>144</sup>

## 10. Contact with the outside world

### a. Visits

As stipulated in the Executive Penal Code, every person in post-trial detention shall be enabled to maintain links, in the first place, with his family and other relatives by means of visits, correspondence, telephone calls, parcels and remittances and, in justified cases, with the approval of the director of the prison, also by other means of communication.<sup>145</sup>

The extent and manner of the contacts referred to above, in particular supervision of visits, censorship of correspondence, control of conversations during visits, telephone conversations and conversations conducted by other means of communication, shall depend on the type and type of prison in which the convicted person is serving his sentence.

As regards visits, they last 60 minutes and can be arranged only once per day.<sup>146</sup> As a general rule, a maximum of 2 adults and an unlimited number of minors may participate in a visit. Prisoners with custody of children are entitled to additional visits with their children.

A visit with a non-family member or other close person may be granted to a prisoner with the permission of the director of the prison.

Visits take place under the supervision of a Prison Service officer, in a manner that allows direct contact between the convicted prisoner and the visitor, at a separate table. During the visit, the consumption of foodstuffs and beverages purchased by the visitors on the prison premises is allowed. If the prisoner or his/her visitor violates the established rules of the visit, the visit may be interrupted or terminated prematurely.

The director of the prison shall make known, by way of a notice, the detailed conditions and rules for visits in a place accessible to visitors.

The above rules do not apply to visits by a defence counsel or attorney who is a lawyer and a representative accepted to represent the inmate before the ECtHR, as well as by representatives of diplomatic and consular offices.

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<sup>143</sup> Member 1 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>144</sup> Member 2 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>145</sup> Executive Penal Code, Article 105(1).

<sup>146</sup> Ibid, Article 105a.

## b. Correspondence

The director of the prison shall take decisions regarding:

- 1) the detention of correspondence,
- 2) censoring correspondence in semi-open and open prisons,
- 3) controlling conversations during visits and telephone conversations and conversations conducted by other means of communication

- if this is required for reasons of prison security or public order. The director of the prison shall inform the prisoner of the retention of the correspondence and may authorise the transmission to them of an important message contained in the retained correspondence.

The person deprived of his or her liberty shall bear the costs of correspondence, including official correspondence. In particularly justified cases, a detainee who does not have money may receive postage stamps for correspondence from the prison administration.

A detainee sending official correspondence shall hand over with it a completed acknowledgement of receipt, which, after being signed by the receiver, shall be returned to them. The envelope shall be stamped with the name of the prison and the date of receipt shall be noted.

The convicted prisoner shall have the right to use the telephone at least once a week at his own expense or at the expense of the caller in the manner and at the times established in the internal order in force in the prison.<sup>147</sup> In justified cases, the director of the prison may grant permission to use a telephone at the prison's expense.

In particularly justified cases, where direct contact is impossible or particularly difficult or where it is due to an urgent life situation, the director of the prison may authorize the use of the telephone for contact with family and other relatives outside the time limits laid down in the prison's internal order.

In cases of danger to public order or to the security of the establishment, the director of the prison may, for a limited period of time, deprive the prisoner of the right to use the telephone.

## c. Visits with children

No national standards in this regard could be identified.

## d. NPM assessment

- 1) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2022](#), 29 November 2023

*„W tym kontekście zasadne wydaje się przytoczenie stanowiska Stowarzyszenia Zapobiegania Torturom (APT), zgodnie z którym tortury i inne okrutne, niehumanitarne lub poniżające traktowanie lub karanie, w prawie wszystkich przypadkach mają miejsce w tajemnicy. Dostęp osób pozbawionych wolności do*

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<sup>147</sup> Article 105b.

prawników, lekarzy oraz kontakt z przyjaciółmi lub członkami rodziny tworzy bardziej otwarte środowisko przetrzymywania, które pomaga zapobiegać torturom i złemu traktowaniu. Zapewnienie zatrzymanym możliwości utrzymywania kontaktu z rodziną poprzez wizyty, rozmowy telefoniczne i korespondencję jest podstawowym prawem osadzonego, które dodatkowo może zapewniać mu istotne wsparcie i pomagać w ponownej integracji po zwolnieniu.”

„In this context, it seems reasonable to quote the Association for the Prevention of Torture (APT) position that torture and other cruel, inhuman or degrading treatment or punishment, in almost all cases, takes place in secret. Access of detainees to lawyers, doctors and contact with friends or family members creates a more open detention environment that helps prevent torture and ill-treatment. Ensuring that detainees are able to maintain contact with their families through visits, phone calls and correspondence is a fundamental right of detainees, which can additionally provide them with vital support and help them reintegrate after release.” (p. 90)

- 2) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2021](#), 28 July 2022

No recommendations in this regard.

*According to the NPM, the access of detainees to contact with the outside world is insufficient. Currently, inmates have the possibility to use telephone twice a week for a period of 10 minutes (when incarcerated in a closed-type prison). This limit also pertains to telephone calls to all entities not listed under Article 8(3) of the Executive Penal Code (as a result, contacts with such institutions as e.g. banks, offices or courts are limited). In a situation where an inmate has an official matter to deal with, he or she automatically has to give up a phone call to a person close to him or her [i.e. in a situation of limited telephone capacity, priority is given to contacting institutions and relinquishing contact with relatives – ed.]. Such a state of affairs, in the NPM's assessment, may lead to a significant limitation in maintaining close family relations. It is true that prisoners also have the possibility to use Skype, but interviews with prisoners often show that not every close person (e.g. an elderly parent) is able to use this form of communication. Moreover, it is often the case that foreign nationals and inmates far from their place of residence are able to use this type of communication first. For this reason, this automatically reduces the chance or sometimes even prevents the rest of the detainees from using Skype.<sup>148</sup>*

*The NPM also draws attention to the problem of detainees being placed in penitentiary units located at a considerable distance from the place of residence of their relatives. This circumstance, combined with the difficult financial situation of the detainees' families, means that these detainees are in many cases not visited.<sup>149</sup>*

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<sup>148</sup> Member 2 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>149</sup> Member 2 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

*In the case of pre-trial detainees, the issue of maintaining close relations with loved ones is also sometimes difficult. The NPM's experience shows that it is sometimes the case that the disposing authority only allows telephone contact or visits with the family after the first three months of pre-trial detention have elapsed.*<sup>150</sup>

*Moreover, in accordance with Article 87a of the Executive Penal Code, in the case of inmates with permanent custody of children under 15 years of age, particular consideration shall be given to the need to initiate, maintain and strengthen their emotional bond with the children, to fulfil their maintenance obligations and to provide material assistance to the children, as well as to cooperate with the care and educational institutions where these children are staying. In the NPM's experience, the units visited do not even collect information on whether persons deprived of their liberty meet the criteria set out in the above provision.*<sup>151</sup>

*It should also be emphasised that the Article 143(1)(7a) of the Executive Penal Code (in force since 2022) provides for a disciplinary penalty of deprivation of the possibility to use visits and a self-cancelling telephone for up to 28 days. The NPM's doubts related to the application of this punishment – in particular with regard to female prisoners – were presented in the reports on the visit of Penal Facility in Herby<sup>152</sup> and Penal Facility No. 1 in Grudziądz<sup>153, 154</sup>.*

*In the context of the question concerning appropriate conditions for visits of detainees by their children, the NPM would like to point out that in the vast majority of penitentiary establishments there are children's play areas in a separate general space in the visiting room. These corners are usually equipped with toys, books, drawing utensils which inmates can use with their children during visits. However, the NPM's concerns are raised by the fact that the practice of how visits are carried out varies from one penitentiary unit to another. For example, there are some penitentiary units in which inmates are not allowed to hug their children, take them on their laps or have any physical contact with them (such restrictions are not related, for example, to the negative behaviour of the inmate or some individual reasons, but it is a general rule in the given unit). Such practices are not regulated by generally applicable law. Therefore, the NPM does not see a clear basis for introducing such restrictions.*<sup>155</sup>

*Detainees' access to contact with their children in the form of visits may be affected by the personal check of children. The child's need to undress in front of Prison Service officers can have a chilling effect and make the child reluctant to visit a parent. There have been cases where NPM interviewees, in an effort to protect their children from this type of activity, have chosen to discourage their children from*

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<sup>150</sup> Member 1 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>151</sup> Member 1 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>152</sup> Poland, National Preventive Mechanism, [Report of the National Torture Prevention Mechanism on the visit of Penitentiary Facility in Herby](#), 22 January 2024, p. 22.

<sup>153</sup> Poland, National Preventive Mechanism, [Report of the National Torture Prevention Mechanism on the visit of Penitentiary Facility No. 1 in Grudziądz](#), 17 May 2024, p. 65.

<sup>154</sup> Member 1 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>155</sup> Member 2 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

visits. This issue was presented more extensively in the general statement of 20 May 2024<sup>156</sup> addressed to the Ombudsman for Children [Rzecznik Praw Dziecka – ed.] on the rules for carrying out personal checks on children going to visit a parent serving a custodial sentence.<sup>157</sup>

## 11. Special measures for female detainees

### a. General conditions of detention for women and girls

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 penitentiary units. 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>158</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>159</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>160</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>161</sup>

### b. Separation from men

The sex of detainees is the most crucial factor for their classification.<sup>162</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>163</sup>

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>164</sup>

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<sup>156</sup> Poland, Commissioner for Human Rights, [Wystąpienie do Rzecznik Praw Dziecka w sprawie zasad przeprowadzania kontroli osobistej dzieci udających się na widzenie z rodzicem odbywającym karę pozbawienia wolności](#), 20 May 2024.

<sup>157</sup> Member 1 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>158</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 87(2).

<sup>159</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 143(2).

<sup>160</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 151(1).

<sup>161</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 153(2).

<sup>162</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 82(2)(1).

<sup>163</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 87(1).

<sup>164</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).

Separation of females from male detainees applies also with regard to police custody.<sup>165</sup>

### c. Hygiene

With regard to women who are either in pre-trial<sup>166</sup> or post-trial detention<sup>167</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>168</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>169</sup>

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

### d. Healthcare

According to the Executive Penal Code, a pregnant or breast-feeding detainee should be provided with specialist care.<sup>170</sup>

Moreover, the regulations of the Minister of Justice<sup>171</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>172</sup>

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>173</sup>

### e. Pregnancy and women with babies or young children

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

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<sup>165</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>166</sup> Poland, Minister of Justice, *Rozporządzenie w sprawie regulaminu organizacyjno-porządkowego wykonywania tymczasowego aresztowania*, 22 December 2016, § 36(4).

<sup>167</sup> Poland, Minister of Justice, *Rozporządzenie w sprawie regulaminu organizacyjno-porządkowego wykonywania kary pozbawienia wolności*, 21 December 2016, § 31(4).

<sup>168</sup> Poland, Minister of Justice, *Rozporządzenie w sprawie warunków bytowych osób osadzonych w zakładach karnych i aresztach śledczych*, 19 December 2016, Appendix 4.

<sup>169</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>170</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 87(3).

<sup>171</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>172</sup> Ibid.

<sup>173</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).

prisons.<sup>174</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>175</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>176</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>177</sup> Prison service officials at such facilities do not wear uniforms but casual clothes.<sup>178</sup> The functioning of facilities for mothers and children is supervised by educational-upbringing teams, whose members are appointed by the director.<sup>179</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>180</sup> The costs of any other commodities should be born by the detainees.

#### f. NPM assessment

- 1) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2022](#), 29 November 2023

No recommendations in this regard.

- 2) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2021](#), 28 July 2022

No recommendations in this regard.

*The only special measure for female prisoners, in the NPM's opinion, is the possibility for a mother to serve a custodial sentence together with her child until the child is three years old [as stipulated in Article 87(4) of the Executive Penal Code]; the NPM positively evaluates such a solution. However, in accordance with Appendix No. 1 to the Regulation of the Minister of Justice of 17 September 2003 on the procedure for admitting children of mothers deprived of their liberty to mother and child homes at designated penal*

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<sup>174</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 87(4).

<sup>175</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>176</sup> *Ibid.*, § 3.

<sup>177</sup> *Ibid.*, § 10.

<sup>178</sup> *Ibid.*, § 11.

<sup>179</sup> *Ibid.*, § 12.

<sup>180</sup> *Ibid.*, Annex 2.

*institutions and detailed rules for the organisation and operation of these institutions,<sup>181</sup> only two penal institutions in Poland have a mother and child home (Penal Facility in Krzywaniac and Penal Facility No. 1 in Grudziądz). This state of affairs not infrequently leads to the placement of an inmate and her child hundreds of kilometres away from her place of residence, which is directly related to the problem of the inmates' contact with the outside world described under Section 10.<sup>182</sup>*

## 12. Special measures for foreign nationals

### a. General measures for foreign nationals

Single provisions concerning foreigners are scattered throughout the Executive Penal Code. However, there are hardly any special measures related to their pre-trial or post-trial detention envisaged so, in principle, their detention does not differ from the ordinary mode.

As regards the contacts with the outside world, the foreigner deprived of their liberty may correspond with the competent consular office or, in the absence of such an office, with the competent diplomatic representation. He or she may benefit from visits of the consular officer or of a staff member of the diplomatic representation performing consular functions.<sup>183</sup>

### b. Interpretation and translation

In the absence of separate regulations in the Executive Penal Code, the provisions of the Code of Criminal Procedure (*Kodeks postępowania karnego*) apply *mutatis mutandis* in this respect.

The person has the right to be assisted by an interpreter free of charge if he or she has insufficient command of the Polish language.<sup>184</sup>

An interpreter shall be summoned for any procedural activity with the participation of such person. At the request of the person or his/her defence counsel, an interpreter shall also be summoned for the purpose of communication between the inmate and his/her defence counsel in connection with the procedural activity in which the foreigner deprived of liberty is entitled (but not obliged) to participate.

Moreover, a foreigner shall be served with a translation of every decision subject to appeal or terminating the proceedings; with the consent of the accused person, the announcement of the translated decision terminating the proceedings may be postponed if it is not subject to appeal.

### c. NPM assessment

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<sup>181</sup> Poland, Minister of Justice, Regulation on the mode of admission of children of mothers deprived of liberty to mother and child homes at designated prisons and the detailed principles of organisation and operation of these facilities ([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, Appendix 1.

<sup>182</sup> Member 2 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>183</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 105(2).

<sup>184</sup> Poland, Code of Criminal Procedure (*Kodeks postępowania karnego*), 6 June 1997, Article 72(1).



- 1) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2022](#), 29 November 2023

*„W przypadku postępowania z osadzonymi będącymi cudzoziemcami KMPT każdorazowo zaleca, aby postępować według następujących zasad: odnotowywać w dokumentacji więźnia informację o barierze językowej; zaopatrzyć jednostkę w informatory dla cudzoziemców i za każdym razem wydawać je osadzonym, w odpowiednim dla nich języku; informować więźnia o jego prawach i obowiązkach, w języku dla niego zrozumiałym oraz odnotowywać w dokumentacji: w jakim języku zostały wykonane obowiązki informacyjne i kto brał udział w czynnościach z udziałem więźnia (np. tłumacz); dokonywać tłumaczenia wszelkich istotnych dla więźnia dokumentów (np. porządku wewnętrznego, oświadczeń, decyzji) na język dla niego zrozumiały, zwłaszcza gdy dokumenty te rodzą dla więźnia określone skutki i musi on poświadczyć pisemnie fakt zapoznania się z nimi; korzystać z pomocy tłumacza, zwłaszcza w trakcie rozmowy wstępnej i świadczeń medycznych (oraz w trakcie pobytów w szpitalu).”*

*“When dealing with foreign national inmates, the NPM recommends that the following principles are followed in each case: note in the prisoner's file the information on the language barrier; provide the unit with foreigners' guides and issue them to the prisoner each time, in the language appropriate for him/her; inform the prisoner of his/her rights and obligations, in a language he/she understands, and note in the file: in which language the information duties were performed and who participated in the activities with the prisoner's participation (e.g. the interpreter); translate all relevant documents (e.g. rules of procedure, declarations, decisions) into a language that the prisoner understands, particularly where such documents have implications for the prisoner and the prisoner must certify in writing that he is familiar with them; have the assistance of an interpreter, particularly during the initial interview and medical treatment (and during hospital stays).” (p. 84)*

- 2) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2021](#), 28 July 2022

No recommendations in this regard available.

*The NPM encounters numerous cases in which foreign detainees who are not fluent in Polish do not understand their situation, including their rights. The internal orders of the visited penitentiary units are not translated into the foreign languages spoken by the foreigners placed there. In addition, the access of this group of detainees to talks with an educator or psychologist is sometimes significantly hampered by the impossibility of holding a free conversation in a language they understand. The most common form of solution to this problem by the Prison Service is the use of [electronic – ed.] translators, but the NPM's experience shows that the use of such devices is far from ideal (NPM representatives also sometimes use translators in individual conversations, and therefore know what limitations this tool has). The NPM is of the opinion that an interpreter should be present in situations important for a foreign detainee (e.g. during an introductory interview, medical examination, penitentiary commission or in other situations and when making decisions resulting in certain consequences for the detainee) – however, in the vast majority of cases this does not happen. Moreover, the practice shows that it is often the co-prisoners' responsibility to familiarise the foreigners with the general rules of the unit. Such a*

*situation may lead to the emergence of a relationship of dependence between the detained foreigner and his/her "teacher". It should also be borne in mind that not every co-inmate may have good intentions and may intentionally mislead the foreigner or even use him/her to pursue their own interests.*<sup>185</sup>

*In the opinion of the NPM, foreigners constitute a risk group also due to the fact that they are exposed to violence from fellow inmates (e.g. xenophobic comments, name-calling, insults). In their conversations with foreign detainees, NPM representatives receive signals that they feel threatened by fellow detainees belonging to the prison subculture. What is particularly worrying is that such comments can also come from the Prison Service officers themselves.*<sup>186</sup>

### 13. Special measures relating to detention of children and young adults/juvenile detention regime

#### a. Age groups

According to the Penal Code (*Kodeks karny*), criminal liability is, as a general rule, incurred by a person who commits an offence after the age of 17.<sup>187</sup>

A juvenile who commits a specific serious criminal act (e.g. murder or rape) after the age of 15 may be held criminally responsible if the circumstances of the case and the degree of development of the offender, his or her personal characteristics and conditions support this and, in particular, if previous educational or correctional measures have proved ineffective.<sup>188</sup> However, the sentence imposed on the case may not exceed two-thirds of the upper limit of the statutory threat provided for the offence attributed to the perpetrator, unless the offence is punishable by life imprisonment. The court may also apply extraordinary leniency.

In addition, a juvenile who, after the age of 14 and before the age of 15, has committed a murder of the qualified type (inter alia, with special cruelty or from a motivation deserving special condemnation) may also be liable under the principles set out in the Criminal Code if the circumstances of the case and the degree of development of the perpetrator, his or her personal characteristics and conditions support this and there is a reasonable suspicion that the application of educational or corrective measures is not capable of ensuring the juvenile's rehabilitation.<sup>189</sup> The court may, however, apply extraordinary leniency.

With regard to an offender who has committed an offence after the age of 17 but before the age of 18, the court shall apply, instead of punishment, the educational, therapeutic or correctional measures provided for juveniles, if the circumstances of the case and the degree of development of the offender, his/her characteristics and personal conditions support this.

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<sup>185</sup> Member 1 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>186</sup> Member 2 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>187</sup> Poland, Penal Code (*Kodeks karny*), Article 10(1).

<sup>188</sup> Ibid, Article 10(2).

<sup>189</sup> Ibid, Article 10(2a).

#### b. General measures for detained children and young adults

As a rule, prisoners under 21 years of age serve their sentence in a juvenile prison (*zakład karny dla młodocianych*).<sup>190</sup> Persons aged 14 and over convicted of certain aggravated offences (see above) may also serve their sentence in a prison for first-time offenders if there are educational and rehabilitation reasons for doing so.<sup>191</sup>

Prisoners under 21 years of age enjoy certain rights, e.g. they mandatorily serve their sentence in programme impact system (*system programowego oddziaływania*),<sup>192</sup> have the right to an additional monthly visit (in closed and semi-open penitentiary units),<sup>193</sup> as well as priority for inclusion in post-primary school<sup>194</sup> and vocational courses.

#### c. Separation from adults

Juvenile offenders are held in penitentiary units (prisons and remand centres) designed for young prisoners (i.e. those who are younger than 21 years old).<sup>195</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>196</sup>

#### d. NPM assessment

- 1) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2022](#), 29 November 2023

No recommendations in this regard.

- 2) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2021](#), 28 July 2022

No recommendations in this regard.

*The NPM relatively rarely comes into contact with this group of detainees during its visits. In the case of juvenile pre-trial detainees before they reach the age of 18, there is a risk that their education will be interrupted. Among the existing lifelong learning centres [centra kształcenia ustawicznego – ed.] in the*

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<sup>190</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 84(1).

<sup>191</sup> Ibid, Article 85(2).

<sup>192</sup> Ibid, Article 95(1).

<sup>193</sup> Ibid, Article 91a.

<sup>194</sup> Ibid, Article 130.

<sup>195</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 84(1).

<sup>196</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).

penitentiary units, 10 out of 18 are for juvenile detainees, while there is no lifelong learning centre for pre-trial detainees (including juveniles).<sup>197</sup>

#### 14. Special measures to protect detainees with disabilities or serious medical conditions

##### a. Care in detention

No national standards in this regard could be identified yet. We will continue to look for examples.

##### b. Continuity of care

No national standards in this regard could be identified yet. We will continue to look for examples.

##### c. Reasonable accommodation and accessibility

No national standards in this regard could be identified yet. We will continue to look for examples.

##### d. NPM assessment

- 1) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2022](#), 29 November 2023

*„W 2022 r. KMPT wizytował jednostkę, w której szpitalu funkcjonuje jedyny w skali kraju więzienny oddział chirurgii ogólnej. Z informacji przekazanych w czasie wizytacji wynikało, iż czas oczekiwania na przyjęcie do oddziału wynosił ok. 5 miesięcy. Przedstawiciele KMPT poinformowani zostali, że pomimo opracowania listy zabiegów operacyjnych możliwych do przeprowadzenia w warunkach oddziału chirurgii ogólnej, zdarzają się przypadki przywożenia do Szpitala AŚ w Bydgoszczy z innych jednostek, czasem bardzo odległych, osadzonych w stanie zdrowia średnio ciężkim i ciężkim, bez wcześniejszego uzgodnienia. Osoby te wymagają często pilnego leczenia w pozawięziennych placówkach ochrony zdrowia i wówczas kierowane są do bydgoskich szpitali. (...) wziąwszy pod uwagę przede wszystkim dobro pacjentów i konieczność zapewnienia im adekwatnej opieki medycznej w możliwie najkrótszym czasie, w ocenie KMPT leczenie osadzonych w stanach nagłych powinno być realizowane w placówkach wolnościowych, zlokalizowanych najbliższej jednostki penitencjarnej, w której są osadzeni.”*

*“In 2022 the NPM visited a unit where the prison hospital has the only general surgery unit in the country. The information provided during the visit indicated that the waiting time for admission to the unit was approximately five months. The representatives of the KMPT were informed that, despite the development of a list of surgical procedures possible to be carried out in the conditions of the general surgery ward, there are cases of inmates in moderately severe and severe health conditions being brought to the Hospital of the Remand Centre in Bydgoszcz from other units, sometimes very far away, without prior agreement. These persons often require urgent treatment in non-prison healthcare facilities and are then referred to Bydgoszcz hospitals. (...) taking into account, first and foremost, the good of the patients and the necessity to provide them with adequate medical care in the shortest*

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<sup>197</sup> Member 1 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

possible time, in the NPM's opinion, the treatment of inmates in emergency conditions should be carried out in liberty facilities located closest to the penitentiary unit in which they are incarcerated." (p. 76)

- 2) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2021](#), 28 July 2022

*"Mając na uwadze, że w jednostkach coraz częściej przebywają osoby niesamodzielne z powodu niepełnosprawności, wieku lub choroby, wymagające pomocy ze strony innych osadzonych, Krajowy Mechanizm Prewencji Tortur rekomenduje dla chętnych więźniów organizowanie kursów opiekuna osób starszych i z niepełnosprawnościami. W związku ze zmianami demograficznymi w społeczeństwie przybywa osób w podeszłym wieku, cierpiących na przewlekłe choroby, które wymagają opieki i pomocy w codziennych czynnościach. Zmiany te widoczne są również w jednostkach penitencjarnych, w których coraz częściej spotyka się osoby w wieku senioralnym lub z niepełnosprawnościami fizycznymi czy psychicznymi. Brakuje natomiast specjalistów, którzy byliby w stanie profesjonalnie nieść pomoc takim osobom. Kursy i szkolenia w tym zakresie zapewniają kwalifikacje i uprawnienia, które będą przydatne również po opuszczeniu izolacji więziennej. Duże zapotrzebowanie na rynku pracy w wyżej wymienionym obszarze może ułatwić aktywizację zawodową i readaptację społeczną poprzez znalezienie pracy po opuszczeniu zakładu karnego."*

*"Bearing in mind that there is an increasing number of persons in units who are dependent due to disability, age or illness and who require assistance from other inmates, the National Torture Prevention Mechanism recommends the organisation of courses for caregivers of elderly and disabled persons for willing inmates. Due to demographic changes in society, there is an increase in the number of elderly people with chronic illnesses who require care and assistance in daily activities. These changes are also evident in penitentiary units, where it is increasingly common to see people of senior age or with physical or mental disabilities. However, there is a shortage of specialists able to provide professional assistance to such people. Courses and training in this area provide qualifications and entitlements that will also be useful after leaving prison isolation. The high demand on the labour market in the above-mentioned area can facilitate vocational activation and social readaptation by finding a job after leaving prison."* (p. 60)

*As noted by the NPM, whereas there are entire penitentiary units in Poland designed particularly for persons with disabilities and cells designated for persons with disabilities, the experience of the NPM shows that very often there are architectural barriers within the units. For example, inmates in wheelchairs or on crutches have to climb the stairs or high thresholds to get to the infirmary, visiting room, library, chapel or warehouse. During the visits, the NPM also observed situations where the door to the entrance of the walking field was too narrow for a wheelchair to pass through. Blind, visually impaired or deaf persons may also face significant difficulties. In this area, too, the majority of penitentiary units do not meet adequate requirements for these persons to be able to fully enjoy all the rights and privileges as healthy persons in isolation. According to the NPM, many of the problems raised*

in the 2019 thematic report on the treatment of prisoners with sensory disabilities<sup>198</sup> still remain relevant.<sup>199</sup>

In recent years, the NPM has also observed a sudden increase in the number of elderly, dependent and chronically somatically ill detainees. There are more and more people who even require round-the-clock care. Currently, the only hospital in Poland dedicated to chronically somatically ill inmates is located in the Penitentiary Institution in Czarne and, according to a declaration obtained by the NPM, it does not admit women. Other penitentiary units do not have qualified staff or specialised equipment to care for such inmates. In practice, there is a situation where the responsibility for caring for this group of inmates falls on fellow inmates. It also happens that inmates do not have a course in elderly and chronically ill care. This problem is particularly acute in the case of temporary detainees. This is because, according to information obtained by the NPM, no such courses are organised for this group of detainees in the visited units. Although there are situations where detainees volunteer to care for their colleagues, such a situation creates the risk of total dependence between the carer and the person taken care of. It also raises the risk of mistreatment by such a care-giver, and many times the persons being cared for are in such a state that they would not be able to report any abuse by their carer. This problem has been described more extensively as a systemic problem, e.g. in the NPM report on the visit in prison in Sztum<sup>200</sup> and in Grudziądz<sup>201</sup>. It should also be emphasised that in extreme cases the waiting time for placement in hospital in ZK Czarne can be as long as 18 months.<sup>202</sup>

In the context of mental health conditions, the NPM observes a progressive inefficiency of the penitentiary system when isolating people with mental disorders. This problem is also highlighted by the Prison Service officers themselves. Many times these persons should be subjected to specialised psychiatric treatment, which is not possible in penitentiary isolation (apart from the use of psychotropic drugs). The situation is not improved by the fact that access to a psychiatrist is difficult. In practice, it is rare for penitentiary units to employ even one such specialist on a full-time basis.<sup>203</sup>

## 15. Specific measures to protect detainees with special needs or other vulnerabilities

### a. Protection of LGBTI detainees

No special measures in this regard could be identified.

### b. Protection of trans detainees

No special measures in this regard could be identified.

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<sup>198</sup> Poland, Commissioner for Human Rights, [Monitoring traktowania więźniów z niepełnosprawnością fizyczną i sensoryczną. Raport z działalności Krajowego Mechanizmu Prewencji Tortur](#), 12 September 2019.

<sup>199</sup> Member 2 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>200</sup> Poland, National Preventive Mechanism, [Report of the National Torture Prevention Mechanism on the visit of Penitentiary Facility in Sztum](#), 19 December 2023, pp. 9-15.

<sup>201</sup> Poland, National Preventive Mechanism, [Report of the National Torture Prevention Mechanism on the visit of Penitentiary Facility No. 1 in Grudziądz](#), 17 May 2024, pp. 25-29.

<sup>202</sup> Member 1 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>203</sup> Ibid.

### c. Protection of other vulnerable detainees

No special measures in this regard could be identified.

### d. NPM assessment

- 1) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2022](#), 29 November 2023

*“W związku z brakiem przygotowania Służby Więziennej na potrzeby osób LGBT+ znajdujących się w polskich jednostkach penitencjarnych oraz potrzebą wprowadzenia systemowych rozwiązań w zakresie postępowania z osobami LGBT+, poniżej przedstawiono obszary, które w ocenie KMPT wymagają wprowadzenia zmian w oparciu o standardy międzynarodowe:*

*- Zawieranie w ewidencji osadzonych informacji o tożsamości płciowej – zgodnie ze standardami minimalnymi Narodów Zjednoczonych dotyczącymi traktowania więźniów (tzw. Regułami Mandeli) informacje zawarte w systemie ewidencji więźniów w odniesieniu do każdego nowo przyjętego więźnia powinny zawierać m.in. dokładne informacje umożliwiające ustalenie jego tożsamości, z poszanowaniem jego subiektywnie postrzeganej płci (reguła 7). Rzetelne rozpoznanie osadzonych pozwala na ukierunkowanie indywidualnych i adekwatnych oddziaływań, w szczególności wobec tzw. grup wrażliwych, do których zaliczają się więźniowie LGBT+.*

*- Warunki zakwaterowania i reżim – odseparowanie od innych osadzonych ze względu na zapewnienie bezpieczeństwa często oznacza odbywanie kary w surowszym reżimie. Może to przejawiać się w odmowie dostępu do usług, udogodnień oferowanych innym osadzonym. W praktyce oznacza to, że osadzeni LGBT+ mogą nie mieć możliwości odbycia szkolenia zawodowego, udziału w warsztatach, kontynuowania nauki lub zajęć sportowych, a nawet wyjścia na spacer. Mogą być również wykluczeni z zajęć grup terapeutycznych i programów odwykowych. Taka dyskryminacja prowadzi do pozbawienia znaczących kontaktów między ludzkich i większej izolacji. Decyzje o umieszczeniu osadzonych w takich warunkach powinny być, w miarę możliwości, uzgadnianie z osadzonym oraz nie powinny być nieodwołalne i długoterminowe, a osadzeni LGBT+ powinni mieć możliwość zaskarżenia takiej decyzji. Reguły Mandeli zakazują stosowania praktyk, takich jak bezterminowe odosobnienie oraz prze dłużone odosobnienie (reguła 43.1), które mogą wywołać szkodliwe skutki psychologiczne. Środki ochrony nie powinny obejmować nałożenia bardziej restrykcyjnych warunków osadzenia osób LGBT+ niż w przypadku innych osadzonych.*

*- Kontrole osobiste – standardy międzynarodowe stanowią, że przeszukania powinny być przez prowadzone przez personel tej samej płci co osoba osadzona. Sytuacja osób interplciowych i transpłciowych jest pod tym względem szczególnie delikatna, zwłaszcza jeśli ich płeć nie została uznana przez władze więzienne lub jeśli znajdują się w okresie przejściowym i korekty płci. Istnieje ryzyko, że osadzeni nie zostaną rozpoznani zgodnie z ich tożsamością płciową. W takich przypadkach transpłciowe kobiety mogą być przeszukiwane przez personel męski. To samo ryzyko dotyczy transpłciowych mężczyzn. Ponadto przeszukania ciała mogą być wykorzystywane do upokarzania osadzonych transpłciowych. Aby ograniczyć i zapobiec takim zagrożeniom, osoby transpłciowe powinny mieć możliwość, w indywidualnych przypadkach, wyboru płci personelu więziennego prowadzącego przeszukanie. W miarę możliwości władze powinny najpierw stosować alternatywne środki, takie jak*

wykrywacze metali, skanery ciała. Ponadto nigdy nie należy przeprowadzać przeszukań w celu określenia płci na podstawie cech anatomicznych. Personel więzienny powinien być przeszkolony w zakresie przeprowadzania przeszukań, zarówno pod względem praktycznych metod, jak i niedyskryminacji, ze szczególnym naciskiem na przeszukania przeprowadzane wobec osadzonych LGBT+.

- Leczenie i terapia – więźniowie transpłciowi mają szczególne potrzeby w zakresie opieki zdrowotnej, które często są zaniebywane przez władze więzienne. Ważne jest już pierwsze badanie przy przyjęciu do zakładu, w którym należy zidentyfikować i określić potrzeby osób transpłciowych. Jak stwierdził Podkomitet ONZ ds. Prewencji Tortur, „uzyskanie precyzyjnych indywidualnych informacji na temat tożsamości płciowej ma kluczowe znaczenie dla określenia właściwego leczenia, w tym m.in. terapii hormonalnej i innego leczenia związanego z korektą płci. Brak mechanizmów pozyskiwania takich informacji pociąga za sobą konsekwencje zdrowotne”. Ważne jest, aby nie przerywać terapii hormonalnej (np. po przyjęciu do zakładu lub zmianie zakładu). Osoby transpłciowe powinny być pod stałym nadzorem odpowiednio przeszkolonego personelu medycznego, który będzie potrafił zająć się potencjalnymi medycznymi skutkami ubocznymi terapii hormonalnej. Więźniowie, którzy przeszli chirurgiczną korektę płci, również powinni mieć dostęp do odpowiedniej opieki. Przerwanie leczenia i terapii ma często druzgocące konsekwencje. Osoby, którym odmówiono leczenia, mogą uciekać się do samookaleczenia lub stosować leki poza kontrolą lekarską. Wsparcie i leczenie zapewnione osadzonym powinny odzwierciedlać to, co byłoby dla nich dostępne poza instytucją. Więźniowie, którzy chcą rozpocząć proces tranzycji podczas pobytu w zakładzie, nie powinni być zniechęceni i powstrzymywani przez służbę więzienną. Specjalistyczna opieka nad osobami transpłciowymi powinna obejmować także psychologiczne wsparcie i poradnictwo w zakresie zdrowia psychicznego. Zapewnienie odpowiedniego dostępu do opieki zdrowotnej oraz poradnictwa właściwych w stosunku do potrzeb osób pozbawionych wolności, mając na względzie szczególne potrzeby danej osoby z uwagi na jej orientację seksualną lub tożsamość płciową, w tym związane ze zdrowiem reprodukcyjnym, dostępem do informacji oraz leczenia HIV/AIDS oraz dostępem do terapii hormonalnej lub innej, jak i w razie potrzeby, do terapii związanej z korektą płci, jest podstawowym prawem, nie zaś formą specjalnego, uprzywilejowanego traktowania osób transpłciowych w więzieniach.

- Używanie zaimków – w kontakcie z osobami transpłciowymi powinno uznawać się deklarowaną tożsamość płciową rozmówców i używać ich preferowanego imienia i zaimków rodzajowych wybranych przez daną osobę, zgodnych z jej samoidentyfikacją.

- Wizerunek – osadzeni nie powinni być karani i dyskryminowani z powodu manifestowania swojej orientacji seksualnej lub wyrażania swojej tożsamości płciowej, a także z powodu okazywania uczuć wobec osoby tej samej płci. Zezwalanie osobom transpłciowym na noszenie ubrania zgodnego z płcią przeżywaną oraz posiadanie przedmiotów określających ich płeć (odzież, akcesoria, kosmetyki) umożliwi im życie zgodne z płcią, z którą się identyfikują. Dostęp do takich przedmiotów nie powinien być zakazywany lub uzależniony od zaświadczenia lekarskiego.

- Szkolenia personelu – zgodnie z zasadami zawartymi w dokumencie Zasady Jogyakarta należy wdrażać programy, szkolenia dla policji, personelu więziennego i wszystkich innych funkcjonariuszy sektora publicznego i prywatnego, dotyczące podnoszenia ich świadomości, a także międzynarodowych standardów oraz zasad równości i niedyskryminacji, w tym w odniesieniu do orientacji seksualnej i tożsamości płciowej. W przygotowanie szkoleń warto zaangażować organizacje pozarządowe posiadające specjalistyczną wiedzę w tych kwestiach. Personel powinien być przeszkolony w zakresie



*konkretnych i praktycznych zagadnień, takich jak: przeprowadzanie kontroli osobistych, klasyfikacji osadzonych i ich rozmieszczenie w zakładzie, identyfikowanie konkretnych form przemocy, zwłaszcza ze strony współwięźniów. Szkoleniem powinien zostać także objęty personel medyczny. Takie szkolenia pozwolą uniknąć dyskryminacyjnych postaw, założeń opartych na stereotypach i błędnych przekonaniach o potrzebach osób transpłciowych.”*

*“In view of the lack of preparation of the Prison Service for the needs of LGBT+ persons in Polish penitentiary units and the need to introduce systemic solutions for the treatment of LGBT+ persons, the following are the areas that, in the opinion of the KMPT, require changes based on international standards:*

*- Including information on gender identity in the prisoners' records - according to the United Nations Minimum Standards for the Treatment of Prisoners (the so-called Mandela Rules), the information contained in the prisoners' records system for each newly admitted prisoner should include, inter alia, accurate information to establish his/her identity, respecting his/her subjectively perceived gender (Rule 7). Reliable identification of detainees allows individual and appropriate interventions to be targeted, in particular towards so-called vulnerable groups, which include LGBT+ detainees.*

*- Accommodation conditions and regime - separation from other detainees for security reasons often means serving a sentence under a stricter regime. This can manifest itself in denial of access to services, facilities offered to other detainees. In practice, this means that LGBT+ detainees may not be able to receive vocational training, attend workshops, continue their education or sports activities, or even go for a walk. They may also be excluded from therapeutic groups and rehab programmes. Such discrimination leads to the deprivation of meaningful human contact and greater isolation. Decisions to place detainees in such conditions should, where possible, be agreed with the detainee and should not be irrevocable and long-term, and LGBT+ detainees should be able to challenge such a decision. The Mandela Rules prohibit practices, such as indefinite solitary confinement and prolonged solitary confinement (Rule 43.1), which may have harmful psychological effects. Protection measures should not include the imposition of more restrictive conditions of confinement for LGBT+ persons than for other detainees.*

*- Personal checks - international standards state that searches should be conducted by staff of the same sex as the detainee. The situation of intersex and transgender detainees is particularly sensitive in this regard, especially if their gender has not been recognised by the prison authorities or if they are in transition and gender adjustment. There is a risk that prisoners will not be recognised according to their gender identity. In such cases, transgender women may be searched by male staff. The same risk applies to transgender men. Furthermore, body searches may be used to humiliate transgender detainees. In order to reduce and prevent such risks, transgender prisoners should be able, on a case-by-case basis, to choose the gender of the prison staff conducting the search. Where possible, the authorities should first use alternative measures such as metal detectors, body scanners. Furthermore, searches should never be conducted to determine gender on the basis of anatomical features. Prison staff should be trained to carry out searches, both in terms of practical methods and non-discrimination, with particular emphasis on searches carried out on LGBT+ prisoners.*

*- Treatment and therapy - Transgender prisoners have special health care needs that are often neglected by prison authorities. The very first examination upon admission is important, where the needs of transgender people should be identified and determined. As stated by the UN Sub-Committee on Prevention of Torture, "obtaining accurate individual information on gender identity is crucial to determine appropriate treatment, including but not limited to hormone therapy and other gender correction treatment. The lack of mechanisms to obtain such information has health consequences." It is important that hormone therapy is not interrupted (e.g. after admission or change of facility). Transgender prisoners should be under the constant supervision of appropriately trained medical staff who can address potential medical side effects of hormone therapy. Prisoners who have undergone surgical gender correction should also have access to appropriate care. Interruption of treatment and therapy often has devastating consequences. Those who are denied treatment may resort to self-harm or use drugs outside medical control. The support and treatment provided to prisoners should reflect what would be available to them outside the institution. Prisoners who wish to begin the transition process while in prison should not be discouraged or held back by the prison service. Specialist care for transgender prisoners should also include psychological support and mental health counselling. Ensuring adequate access to health care and counselling appropriate to the needs of persons deprived of their liberty, taking into account the particular needs of the person because of his or her sexual orientation or gender identity, including those related to reproductive health, access to information and treatment for HIV/AIDS and access to hormonal or other therapy and, if necessary, to gender correction therapy, is a fundamental right and not a form of special, privileged treatment for transgender persons in prison.*

*- Use of pronouns - when interacting with transgender prisoners, the declared gender identity of interlocutors should be recognised and their preferred name and gendered pronouns chosen by the person, consistent with their self-identification, should be used.*

*- Image - inmates should not be penalised or discriminated against for displaying their sexual orientation or expressing their gender identity, or for showing affection towards a person of the same sex. Allowing transgender people to wear clothing consistent with the gender they experience and to own items that identify their gender (clothing, accessories, cosmetics) enables them to live in accordance with the gender with which they identify. Access to such items should not be prohibited or subject to medical certification.*

*- Staff training - in line with the principles of the Yogyakarta Principles document, programmes should be implemented, training for police, prison staff and all other public and private sector officers on raising their awareness, as well as international standards and principles of equality and non-discrimination, including in relation to sexual orientation and gender identity. It is useful to involve NGOs with expertise in these issues in the preparation of training. Staff should be trained on specific and practical issues, such as conducting personal checks, classifying detainees and their placement in the establishment, identifying specific forms of violence, especially from fellow detainees. Training should also be given to medical staff. Such training will avoid discriminatory attitudes, assumptions based on stereotypes and misconceptions about the needs of transgender persons." (pp. 74-76)*

- 2) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2021](#), 28 July 2022

No recommendations in this regard available.

*The NPM is unable to identify legislation or policies in this regard. However, the experience of the NPM shows that in the visited penitentiary units there are no procedures on how to deal with persons belonging to non-heteronormative groups. It is only when such a person appears in the unit that an informal way of dealing with them is established on an ad hoc basis. Moreover, the NPM increasingly encounters transgender persons in penitentiary units during its visits. For this group of inmates, there are also no procedures in place for dealing with them (e.g. for conducting personal checks). This issue is addressed extensively in the report on the visit in prison in Potulice<sup>204</sup> and in Barczewo<sup>205</sup>, which took place in 2022.<sup>206</sup>*

## 16. Specific measures to address radicalisation in prisons

### a. General measures to prevent radicalisation

No standards with regard to preventing radicalisation could be identified.

### b. Risk assessments

As above.

### c. Training of staff

As above.

### d. Deradicalisation measures

As above.

### e. NPM assessment

- 1) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2022](#), 29 November 2023

No recommendations in this regard available.

- 2) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2021](#), 28 July 2022

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<sup>204</sup> Poland, National Preventive Mechanism, [Report of the National Torture Prevention Mechanism on the visit of Penitentiary Facility in Potulice](#), 2 November 2023, pp. 12-16.

<sup>205</sup> Poland, National Preventive Mechanism, [Report of the National Torture Prevention Mechanism on the visit of Penitentiary Facility in Barczewo](#), 17 January 2023, pp. 6-12.

<sup>206</sup> Member 2 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

No recommendations in this regard available.

*During its visits to penitentiary units to date, the NPM has not discovered or described the problem of radicalisation of detainees. On 2-3 July 2024, a representative of the NPM participated in an ODIHR training course on this issue [exact name: regional training course for selected European countries on 'Detention monitoring and the protection of human rights while preventing and countering violent extremism and radicalisation to terrorism (VERLT) in prisons']. To the NPM's knowledge, the Prison Service also receives training in this area (e.g. the recent CEPOL training in Prague in June 2024<sup>207</sup>).<sup>208</sup>*

## 17. Inspections and monitoring

### a. Inspections

According to the Executive Penal Code, the penitentiary judge (*sędzia penitencjarny*) supervises the legality and regularity of the execution of, among others, a deprivation of liberty sentence, pre-trial detention, and coercive measures resulting in deprivation of liberty.<sup>209</sup>

The penitentiary judge visits prisons, remand centres and other places where persons deprived of their liberty are held. He or she shall have the right to enter at any time, without restrictions, these establishments and to move around their premises, to review documents and to request explanations from the administration of these units. Moreover, the penitentiary judge has the right to interview persons deprived of liberty in the absence of others and to examine their requests, complaints and requests.

The penitentiary judge shall revoke any unlawful decision of the prison or remand centre director, insofar as it concerns a person deprived of liberty.<sup>210</sup>

If, in the opinion of the penitentiary judge, there is a need to issue a decision which does not fall within his or her competence, in particular a decision of an administrative nature, he or she shall forward their observations together with the relevant conclusions to the competent authority. The authority is obliged to notify the penitentiary judge, within 14 days or within any other period determined by the judge, of the position taken. If the penitentiary judge finds this position unsatisfactory, he or she shall present the case to the authority superior to the authority; the superior authority shall notify the judge of the manner in which the case has been settled.<sup>211</sup>

In the event of recurrence of gross deficiencies in the functioning of the penitentiary unit or other place where persons deprived of liberty are detained, or when the conditions existing therein do not ensure respect for the rights of persons detained therein, the penitentiary judge shall request the competent superior authority to remedy the existing deficiencies within a specified period of time. If the deficiencies have not been remedied within the said time limit, the penitentiary judge shall request the

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<sup>207</sup> Poland, Prison Service, [Służba Więzienna uczestnikiem międzynarodowego szkolenia CEPOL w Pradze](#) (accessed: 8.7.2024).

<sup>208</sup> Member 1 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>209</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 32.

<sup>210</sup> Ibid, Article 34(1).

<sup>211</sup> Ibid, Article 35(1) and (2).

competent minister to suspend the operation or to abolish in whole or in part the specified establishment.<sup>212</sup>

The manner, scope and mode of supervision by the penitentiary judge are set out in detail in the 2003 Regulation of the Minister of Justice.<sup>213</sup> According to the regulation, supervision in prisons, remand centres and police detention facilities includes, among others:

- the legality of the execution of the sentence imposed, the legality of the sentenced prisoner's incarceration and stay in penitentiary institutions and their release from these institutions;
- the performance of penitentiary tasks and the rehabilitation activity of the penitentiary establishment and the course of the process of rehabilitation of sentenced prisoners, in particular the observance of the rights and obligations and the legitimacy and effectiveness of the applied methods and measures of penitentiary influence, the correctness and timeliness of periodic assessments of the progress in rehabilitation and the opinion of prisoners;
- the qualification of prisoners for the appropriate sentencing systems, the determination of individual impact programmes and the manner of their implementation;
- qualifying prisoners as dangerous;
- the correctness of the classification of prisoners into the appropriate classification groups and sub-groups, the referral to the appropriate penitentiary institutions, the distribution within these institutions, as well as making changes in this regard;
- the differentiation of the manner and conditions of execution of custodial sentence;
- the use of work as a means of penitentiary influence, observance of the provisions on time, health and safety at work, directing, in the first instance, to paid employment those obliged to provide maintenance, as well as prisoners having a particularly difficult material, personal or family situation, and the correctness of the determination of dues for work;
- directing prisoners to general and vocational education, as well as observing the established rules of training and self-education;
- the organisation of the prisoners' free time, in particular the organisation of cultural and educational activities, physical education and sports activities, and the stimulation of social activity;
- cooperation with society, especially with workplaces employing prisoners, educational institutions and families of prisoners, especially juveniles, and obtaining their participation in the educational process;
- the living conditions of prisoners, the state of medical care and sanitary condition;
- the regularity and timeliness of handling requests, complaints and applications;

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<sup>212</sup> Ibid, Article 35(3).

<sup>213</sup> Poland, Minister of Justice, Regulation on the manner, scope and procedure for the exercise of penitentiary supervision (*Rozporządzenie w sprawie sposobu, zakresu i trybu sprawowania nadzoru penitencjarnego*), 26 August 2003.

- the observance of prison security regulations, including regulations on the use of weapons, physical force and means of direct coercion;
- the regularity of the conduct of the prison administration in the event of the discovery of the commission of a crime, as well as in cases of mutiny, self-harm and deaths.<sup>214</sup>

The visitation schedule of the penitentiary judge is based on the plan established by the president of the regional court once every four years, concerning the individual penitentiary units under their control.<sup>215</sup>

#### b. Access to detention facilities by national authorities

Organisational units of the Prison Service, including prisons and detention centres, may be subject to control by the Ministry of Justice under the subordination.<sup>216</sup> Control then takes place on the basis and in accordance with the Act on control in government administration.<sup>217</sup> Its purpose is to assess the activities of the audited unit made on the basis of the established facts, applying the adopted audit criteria. If irregularities are found, the purpose of the control is also to determine their scope, causes and effects and persons responsible for them, as well as to formulate recommendations aimed at removing the irregularities. As a rule, the audit is carried out in terms of legality, economy, purpose and reliability.

Penitentiary units can also be accessed by national parliamentarians as part of a broader power to intervene in government bodies.<sup>218</sup> The directors of penitentiary units are obliged to receive without delay any MP who has arrived on a matter resulting from the exercise of his or her mandate, and to provide information and explanations relating to the matter. A parliamentarian's identity card shall entitle the MP to enter the premises of the penitentiary unit.

Moreover, the Commissioner for Human Rights (*Rzecznik Praw Obywatelskich*), who in Poland carries out the mandate of the NPM, or a person authorised by him or her shall have the right to enter at any time, without restriction, prisons, remand centres and other places where persons deprived of liberty are detained, and to move around their premises, to inspect documents and request explanations from the administration of these units, as well as to interview persons deprived of liberty in the absence of other persons and to examine their applications, complaints and requests.<sup>219</sup>

The same shall apply to a public prosecutor performing official activities.

#### c. Access to detention facilities by international bodies

In Poland, the functions of the National Preventive Mechanism are performed by the Commissioner for Human Rights. The information presented in paragraph 17b therefore remains valid.

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<sup>214</sup> Ibid, § 2.

<sup>215</sup> Ibid, § 7b(1).

<sup>216</sup> Poland, Act on the Prison Service (*Ustawa o Służbie Więziennej*), 9 April 2010, Article 1a.

<sup>217</sup> Poland, Act on control in government administration (*Ustawa o kontroli w administracji rządowej*), 15 July 2011.

<sup>218</sup> Poland, Act on the exercise of the mandate of deputy and senator (*Ustawa o wykonywaniu mandatu posła i senatora*), Article 20.

<sup>219</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 8b.

As regards the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), there are no rules governing the cooperation. According to the reports presented, however, the CPT has access to Polish penitentiary units during its country visits.<sup>220</sup>

There are no rules concerning the access of MEPs to penitentiary units.

#### d. NPM assessment

- 1) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2022](#), 29 November 2023

*“Podczas rozmów indywidualnych pracownika KMPT z więźniami Zakładu Karnego w Barczewie doszło do sytuacji, w której jego bezpieczeństwo mogło być zagrożone, a dobre imię i dotychczasowa nieposzlakowana opinia zostały wystawione na szwank. Chcąc opuścić pomieszczenie monitorowane w oddziale dla tzw. osadzonych niebezpiecznych, w którym przeprowadzał rozmowy z więźniami, pracownik KMPT przez ponad 15 minut bezskutecznie oczekiwał na reakcję funkcjonariuszy Służby Więziennej. Pracownik KMPT sygnalizował konieczność opuszczenia pomieszczenia nie tylko za pomocą instalacji przyzywowej, lecz także wykonując wymowne gesty w kierunku kamery je monitorującej. Funkcjonariusze otworzyli pomieszczenie dopiero po 15 minutach od pierwszego użycia instalacji przyzywowej. Znajduje to potwierdzenie w zapisach z monitoringu pomieszczenia.”*

*“During one-on-one interviews between a NPM worker and an inmate of Barczewo Prison, a situation occurred in which his safety may have been at risk and his good name and previous good reputation were put at risk. Wanting to leave the monitored room in the unit for so-called dangerous inmates, where he was interviewing inmates, the NPM employee waited in vain for more than 15 minutes for the reaction of the Prison Service officers. The NPM employee signalled the need to leave the room not only by using the summoning system, but also by making meaningful gestures towards the camera monitoring the room. The officers did not open the room until 15 minutes after the first use of the call system. This is corroborated by the room's surveillance recordings.” (p. 32)*

- 2) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2021](#), 28 July 2022

*„W dniu 11 kwietnia 2021 r. Zastępczyni Rzecznika Praw Obywatelskich wizytowała Komendę Rejonową Policji Warszawa I przy ul. Wilczej 21. Po przeprowadzeniu wywiadu z osobą zatrzymaną w wydzielonym pomieszczeniu do przeprowadzania kontroli osobistej, kolejne rozmowy z zatrzymaną były filmowane przez funkcjonariusza Policji, który rejestrował również dźwięk. Na zwróconą mu uwagę, iż takie zachowanie uniemożliwia realizację mandatu KMPT, funkcjonariusz ten stwierdził, że dostał takie polecenie. Postawa nagrywającego rozmowę policjanta spotkała się ze zrozumieniem jego przełożonych, którzy mimo interwencji Zastępczyni RPO, nie odstąpili od wydanego polecenia.”*

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<sup>220</sup> <https://rm.coe.int/1680ae9529>

*“On 11 April 2021, the Deputy Commissioner for Human Rights visited the Warsaw I District Police Station at 21 Wilcza Street. After interviewing a person detained in a separate room for personal checks, subsequent interviews with the detainee were filmed by a police officer, who also recorded sound. At attention drawn to him that such behaviour was preventing the implementation of the NPM's mandate, the officer stated that he had been instructed to do so. The attitude of the police officer recording the conversation was met with the understanding of his superiors, who, despite the intervention of the Deputy Commissioner, did not withdraw from the given order.” (p. 30)*

*As a rule, the NPM does not encounter obstacles to the implementation of its mandate in penitentiary units. These units are always prepared and open to cooperation. The only impediment that has arisen during visits in recent years has been in relation to access to medical records. The Prison Service explained that it cannot provide visitors with access to detainees' medical records without their consent; a similar position was also shared by the Ombudsman for Patients' Rights [Rzecznik Praw Pacjenta – ed.] and it was his opinion that the Prison Service relied on. The problem with access to inmates' medical records was resolved in April 2024 after the Director General of the Prison Service shared the NPM's position.<sup>221</sup> The NPM did not encounter any mention of potential problems related to the conduct of activities in published reports of international inspection bodies.<sup>222</sup>*

## 18. Access to remedy

### a. Legal remedies

As indicated in the 2021 report, 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>223</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>224</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>225</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).

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<sup>221</sup> Poland, Commissioner for Human Rights, [Kwestia dostępu przedstawicieli KMPT do dokumentacji medycznej osadzonych. Pozytywna odpowiedź Służby Więziennej](#), 2 January 2024 (update: 8 May 2024).

<sup>222</sup> Member 2 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

<sup>223</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 6(2).

<sup>224</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 7.

<sup>225</sup> Poland, Civil Code (*Kodeks cywilny*), 23 April 1964, Articles 23 and 24.



However, such a time limit may not be longer than ten years from the day when the event causing the damage occurred.<sup>226</sup>

#### b. Legal assistance

According to the Executive Penal Code, communication with a defence counsel (*obrońca*) or attorney (*pełnomocnik*) is among the most important rights of a person incarcerated in a prison or remand centre.<sup>227</sup>

A person deprived of his or her liberty may communicate with his or her defence counsel or an attorney who is a lawyer in the absence of other persons, and conversations with such persons during visits and telephone calls shall not be subject to inspection. The same applies to communication with a representative who is not a lawyer and who has been approved by the President of the Chamber of the European Court of Human Rights to represent the person before the ECtHR.<sup>228</sup>

Moreover, every person deprived of liberty may use a telephone at least once a week, on dates established in the internal order in force in the prison or remand centre, to contact their defence counsel or attorney. In particularly justified cases, if the scheduled dates of procedural activities indicate the necessity of using the self-recording telephone without delay, the director of the unit shall grant permission for contact outside the dates established in the internal order in force in the prison or remand centre.<sup>229</sup> It is a condition for the use of the telephone that the defence counsel or attorney must first provide the director of the prison or remand centre in writing with a telephone number at which they can be contacted.<sup>230</sup> The person deprived of liberty must inform a Prison Service officer whenever he or she wishes to contact a defence counsel or attorney.<sup>231</sup>

The correspondence of a person deprived of liberty with a defence counsel or attorney who is a lawyer is not subject to censorship, surveillance and detention and should be forwarded without delay to the addressee.<sup>232</sup> Only in the case of pre-trial detention the public prosecutor can reserve control of correspondence with the defence counsel, but this can only be done during the first 14 days of detention and in particularly justified cases.<sup>233</sup>

#### c. Request and complaints

An example in this respect can be found in the situation where a person deprived of his or her liberty (either in pre-trial or post-trial detention) is concerned by the so-called mandatory defence in executive proceedings.<sup>234</sup> As a rule, in executive proceedings (i.e. proceedings to enforce a criminal court decision), the convicted person may be assisted by a defence counsel – this is his or her right. However, in proceedings before a court (e.g. pending following a complaint against a decision of the director of a penitentiary unit), in certain situations the law dictates that a person must have the services of a defence counsel. This applies to the following situations:

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<sup>226</sup> Poland, Civil Code (*Kodeks cywilny*), 23 April 1964, Article 442<sup>1</sup>(1).

<sup>227</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 102(7).

<sup>228</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 8(3).

<sup>229</sup> Ibid, Article 8(4).

<sup>230</sup> Ibid, Article 8(5).

<sup>231</sup> Ibid, Article 8(6).

<sup>232</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 8a(2).

<sup>233</sup> Poland, Code of Criminal Procedure (*Kodeks postępowania karnego*), 6 June 1997, Article 73(3) and (4).

<sup>234</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 8(2).

- the person is deaf, mute or blind;
- there is reasonable doubt as to the person's sanity;
- the person is under 18 years of age;
- the court deems it necessary due to circumstances that hamper the defence.

A person who, in such circumstances, does not have a defence counsel of choice may request that an *ex officio* defence counsel be appointed for him or her. It is necessary to demonstrate that he or she is unable to bear the costs of defence without jeopardising the necessary support of themselves and their family.<sup>235</sup>

#### d. Independent authority

The primary authority in this respect is the penitentiary court (*sąd penitencjarny*). Penitentiary courts operate within regional courts (*sądy okręgowe*).<sup>236</sup>

A person deprived of his or her liberty may complain to the penitentiary court against the decision of, among others, the director of the prison, the director of the remand centre, as well as the district director and the Director General of the Prison Service and the penitentiary commission, challenging its legality. It may concern any aspect of the execution of a custodial sentence or coercive measure resulting in deprivation of liberty.<sup>237</sup>

The inmate shall have the right to lodge a complaint within 7 days from the date of announcement or service of the decision; the decision shall be announced or served with a statement of reasons and instructions on the right, time limit and manner of lodging the complaint. The complaint shall be lodged with the authority that issued the contested decision. If the authority which issued the contested decision does not uphold the complaint, it shall forward it, together with the case file, without delay to the penitentiary court.<sup>238</sup>

The penitentiary court called upon to decide on the complaint may suspend the execution of the contested decision.<sup>239</sup> After considering the complaint, the court shall decide whether to uphold, annul or amend the contested decision; there shall be no appeal against the court's decision.<sup>240</sup>

#### e. NPM assessment

- 1) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2022](#), 29 November 2023

No recommendations in this regard available.

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<sup>235</sup> Poland, Code of Criminal Procedure (*Kodeks postępowania karnego*), 6 June 1997, Article 78.

<sup>236</sup> Poland, Executive Penal Code (*Kodeks karny wykonawczy*), 6 June 1997, Article 3(2).

<sup>237</sup> Ibid, Article 7(1) and (2).

<sup>238</sup> Ibid, Article 7(3).

<sup>239</sup> Ibid, Article 7(4).

<sup>240</sup> Ibid, Article 7(5).

- 2) Poland, Commissioner for Human Rights, [Report of the Bureau of the Commissioner for Human Rights on the activities of the National Torture Prevention Mechanism in Poland in 2021](#), 28 July 2022

*„Dyrektorzy jednostek penitencjarnych nadal nie zostali zobowiązani do wydawania decyzji o poddaniu więźnia kontroli osobistej, którą osadzony mógłby zaskarżyć do sądu w trybie art. 7 kodeksu karnego wykonawczego. Tymczasem na powtarzające się nadużycia w zakresie poddawania osadzonych inwazyjnym kontrolom osobistym Europejski Trybunał Praw Człowieka w Strasburgu wskazywał w licznych wyrokach przeciwko Polsce – wydanych również w ubiegłym roku. Trybunał wskazywał, że prawo krajowe w praktyce nie zapewniało osadzonym skutecznego środka odwoławczego pozwalającego na zakwestionowanie decyzji w przedmiocie przeprowadzenia kontroli osobistej.”*

*“Directors of penitentiary units are still not obliged to issue a decision to subject an inmate to a personal inspection, which the inmate could challenge in court under Article 7 of the Executive Penal Code. Meanwhile, the repeated abuse of subjecting prisoners to invasive personal checks has been pointed out by the European Court of Human Rights in Strasbourg in numerous judgments against Poland - also issued last year. The Court pointed out that national law in practice did not provide detainees with an effective remedy to challenge the decision to carry out a personal inspection.” (p. 53)*

*As raised by the NPM, the complaints and remedies available to detainees regarding the material conditions in which they are incarcerated do not differ from those available to them in other matters concerning deprivation of liberty [as stipulated in Articles 6, 7, 32 and 78(2) of the Executive Penal Code]. The NPM does not examine the legitimacy or the manner in which complaints are handled by the Prison Service authorities and the penitentiary courts. Possible problems of inmates in delivering complaints to the competent authorities are described under Section 9.<sup>241</sup>*

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<sup>241</sup> Member 1 of the NPM, Poland, written response provided to HFHR in response to a request for public information, 5 July 2024.

## Part II: National case-law

Poland, Appellate Court in Białystok (*Sąd Apelacyjny w Białymstoku*), case no. I ACa 493/20, 21 June 2021

<b>Thematic area</b>	<b>Part 8 – Healthcare</b>
<b>Decision date</b>	21 June 2021
<b>Reference details</b>	Judgement of the Appellate Court in Białystok ( <i>Sąd Apelacyjny w Białymstoku</i> ), <a href="#">case no. I ACa 493/20</a>
<b>Key facts of the case</b>	<p>The plaintiff requested that the State Treasury (directors of two remand centres) be ordered to pay the sum of PLN 100,000 in damages and compensation for the non-material harm suffered as a result of his stay in the penitentiary units.</p> <p>In justifying his position, the plaintiff stressed that he suffered from serious urethral and anal disorders, also mental disorders, and moves in a wheelchair (he is paralysed from the waist down). At the date of the statement of claim, he was serving a custodial sentence and was placed consecutively in two remand centres. He was not given proper medical care in the above-mentioned facilities – the obligation to provide him with the necessities for daily functioning, especially catheters and disinfecting materials, was not fulfilled; he constantly suffered from a bacterial infection of the urethra. In the plaintiff's opinion, he was treated in an inhuman, degrading manner, which translated into his physical but also psychological comfort. He was placed in a three-bed cell not adapted to the needs of persons with disabilities; the bathing room prevented free use by a person in a wheelchair (narrow door, lack of handrails, other safety devices), he was significantly restricted in his use of walks (cell placed on the first floor, lack of lift and persons trained to carry in and out a person in a wheelchair; narrow staircase), and highly dependent on cellmates. As a result, his health was deteriorating.</p> <p>In a judgment of 17 July 2020, the Białystok Regional Court partially granted the plaintiff's claim and awarded him PLN 15,000 with interest as compensation and damages. The judgement was appealed against both by the plaintiff and the defendant.</p>
<b>Main reasoning/argumentation</b>	<p>In the opinion of the Appellate Court, with the scope of the violations of the plaintiff's rights correctly established by the court of first instance, the amount of PLN 15,000 in damages was considered to be only symbolic and in no way compensates the plaintiff for the extent of his suffering and humiliation.</p> <p>The Appellate Court agreed with the applicant's position that the extent of his suffering far exceeded the complaints associated with the incarceration itself. The plaintiff initially had to catheterise himself in the presence of several inmates, and only later was he allowed to catheterise lying down and moved to a two-bed cell. Also the expert opinion on neuro-urology, urodynamics and incontinence, left no doubt that the extent of the plaintiff's incarceration-related suffering was considerable, and that the compulsion to catheterise himself in a multi-bed cell should be regarded as the worst, both in terms of hygiene and human deprivation</p>

	<p>of dignity. The expert stressed that the primary method of treating severe bladder dysfunction in patients with neurogenic bladder is the method of "pure intermittent bladder catheterisation". This method is such an unquestionable way of managing patients with the same condition that the National Health Fund reimburses 180 catheters every month. Meanwhile, there are repeated references in the case file to the plaintiff being given out a few catheters at a time or even information on the complete absence of catheters. The impossibility of regular clean catheterisation with sterile catheters obviously increased the risk of subsequent urinary tract infections (which did occur).</p> <p>The above, combined with the total lack of rehabilitation of the claimant, must be seen in terms of a gross violation of the claimant's personal rights, including dignity and ensuring the right to medical protection in the broad sense. The rehabilitation expert stressed that during the period of the claimant's mobility in a wheelchair, classes with a physiotherapist should take place daily (Monday - Saturday) regardless of the exercises performed independently.</p> <p>Although the plaintiff's health has not significantly deteriorated, this does not change the fact that the defendant's actions must be assessed as inhumane. In particular, it cannot be inferred from the fact that the plaintiff's urinary tract infections were treated properly that the care for the plaintiff's health was proper, if one considers that these infections occurred because the plaintiff was not provided with an adequate number of catheters.</p> <p>It should be borne in mind that the findings of the Regional Court showed that the cells in both detention centres were not adapted to the needs of persons with disabilities. In the detention centre in W., there were no grab bars in the toilet and shower, while in B., on the other hand, the entrances to the toilet and shower were too narrow. All this meant that the plaintiff was dependent on the assistance of fellow inmates, who were by no means obliged to provide such assistance. At the same time, the testimony of witness R. showed that the plaintiff had signalled to the visiting judge of the unit that he had a problem entering the toilet. These circumstances were insufficiently taken into account by the Regional Court when determining the amount of damages.</p> <p>For the above reasons, the Appellate Court considered PLN 50,000 as the appropriate amount of compensation. This is the amount adequate to the suffering suffered by the plaintiff resulting from the above-described conditions of imprisonment. It takes into account the humiliation suffered by the plaintiff as a result of the failure to provide him with appropriate conditions for catheterisation, as well as the ailments related to the urinary tract infections occurring against this background and all the above-described inconveniences related to the failure to adapt the cells to the conditions of a disabled person. In the opinion of the court, this sum being of an economically appreciable value will fulfil its compensatory value, compensating for the plaintiff's non-material harm.</p>
<p><b>Key issues (concepts, interpretations) clarified by the case</b></p>	<p>As emphasised by the Appellate Court in Białystok, the defendant's liability arises from the violation of Article 102(1) of the Executive Penal Code (<i>Kodeks karny wykonawczy</i>), according to which the convicted person has the right, in particular, to health services appropriate to the preservation of health and to appropriate hygiene conditions. It can also be alleged that there has been a violation of Article 4(1) of the Executive Penal Code, according to which penalties shall be carried out in a humane manner, with respect for the human dignity of the convicted person, as well as a violation of Article 1(3)(3) (now Article 2(1)(3)) of the Prison Service Act (<i>Ustawa o Służbie Więziennej</i>), according to which the basic tasks of the Prison Service include ensuring that rights of persons in criminal detention, in particular humane living conditions, respect for dignity and healthcare, are respected.</p>

	The failure to comply with these provisions at the same time constituted a violation of the plaintiff's personal rights in the context of Articles 23-24 of the Civil Code ( <i>Kodeks cywilny</i> ), above all his sense of dignity, and justified the award of damages.
<b>Results (sanctions) and key consequences or implications of the case</b>	The Appellate Court in Białystok allowed the claimant's appeal in part and in this respect amended the appealed judgment of the court of first instance, awarding the amount of PLN 50,000 instead of PLN 15,000 as compensation and damages. The remainder of the plaintiff's claim was dismissed.  The appeal of the defendant was dismissed in its entirety.
<b>Key quotation in original language and translated into English with reference details</b>	<i>„Traktowanie powoda w jednostkach penitencjarnych jak osoby w zasadzie zdrowej, pomimo bogatej dokumentacji medycznej, nie pozostawiającej wątpliwości o konieczności przeciwdziałaniu potencjalnemu zanikowi mięśni, co możliwe było do uzyskania wraz z prawidłowym dokonaniem oceny schorzeń powoda i skorelowaniu jej ze zleceniem specjalistycznej opieki, której bezsprzecznie wymagał, należy uznać za naruszenie jego prawa do odpowiednich ze względu na stan zdrowia warunków bytowych, a także za postępowanie niehumanitarne, gdyż stwarzające zagrożenie dla zdrowia.”</i>  <i>“Treating the claimant in penitentiary units as a basically healthy person, despite extensive medical documentation leaving no doubt about the need to counteract potential muscular atrophy, which could have been achieved with the correct assessment of the claimant's conditions and correlating it with the ordering of specialised care that he undeniably required, must be considered a violation of his right to adequate living conditions in view of his state of health, as well as inhumane conduct, since it poses a risk to his health.”</i>

Poland, Appellate Court in Kraków (*Sąd Apelacyjny w Krakowie*), case no. II AKzw 1096/21, 19 October 2021

<b>Thematic area</b>	<b>Part 8 – Healthcare</b>
<b>Decision date</b>	19 October 2021
<b>Reference details</b>	Judgement of the Appellate Court in Kraków ( <i>Sąd Apelacyjny w Krakowie</i> ), case no. II AKzw 1096/21 (hyperlink not available)
<b>Key facts of the case</b>	In a decision of 17 September 2021 – taking into account the application and arguments of the director of the penitentiary institution – the court of first instance granted the convicted prisoner a break in serving his sentence in custody for a period of 2 months (starting from 15 November 2021 until 15 January 2021) in connection with a planned medical procedure in an external health care facility.  The convicted prisoner lodged a complaint against this decision, alleging that an arbitrary assessment of the evidence had been made. According to the applicant, this led to an erroneous assessment of the factual findings adopted as the basis of the decision and, as a result, to the adoption of a too short period of the break, as well as an erroneous determination of the time of its commencement. Meanwhile,

	<p>as the applicant pointed out, he was to be admitted to the clinic on 29 November 2021, while the medical procedure planned there could take place at a later date.</p> <p>The applicant requested that the decision under appeal be amended by granting him a break in the execution of his prison sentence for a period of six months.</p>
<b>Main reasoning/ argumentation</b>	<p>In the appellate court's opinion, the complaint did not deserve to be upheld, as the court of first instance neither violated the rules of procedure influencing the issued decision, nor erroneously assessed the factual findings adopted as the basis for the decision, nor violated the substantive law.</p> <p>The result of proper monitoring and assessment of the prisoner's health was a motion by the director of the prison indicating that circumstances of a health nature justified granting the prisoner a break in the execution of his sentence of imprisonment and a medical consultation which led to the setting of a date for admission to hospital.</p> <p>As indicated in the written referral of the convict for cardiac surgery, until admission to the clinic, the specialists in cardiology and cardiac surgery did not see a threat to the prisoner's life. This also means that the need for cardiac surgery due to the applicant's diagnosed severe aortic regurgitation was not a condition that would require immediate release from prison. And since the surgery was not to be performed until after 29 November 2021, there was no need to grant an early break in sentence on this basis.</p>
<b>Key issues (concepts, interpretations) clarified by the case</b>	<p>The court pointed out that the basis for granting a break in sentence on health grounds is a finding that the sentenced person's continued stay in prison may endanger his life or cause a serious danger to his health. Such a danger may be posed by the isolation itself and the rigours associated with it, or by the lack of appropriate medical treatment when, at the same time, such treatment can be carried out under free conditions.</p> <p>Moreover, as the court emphasised, the opinion on the state of health of a person deprived of liberty is drawn up by the doctor of the treatment facility. If there are no grounds for questioning the reliability of this certificate or the need for a more thorough examination of the prisoner's state of health through the opinion of an expert of the relevant speciality, such a certificate is sufficient to assess the prisoner's state of health.</p>
<b>Results (sanctions) and key consequences or implications of the case</b>	<p>The Appellate Court in Kraków upheld the contested decision granting a break in serving the sentence.</p>
<b>Key quotation in original language and translated into English with reference details</b>	<p><i>„Monitorowanie i ocena stanu zdrowia osadzonych należy do personelu medycznego jednostek penitencjarnych, zaś skazanemu nie przysługuje możliwość dowolnego wyboru lekarza prowadzącego (art. 115 § 1, § 1a i § 4 k.k.w.). Przy czym w ramach opieki medycznej nad osadzonymi personel ten, stosownie do konieczności, współpracuje z publicznymi jednostkami ochrony zdrowia (art. 115 § 1, 1a i 4 k.k.w.), w tym również przez zapewnienie badań i konsultacji specjalistycznych.”</i></p> <p><i>“The monitoring and assessment of the health of inmates is the responsibility of the medical staff of the penitentiary units, and the convicted person is not free to choose his or her attending physician (Articles 115(1), (1a) and (4) of the Executive Penal Code). At the same time, within the framework of the medical care of the inmates, these staff cooperate, as necessary, with the public healthcare units (Article 115(1),</i></p>

	<i>(1a) and (4) of the Executive Penal Code), including by providing specialist examinations and consultations.”</i>
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