CONCLUSIONS AND RECOMMENDATIONS

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BRIDGING VIEWS FOR A RIGHTS-BASED APPROACH TO PRE-TRIAL DETENTION

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1 CONCLUSION ON NATIONAL CHAPTERS

The prison is a space where rights are both most urgently required and most likely to remain theoretical. As scholarship has long noted, there is often a profound gap between the promise of human rights and their realisation behind bars.[1] When rights are formally recognised but not enforceable in practice, they risk serving purposes other than protection. Indeed, as Kerr states, prisons "present a special context for the interpretation of constitutional rights", where respect for the rule of law, human dignity, and purported security considerations all come into sharp relief in day-to-day decision-making.[2] Scholars have argued that when rights remain theoretical or unenforceable, they could end up functioning as metrics of compliance,[3] disguising the power relations that define prison life,[4] or be instrumentalised as performances of legality and reform.[5] Armstrong goes further still, suggesting that it could contribute to "prison bureaucratisation and, through this, transform, extend, and legitimate forms of penal control".[6]

The comparative findings from Portugal, Greece, and Ukraine illuminate the depth of this tension. Despite their different legal traditions and socio-political contexts—and despite, in Ukraine's case, the extreme situation of war that threatens the very survival of the country and makes its experience difficult to compare in conventional terms—all countries face a number of common challenges in terms of access to law and access to the courts. Across these systems,

1 Sonja Snacken and Gaëtan Cliquennois, 'European and United Nations monitoring of penal and prison policies as a source of an inverted panopticon?' (2018) 70(1) Crime, Law and Social Change 1–18; Dirk van Zyl Smit and Sonja Snacken, Principles of European Prison Law and Policy: Penology and Human Rights (Oxford University Press 2009).

2 Lisa Coleen Kerr, 'The Chronic Failure to Control Prisoner Isolation in US and Canadian Law' (2015) 40(2) Queen's Law Journal 483-529.

3 David Scott, 'The Politics of Prisoner Legal Rights' (2013) 52(3) The Howard Journal of Criminal Justice 233–250.

4 Kelly Hannah-Moffat, Punishment in Disguise: Penal Governance and Federal Imprisonment of Women in Canada (University of Toronto Press 2001).

5 Laura Piacentini and Elena Katz, 'Carceral Framing of Human Rights in Russian Prisons' (2016) 19(2) Punishment & Society 221–239.

6 Sarah Armstrong, 'Securing Prison through Human Rights: Unanticipated Implications of Rights-Based Penal Governance' (2018) 57(3) The Howard Journal of Crime and Justice 401–421.

prisoners' capacity to invoke and enforce their rights is constrained by structural, procedural, and financial barriers that limit access to effective remedies. While the right to legal assistance is recognised for pre-trial detainees, there is little coordinated provision of it when it comes to matters beyond the criminal trial and for enforcing their rights in detention, leaving prisoners to navigate complex administrative and judicial procedures on their own—an effectively insurmountable task given the isolation, limited information, and dependency that define imprisonment. Access to legal advice in detention is not simply a matter of fairness but a structural precondition for the enforceability of rights. Without it, the overlapping barriers within the prison environment make it difficult, and in many cases impossible, for prisoners to understand what remedies exist, meet procedural deadlines, or secure the evidence required to substantiate complaints. Within this context, only a very small minority are able to navigate litigation channels unaided. Simplified procedures cannot compensate for the interpretative, evidentiary, and protective functions that only a lawyer can provide. This exclusion not only weakens individual access to justice but reinforces a cyclical marginalisation of prison issues within the legal system. The absence of funded legal work in this field discourages lawyers from developing expertise, while low remuneration, delayed payments, and a lack of institutional recognition further disincentivise engagement. **As a result, prison law remains a peripheral and underdeveloped area of practice, perpetuating the invisibility of detainees' rights violations and the absence of consistent litigation capable of enforcing prisoners' rights as well as addressing and exposing torture and ill-treatment within detention**.

Moreover, in Greece and Portugal, this vacuum has not been filled by civil society. NGOs and university legal clinics active in prisons focus almost exclusively on psychosocial support, education, or reintegration, rather than on providing sustained legal representation. There are no networks of prison law specialists or mechanisms for coordinating strategic litigation in this field either. In Ukraine, civil society organisations play a more active role in assisting detainees and monitoring detention conditions, but their efforts are constrained by limited funding, logistical constraints that may be massive in connection with the war and the immense task of dealing with war crimes in terms of documentation and victim support, which involves redeploying a large part of their resources.

Overall, the findings from all three countries underscore that meaningful access to justice for prisoners cannot depend on the mere existence of rights recognition on paper or simplified complaint mechanisms, but requires the practical infrastructure, professional expertise, and political will necessary to make those rights tangible, effective, and enforceable in practice.

LEGAL INFORMATION AND ADVICE IN DETENTION: FOUNDATIONAL YET NEGLECTED PRECONDITIONS FOR ACCESS TO JUSTICE

There are two essential and closely interlinked preconditions for prisoners to be able to enforce their rights while in detention. The first is access to legal information, which enables them to understand the laws governing their situation and the remedies available. The second is confidence in the independence, diligence, and effectiveness of those remedies, coupled with the assurance that seeking redress will not lead to reprisals—a concern that is particularly acute for pre-trial detainees.

Access to legal information is complex and involves several elements. Prisoners must first recognise that the prison administration can act unlawfully and that judicial review may provide redress. This requires an understanding that the administration's actions are subject to the law and that legal authority prevails over institutional hierarchy. They must also have access to legal documents that allow them to formulate and substantiate their claims, or at least to seek legal assistance where available. Yet legal issues rarely present themselves in simple terms and often require complex assessments of necessity, proportionality, and legal sufficiency. Even in Romano-Germanic legal systems such as those of Ukraine, Portugal and Greece, access to written legislation alone is not enough; understanding the applicable law also requires consulting case law from domestic courts, constitutional courts, and the European Court of Human Rights. Prison law today arises from intertwined legal orders, and references to the jurisprudence of the European Court of Human Rights have become essential, even for common matters such as searches, visits, disciplinary sanctions, or correspondence control.

Beyond knowledge of the applicable law, prisoners must understand what remedies exist and their main characteristics. Where several remedies are possible, such as annulment, summary proceedings, or compensation, prisoners must know which procedure best suits their case, the conditions of admissibility, the applicable rules of evidence, and the powers of the court to redress violations.

Legal action is inherently complex, and this is compounded by the barriers prisoners face in accessing justice, even in wealthier countries. These include low economic, social, and cultural capital and limited literacy or communication skills. Overall, effective access to justice requires proactive policies on access to rights in prison, adapted to the specific circumstances of prisoners. However, such policies are largely lacking across Europe.

Providing access to legal information can take two main forms. The first is ensuring that legal norms and case law are freely accessible, either orally or in written form. The second is establishing legal access points in prisons where legal professionals can explain issues, outline available remedies, and provide guidance. These mechanisms complement each other: a basic understanding of the law is necessary to seek legal help, while access to documents alone is rarely sufficient given the complexity of legal language and judicial systems.

A Narrow and Incomplete Approach to Access to Legal Standards

Across Portugal, Greece, and Ukraine, the systems designed to inform prisoners of their legal rights and facilitate access to legal information remain fragmented, outdated, and largely ineffective in practice. Although all three countries have formal provisions guaranteeing access to legal texts and rights-related information, their implementation tends to prioritise administrative control and order rather than enabling prisoners to understand or assert their legal entitlements. The result is a shared pattern of limited, uneven, and often formal compliance with legal obligations, leaving prisoners heavily dependent on informal sources of knowledge and external support.

In Portugal, the law requires that information leaflets be available in Portuguese and the main foreign languages, mandates that key legislation and administrative orders be accessible in prison libraries, and has introduced a pilot digital portal for controlled access to selected official sites. Fieldwork, however, revealed that the information reaching prisoners remains limited, largely in Portuguese, and focused on practical routines rather than rights and remedies. According to inmates, information within prisons is typically displayed on large wall placards that do not address substantive legal rights but rather routine matters such as visiting schedules, daily timetables, or the quantity of food and clothing permitted from relatives. The introduction of digital legal tools remains at an early stage. Lawyers interviewed indicated that no dedicated digital systems currently exist for prisoners or defence counsel in the field of prison litigation.

The obligation to inform prisoners of their rights and duties is not formally assigned to any specific authority. In practice, it is carried out by the prison governor and staff, such as reintegration officers or guards, through the provision of leaflets and legislation. However, inmates reported that no staff member proactively explains the available information. Social workers were identified as the main staff resource for conveying rights-related information, with prisoners often relying instead on informal peer-to-peer explanations rather than a structured system. This demonstrates the paradoxical nature of such a system, in which the administration controls the dissemination of legal information that is supposed to circumscribe its power.

Although prisoners can theoretically access printed forms to file motions or requests, these are in practice controlled by the Wing Chief, who maintains pre-prepared templates by topic. Completed forms must be deposited in designated boxes. While a complaint box exists for confidential grievances, inmates expressed reluctance to use it. Because the process requires requesting a form from the Wing Chief and visibly placing it in the box, prisoners fear that staff can identify the complainant and that reprisals may follow.

In Greece, the statutory framework requires the systematic provision of information, including a ministry-issued leaflet and access to internal rules. In practice, however, no official leaflet currently exists, the last booklet from 2016 is outdated and no longer distributed, and prison libraries are incomplete and obsolete. Detainees have

no access to online legal databases—controlled internet access is permitted only for inmates enrolled in university programmes—and no institutional service systematically provides legal information. The old Prisoner's Handbook (Alfavitari tou Kratoumenou), a simplified version of the Penitentiary Code, is also outdated and unavailable across all facilities.

As one former prisoner observed, the process of informing detainees is "completely basic," with "talk to your lawyer" being the standard response when further information is sought. In practice, most prisoners rely on informal peer-to-peer systems, where older inmates act as mentors and guides for newcomers. Chronic understaffing further compounds these shortcomings: even where information and protection protocols exist, they are often impossible to implement. Some facilities lack even a single social worker, making meaningful support unattainable. As one NGO representative explained, professionals working in detention often make great efforts, but the overwhelming number of detainees prevents them from meeting demand and frequently leads to burnout. Field research also revealed that many prisoners lack confidence in the complaints system, convinced that "nothing can be achieved" through official channels.

In Ukraine, formal guarantees of access to legal information appear strong on paper. Pre-trial detention facilities are required to provide detainees with key legal texts and updates, including the Constitution, Criminal Code, and relevant laws on detention. Regulations also mandate that prison libraries stock core legal materials and major human rights instruments, while notice boards and pamphlets should inform detainees of their rights and available remedies. Recent reforms have introduced controlled digital access for convicts to official websites and limited use of tablets for legal and administrative communication.

In practice, however, the study found that these mechanisms remain uneven and insufficient. While some facilities display banners and leaflets explaining how to contact lawyers or free legal aid, many detainees cannot access them because they rarely leave their cells, and verbal explanations at intake are often perfunctory. Library collections are incomplete or outdated, and detainees report that even fiction books are hard to obtain, let alone legal materials. Field monitors observed that information stands frequently contained obsolete content and lacked clear guidance on filing complaints.

Digital reforms have implemented in some correctional facilities, aimed at enabling use of tablets and online court systems. However, generally across penitentiary institutions Internet connections are blocked or heavily restricted to government-approved sites, with staff often preventing access to legal databases or human rights organisations' pages. In some women's colonies, administrations reported that inmates "do not need" Internet access, effectively excluding them from these initiatives. As a result, despite recent technological advances, access to law in detention remains fragmented, inconsistent, and dependent on administrative discretion, confirming that, in practice, detainees continue to face significant barriers to understanding and exercising their rights.

Unpublished Norms and the Opaque Regulation of Prison Life

The proliferation of lower-level regulatory texts, such as circulars and administrative memos, that directly shape prisoners' daily lives but are rarely published or made accessible creates a form of opaque governance that fosters arbitrariness and undermines legal certainty. This trend is evident in Portugal. The new standardised procedure for handling complaints from prisoners across all prison establishments is grounded in Circular No. 9/2021 (Regulation on Complaints and Requests for the Prison Population). Despite underpinning the entire complaints process and being essential to assessing the effectiveness of this remedy, the circular itself is not publicly available on the DGRSP website or through any other official channel. Inaccessibility in Portugal also extends beyond administrative circulars. Transparency of jurisprudence is limited: judgments of the first-instance courts are not published, and only a selection of higher-court decisions is made public, with no clear criteria guiding their selection. This lack of systematic publication restricts both public oversight and professional access to the jurisprudence shaping detention practice. In both Greece and Ukraine, circulars, laws, and internal regulations are formally public and accessible online, yet prisoners have no practical access to them.[7]

7 See 1.1 above.

Legal Advice in Prisons: A Critical but Rare Service

Despite prisoners' marked social, economic, and educational barriers—and being faced with navigating complex administrative, criminal, and human-rights frameworks—most do not receive direct legal support. In practice, prisons tended to rely on external defence lawyers from the underlying criminal case, on the assumption that they would also address prison-related matters.[8] This assumption is unfounded: such lawyers often lack expertise in prison law, have limited time, and are not remunerated for pursuing additional proceedings.

Across Portugal, Greece, and Ukraine, access to legal advice in detention remains the exception rather than the rule. In Portugal, access to legal aid is tied to legal proceedings initiated, and as a result, only secondary legal aid is available, with no provision for general legal advice except in criminal matters up to the point of a final sentence. The Portuguese Bar Association itself has publicly acknowledged that the lack of accessible legal advice in prisons constitutes one of the most serious gaps in the system, noting that many inmates are unable to make use of the legal mechanisms available to them because of it. It has repeatedly called for the creation of a dedicated mechanism for providing remote and in-person legal counselling to prisoners through Bar-registered lawyers. Despite earlier commitments by the Ministry of Justice and the Directorate-General for Reintegration and Prison Services to establish legal counselling offices in prisons—a plan negotiated with the Bar Association between 2017 and 2019—the proposed protocol was never finalised or implemented. As a result, such offices do not exist, and prisoners continue to rely on ad hoc or external support for legal information.

In Greece, legal aid is also linked to legal proceedings, and can only be accessed once a summons to appear before a court has been issued. As a result, only secondary legal aid is available, with no access to general legal advice. In Ukraine, legal aid is guaranteed in law but undermined by chronic underfunding, bureaucratic hurdles, and wartime disruptions that restrict lawyers' access to

8 European Prison Litigation Network, White Paper on Access to Justice for Pre-Trial Detainees (2019): LINK.

detention facilities. Across all three systems, NGOs and ombuds institutions only partly fill this gap: while civil society organisations in Ukraine provide legal information and monitoring, their capacity is constrained, and in Portugal and Greece, NGOs inside prisons focus mainly on psychosocial or reintegration support rather than legal representation.

Foreign-National Prisoners: Compounded Barriers

Foreign-national prisoners face significant additional barriers in accessing legal information and advice. This is a particularly acute issue in Greece, where foreign nationals make up an exceptionally large proportion of the prison population. Although legislation formally guarantees the right to interpretation and to be informed of one's rights in a language one understands, in practice this is rarely implemented. The official information leaflet on detainees' rights is not available in foreign languages, or even consistently in Greek, and prison staff provide only limited information at admission, often out of concern about making mistakes or potential liability. When communication is necessary, it is usually attempted in English, if both parties have at least a basic understanding, or facilitated informally by fellow prisoners who share the same language, raising serious concerns about confidentiality, accuracy, and reliability.

Permission for a professional interpreter to enter a prison, for example to assist communication between a detainee and their lawyer, may be granted but requires prior authorisation and is at the detainee's expense. More broadly, neither the Penitentiary Code nor the Statute for the Operation of Detention Facilities provides for the systematic translation or interpretation of information on rights for those who do not speak Greek. As a result, many detainees receive little or no information in a language they understand, leaving them dependent on ad hoc solutions and effectively excluded from meaningful access to legal information or the ability to exercise their rights in detention.

In Portugal, despite a legal framework that formally provides robust safeguards for foreign prisoners, access to information and interpretation in practice remains highly limited. The information disseminated

within prisons is almost exclusively in Portuguese. Although Portuguese law guarantees the right to interpretation and translation in criminal proceedings, this only applies to judicial proceedings. Beyond that scope, translation and interpretation expenses fall to the legal aid beneficiary and are not covered by the legal aid scheme, leaving a significant gap in practice for prisoners seeking to understand or exercise their rights. While a telephone line exists operated by the Agency for Integration, Migration and Asylum to assist foreign prisoners with translation, but this service is reportedly little known and rarely used.

In Ukraine, access to interpretation and translation under legal aid is excluded from primary legal aid, which covers basic access to legal information. In practice, interpretation is usually available during the first meeting with a lawyer and for translating case materials, complaints, and other procedural documents. In 2023, the State Criminal-Executive Service translated internal prison regulations into seven languages to enhance access to information on detainees' rights. Nevertheless, the persistent shortage of qualified interpreters, particularly for less common languages, continues to delay proceedings and hinder effective communication and the provision of legal assistance in practice.

LEGAL AID: A LEVER OF TRANSFORMATION WITH UNREALISED POTENTIAL

Simplified procedures for accessing legal assistance through national legal aid schemes are decisive for prisoners' access to justice, especially where their capacity to enforce their rights is critically undermined by the absence or ineffective realisation of structural safeguards. Structured legal aid policies have demonstrated far-reaching, self-reinforcing effects that extend well beyond facilitating individual access to justice.[9] They enable the regular presence of lawyers in detention facilities, foster specialised expertise in prison law, and ensure that prison-related grievances reach the courts more effectively. This, in turn, generates new case law, stimulates academic engagement, and increases public and

9 Ibid.

political attention—gradually moving prison law from the margins of legal practice into the mainstream. These dynamics are particularly strong where legal aid separately finances complaints concerning detention conditions, supported by a dedicated fee structure and, where a distinct lawyer is appointed from the one handling the criminal case. Such measures not only strengthen the protection of prisoners' rights but also help cultivate a specialised and engaged community of practitioners capable of sustaining long-term progress in the field.

Legal Aid in Prison Matters: Recognition in Law, Exclusion in Practice

Across Portugal, Greece, and Ukraine, legal aid is formally recognised as a right for persons deprived of liberty, yet its practical application in detention-related matters remains extremely limited. In all three systems, the combination of procedural ambiguities, restrictive interpretations of scope, and structural barriers means that prisoners rarely benefit from legal aid when seeking to challenge conditions of detention, disciplinary measures, or administrative decisions.

Two structural issues can be observed in both Greece and Portugal: first, legal aid is only available for certain judicial proceedings; and second, its coverage extends solely to the trial phase. In both jurisdictions, once a conviction becomes final, the lawyer's mandate, and with it the right to publicly funded legal assistance, automatically ceases. This institutional design leaves the execution phase of the sentence largely without legal aid coverage. In Portugal, prisoners must initiate separate applications for each specific issue, and legal aid lawyers are appointed on a per-act basis, with remuneration tied to individual procedural steps rather than continuous representation. This piecemeal approach discourages engagement and prevents the development of long-term lawyer–client relationships or sustained litigation strategies.

Furthermore, legal aid schemes in both countries are limited to proceedings before courts of law, thereby excluding internal procedures conducted within the prison system. In Greece, although legal aid formally encompasses criminal, civil, and administrative matters, detainees cannot apply unless they have been formally summoned

before a court, effectively excluding the majority of detention-related complaints.

In all three systems, there is also no specialisation within the legal aid framework: lawyers register under broad fields such as criminal, civil, or administrative law, and may be assigned to prison-related cases regardless of expertise. The bar and legal aid structures treat prison litigation as a residual category.

In Ukraine, prisoners also rarely receive funded legal support for internal prison matters such as disciplinary cases, administrative complaints, or conditions of detention. Legal aid is more readily available only once a dispute reaches the courts, meaning that access effectively depends on whether a case is treated as judicial rather than administrative. Coverage is also inconsistent: while legal aid is automatic for criminal proceedings and certain victims of ill-treatment, support for other matters depends on the discretionary interpretation of Free Legal Aid Centres.

Legal Aid in the Grey Zone of Prison Law

Across Portugal, Greece, and Ukraine, prisoners' access to legal aid is hindered by the ambiguous legal character of prison decisions and the procedural fragmentation that results. Organisationally, legal aid schemes are not adapted to the specific realities of the prison context but instead mirror the broader judicial order—criminal, administrative, or civil—within which each proceeding is categorised. This lack of differentiation not only reinforces the marginal position of prison-related legal work within national systems but also exposes a deeper structural flaw. The boundaries between administrative, judicial, and quasi-judicial mechanisms remain blurred, leaving crucial aspects of detention—such as transfers, disciplinary sanctions, regime changes, and complaints about conditions—trapped in a legal grey zone with regards to legal aid applicability. This uncertainty directly undermines access to legal aid: where it is unclear whether proceedings qualify as of judicial nature and therefore subject to review, eligibility for legal aid becomes equally indeterminate.

As outlined above, in both Portugal and Greece, this structural

ambiguity results in a situation where internal procedures, those conducted before the prison administration or director, fall outside the remit of legal aid frameworks. Where prisoners may theoretically bring complaints before courts for the execution of sentences, legal aid is only granted when a "question of law" is raised. This threshold, narrowly and inconsistently applied, allows competent authorities such as Portugal's Social Security services or Greece's legal aid committees to deny applications on procedural or interpretative grounds. In both contexts, confusion among officials themselves over the scope of legal aid provisions further deepens inconsistency. Although the law is ostensibly clear, extending assistance to disciplinary or sentence-execution proceedings, its interpretation varies across regions and institutions, leading to arbitrary outcomes and leaving prisoners dependent on administrative discretion.

The Portuguese framework is an illustrative example. While the Code governing sentence execution recognises prisoners' right to be assisted by a lawyer in disciplinary or sentence-related matters, the Law on Legal Aid restricts coverage strictly to judicial proceedings, excluding administrative or internal prison procedures. This misalignment between the two instruments creates persistent confusion among the Social Security services responsible for administering legal aid. In practice, officials often disagree on whether proceedings before the Court for the Execution of Sentences qualify for coverage, particularly when they involve mixed administrative and judicial elements. Some offices grant aid in such cases, while others deny it, citing the absence of a clear "question of law." The result is a patchwork of interpretation where prisoners' access to legal aid depends largely on the regional office handling their request.

Ukraine presents a variation of the same structural dilemma. While the legal aid framework is more clearly institutionalised, dividing responsibilities between regional and local centres for free secondary legal aid and local legal aid bureaus, its operation remains bound by formalistic eligibility criteria. Applications are assessed primarily on procedural grounds, with centres examining whether applicants fall within predefined categories and whether the issue qualifies as one covered by the law. The determination of eligibility depends on how the matter is classified: only those proceedings deemed of a judicial nature are typically accepted, while issues related to detention conditions or internal disciplinary actions are frequently refused as "outside the legal scope." Although refusals

may be appealed to higher-level centres or administrative courts, such remedies are procedurally burdensome and rarely pursued by prisoners.

Taken together, this reveals a shared structural limitation: legal aid systems are designed for conventional forms of litigation rather than the hybrid and administrative realities of prison law. Across all three countries, the uncertainty surrounding the legal nature of prison measures leaves the implementation of legal aid dependent on the discretion of administrative authorities. As a result, prisoners remain exposed to arbitrary and inconsistent decision-making, where legal aid can be denied even in cases where entitlement is explicitly established in law.

Financing of Legal Aid and Disincentives for Lawyers' Engagement in Prison Litigation

Across Portugal, Greece, and Ukraine, the financing structures of legal aid schemes create disincentives for lawyers to engage in prison-related work. While each country provides for state-funded legal assistance in principle, low remuneration, procedural complexity, and delayed payments make this area of practice difficult to sustain. Legal aid budgets remain closely tied to national fiscal conditions, and adjustments to remuneration rarely reflect inflation or the complexity of detention-related cases.

In all three countries, remuneration is generally calculated per procedural act rather than on an hourly or case-based basis. This design favours shorter and more straightforward matters, while prison-related cases, often fragmented across multiple administrative and judicial steps, require sustained effort and repeated visits to detention facilities. The resulting imbalance discourages lawyers from taking on such work and limits the development of expertise in prison law.

In Portugal, legal aid is co-financed by the State and the Bar Association, with payments managed through the Institute for Financial Management and Justice Equipment (IGFEJ). Although recent reforms have updated the compensation framework, the underlying structure remains largely unchanged. For proceedings during the execution phase of a sentence, appointments are made on a per-act

basis, with remuneration set at €112 to €140 per intervention. Up to three prison visits may be reimbursed, while other costs—such as materials, tolls, or administrative expenses—are excluded. Reimbursements are only processed after a case is finalised, meaning that lawyers must often cover expenses in advance. Although the payment schedule has improved, the structure continues to place the financial burden on individual lawyers, particularly in lengthy or complex cases.

In Greece, the legal aid system is state-funded, and compensation is capped at €15,000 per year overall. Payments are typically delayed for long periods, sometimes up to two or three years, further reducing the attractiveness of legal aid work. Fees are tied to individual procedural acts rather than overall case management, with no provision for interim payments. Given the low remuneration and lengthy delays, sustained engagement in prison litigation is not economically viable for most lawyers, contributing to the scarcity of practitioners working in this field.

In Ukraine, lawyers providing free secondary legal aid are remunerated under a regulation that sets the hourly rate at around ₴150 (approximately €3.50). Even when coefficients for complexity are applied, the effective rate remains low and does not reflect the time or travel required for detention-related work. Although reimbursement for travel, accommodation, and communication costs is available, these payments are limited. Following the full-scale Russian invasion in 2022, funding delays worsened when legal aid payments were temporarily suspended as resources were redirected to the war effort, resulting in significant arrears that were only partially resolved later that year.

The Means Test and Bureaucratic Barriers Behind Bars

Across Greece, Portugal, and Ukraine, eligibility for legal aid is determined primarily by financial means, with no merit test applied. The operation of the means test itself presents multiple barriers to accessing legal aid in the context of detention. The requirement to prove limited financial means presupposes a level of administrative access that prisoners simply do not have. Applications must be accompanied by a range of official documents—such as tax

returns, proof of employment or unemployment, income statements, property records, and evidence of benefits or pensions received—that are held by external authorities. Prisoners have no direct access to these institutions, lack internet or phone contact, and depend on slow and uncertain correspondence channels controlled by the prison administration. There is no procedural accommodation to account for these constraints or any alternative mechanism allowing detainees to verify their financial situation from within custody.

The difficulty is compounded by the absence of clear guidance on the information required to apply. Prisoners often lack access to up-to-date forms or instructions specifying the necessary documentation, and no standardised assistance exists to support them in completing applications. In Greece, for instance, detainees may only apply for legal aid once a formal summons to court has been issued, and strict deadlines, such as the forty-eight-hour time limit at the pre-trial stage, make compliance unrealistic. In Portugal, the forms themselves are relatively simple, but the supporting documentation demanded is extensive, and prisoners must reapply for each new proceeding, such as a request for early release or sentence modification, meaning the same process is repeated multiple times. Even where eligibility criteria are less restrictive, as in Ukraine, where most persons deprived of liberty are automatically entitled to legal aid, those outside the automatic categories, such as individuals seeking post-conviction assistance, remain subject to financial verification requirements similar to those in Greece and Portugal; and the prisoner still has to request legal assistance through the prison administration which presents several hurdles as illustrated below.

In Ukraine, a distinction exists between different forms of state-funded assistance. Access to legal consultations and help with drafting documents is subject to a merit test, while representation before courts and public authorities requires a means test. The relevant regulation specifies that applications may be accompanied by a range of supporting financial documents—including income records, pension statements, tax registry information, confirmation of receipt of social benefits, and declarations from self-employed individuals. Although these documents are not always mandatory, obtaining them from within detention is often unrealistic. Prisoners rely on correspondence through prison staff or on family members to liaise with external authorities. In conflict-affected areas, these channels are further disrupted, making timely submission of applications particularly difficult.

These structural hurdles interact with personal and social factors that make the means test especially exclusionary for certain groups. Prisoners without relatives or contacts on the outside struggle disproportionately to obtain the required records, as there is no system enabling them to request documents directly from the relevant authorities. Foreign nationals frequently lack access to financial documents from their countries of origin or cannot afford the cost of translation and legalisation required for submission. Prisoners with psychosocial disabilities face additional challenges in understanding and completing bureaucratic procedures, particularly in the absence of tailored assistance or legal support. Together, these factors mean that the means test functions in practice as a procedural barrier that disproportionately excludes those least able to meet its documentary and administrative demands.

The Right to Legal Aid in Detention: A Matter of Institutional Discretion?

Across all three jurisdictions, prisoners' access to legal aid is mediated through prison staff. The process of applying for legal aid depends heavily on the cooperation, awareness, and initiative of officials within detention facilities, creating a layer of administrative dependency that significantly undermines prisoners' access to legal aid. This arrangement places full control over communication with legal aid bodies in the hands of the very institution whose actions or conditions may be the subject of the complaint.

In Greece, the absence of a standardised legal aid application form means that detainees must draft a general written request addressed to the prison director, who is then responsible for forwarding it to the competent judicial authority. This indirect and informal procedure introduces uncertainty at every stage: applications may be delayed, misplaced, or never transmitted, depending on the diligence of individual staff members. The lack of transparency surrounding the process prevents detainees from tracking the progress of their requests, while the absence of clear institutional responsibility results in wide variation in practice across facilities.

In Portugal, the system relies on intermediaries within prisons—typically "educators" or social workers—who assist prisoners in completing the standardised legal aid forms and ensure their submission

to the appropriate authority. In theory, this structure is intended to support prisoners in navigating the application process; in practice, it has become a bottleneck. The number of educators is grossly insufficient in proportion to the prison population, leading to long delays before a prisoner can even initiate an application. In Lisbon Central Prison, for example, twenty educators reportedly share responsibility for around 3,000 inmates, meaning each must supervise approximately 150 prisoners. As a result, detainees may wait up to two weeks for a meeting simply to begin the process. Moreover, the assistance provided is inconsistent. Social workers vary considerably in their knowledge of the legal aid framework and in their willingness or ability to support detainees, leading to disparities in access across and within institutions. Prisoners without external contacts are especially dependent on these intermediaries, and their ability to obtain legal aid contingent on the commitment of individual staff members rather than on clear procedural guarantees.

In Ukraine, prisoners depend on prison staff to transmit their legal aid requests, as applications to the regional or local Free Legal Aid Centre must be forwarded through the prison administration. Despite legislative amendments intended to safeguard confidential correspondence with courts, prosecutors, lawyers, and oversight bodies, long-standing monitoring data as well as judgments of the European Court of Human Rights demonstrate that these protections remain largely theoretical. Persistent censorship, interference, and delays in prisoner correspondence continue to be reported. Monitoring by human rights organisations further found that in numerous institutions no sealed appeals were sent to the Ombudsman or other oversight bodies over extended periods. In nearly half of the institutions surveyed, correspondence with such authorities was either non-existent or extremely limited. Cases have been documented in which letters were delayed, withheld, or "lost," and detainees were actively discouraged from contacting external institutions.

These examples show how structural dependence on prison administrations can risk transforming the right to apply for legal aid into a matter of institutional discretion. Whether an application is completed, forwarded, or even acknowledged often depends not on the prisoner's eligibility, but on the attitudes, capacity, and integrity of prison staff.

Distrust, Fear, and the Structural Deterrence of Rights in Detention

Within places of detention, distrust and fear converge to form a structural deterrent to the exercise of rights. Scholarship in prison studies has long noted that complaint systems in carceral settings are viewed by prisoners not as instruments of accountability but as extensions of the institutional apparatus itself; symbolic gestures of legitimacy rather than genuine channels of redress. The dynamics of imprisonment instil and amplify these perceptions: vast power differentials, dependence on staff, and the absence of independent oversight generate deep scepticism about the system's fairness and purpose. Across the countries examined, detainees report hopelessness, distrust, cynicism, and disillusionment, seeing legal aid and complaint bodies as partial, ineffective, or complicit in sustaining control. The anticipation of punitive consequences—such as loss of privileges, isolation, fabricated disciplinary charges, or escalated mistreatment—interlocks with this to produce widespread self-censorship. Indeed, prisoners' capacity and willingness to assert their rights are curtailed by their dependence on the prison administration and the fear of reprisals. It is clear that prisoners' disengagement cannot be reduced merely to a lack of awareness or procedural obstacles; it stems from structural distrust in the justice system as an instrument of state power, which simultaneously crystallises into a self-protective fear that suppresses redress and perpetuates the carceral power structure itself.

In Greece, several interviewees reported that prisoners "laugh" when asked about their rights in detention, underscoring a deep cynicism about the system's credibility. Practitioners and former detainees agreed that only those with power, economic means, or personal connections are able to exercise their rights in practice. As one former detainee put it, "Legal aid is a joke; most lawyers have neither the skills nor the time to defend their clients." Legal aid services were consistently described as inadequate, perfunctory, or purely formalistic, reinforcing prisoners' perception that state-appointed lawyers, dismissively referred to as "lawyers of the list", offer little real assistance. The climate of fear and futility was repeatedly emphasised: "Being a prisoner... fear prevails. You can't go against a thing that can swallow you up." Another interviewee explained that "it is structured in such a way that it does not serve the interests of prisoners to claim their rights by submitting complaints," revealing a learned helplessness that extends beyond material barriers to a lack of faith in the system.

In Portugal, prisoners also expressed scepticism and fear. Many detainees assume that only privately instructed lawyers can provide genuine assistance. At the same time, prisoners fear that submitting a complaint or seeking legal aid will expose them to retaliation; many distrust the confidentiality of the process, believing that guards will learn who submitted a complaint. Fear of reprisals was noted as a deterrent for many from engaging with the very mechanisms designed to protect their rights.

In Ukraine, prisoners face an entrenched structure of deterrence that suppresses the exercise of rights through fear and punitive control. Administrative interference with correspondence functions as one deterrent, signalling that attempts to communicate with courts or oversight bodies are futile. Another is the fear of retaliation, with the prison administrations using disciplinary action to punish prisoners who complain. The routine deployment of special prison forces, repeatedly condemned by the CPT for fostering intimidation and ill-treatment, further reinforces the perception that challenge to authority invites retribution. Moreover, prisoners face prosecution as a form of deterrence under Article 391 of the Criminal Code, which has been used by prison administrations as a tool of repression and criminalisation of complaints and reports of torture. Its vague wording grants administrations unfettered discretion to transform minor disciplinary infractions—such as refusal to work, improper dress, or verbal resistance—into criminal offences.

THE INVOLVEMENT OF BAR ASSOCIATIONS AND LAWYERS IN PRISON LITIGATION: STRUCTURAL ABSENCE AND PROFESSIONAL DISINCENTIVES

Across Greece, Portugal, and Ukraine, the institutional involvement of Bar Associations in ensuring access to legal aid for prisoners is largely formalistic and fragmented, with little evidence of sustained engagement in prison-related legal practice or capacity-building. While all three countries maintain legal frameworks assigning Bars or professional bodies a role in administering or supervising legal aid, their involvement rarely extends beyond administrative coordination. The result is a system in which lawyers'

participation in detention cases is neither strategically organised nor professionally supported, leaving the defence of prisoners' rights dependent on individual initiative rather than institutional backing.

In Greece and Portugal, Bar Associations are responsible for maintaining lists of legal aid lawyers and for appointing counsel, yet no structure exists for the systematic training, supervision, or evaluation of these lawyers in the specific context of detention. In both jurisdictions, the Bars fulfil their legal obligations through procedural management rather than substantive oversight. Once appointments are made, the relationship between the Bar and the appointed lawyer effectively ends, and no mechanisms ensure that detainees actually receive adequate or informed representation. In practice, Bars have not developed policies, guidance, or resources addressing the distinct challenges of providing legal aid in places of deprivation of liberty.

In Ukraine, the situation is somewhat distinct but structurally analogous. The state-run Free Legal Aid Centres manage appointments and case allocation, while the Bar retains only a supervisory role over the profession itself. Lawyers working within the system are required to pass a selection process and enter into contracts with the centres, but no specialisation, continuing education, or thematic oversight exists specifically for those handling detention-related cases.

Across all three countries, training and capacity-building in penitentiary law remain virtually non-existent. Penitentiary or prison law is absent from the core curriculum of legal education, and Bar-provided training, where it exists, is rare, non-compulsory, and poorly attended. Occasional seminars in Greece or Portugal are ad hoc and lack continuity or practical focus.

The Bar Association and Monitoring of Detention Conditions

In both Greece and Portugal, Bar Associations are legally empowered to visit prisons and monitor detention conditions. In practice, however, this role is exercised unevenly. In Greece, there is no evidence of active monitoring: lawyers and practitioners interviewed could not recall any Bar-led prison visits, statements, or interventions concerning detention conditions or prisoners' rights. In Portugal, the

Bar Association conducts visits through its Human Rights Commission, which maintains a cooperative relationship with prison governors. Yet, these visits focus solely on general conditions of detention and do not address access to legal aid or the effectiveness of legal assistance. Additionally, the Bar Association (or its Human Rights Commission) does not hold prerogatives similar to those of the NPM or the CPT (e.g., visit without prior notice, access to detainees without the presence of prison officials, access to individual files).

In Ukraine, Bar Associations have no legal mandate to monitor detention facilities. Oversight of prison conditions is carried out instead by the Parliamentary Commissioner for Human Rights (National Preventive Mechanism) and civil society. The Bar's role is limited to supervising advocates and cooperating with the Free Legal Aid Centres responsible for providing assistance to persons deprived of liberty.

Lawyers and Prison Litigation: The Marginal Position of Prison Litigation within Legal Practice

In the absence of a Bar Association or any other centralised body responsible for overseeing or maintaining a network of lawyers specialised in penitentiary law or rights in detention, prisoners across all three countries depend on general legal aid systems that lack both specialisation and continuity. None of the countries examined have an organised network of lawyers dedicated to prison litigation or the defence of prisoners' rights. Lawyers who do engage in this work face multiple disincentives: there is no centralised training or institutional support; remuneration is low and often delayed; and prison litigation is widely regarded within the profession as non-profitable. In addition to economic constraints, lawyers encounter significant practical barriers to effective representation, including limited and inconsistent access to detention facilities, difficulties maintaining confidential communication with clients, and obstacles in obtaining case documentation.

In Greece, legal representation in prison-related proceedings is rare, as it is neither mandatory nor facilitated under the legal aid framework. The study found no evidence of any professional group or informal network of lawyers specialising in prison law or detention-related rights. Lawyers who appear in such matters do so sporadically and without institutional support. Minimum conditions exist for lawyers

to register on the legal aid list, but these do not ensure competence in criminal or penitentiary law. Both former detainees and practitioners described the overall quality of legal aid as low, with a few positive examples of strong representation regarded as exceptions rather than the norm.

In Portugal, prisoners are entitled to legal assistance in certain proceedings—such as disciplinary cases or matters before the court for the execution of sentences—but this engagement remains limited and fragmented. Field research revealed no structured or dedicated network of lawyers specialising in prison law. Prisoners generally depend on the broader pool of legal aid lawyers registered under criminal law, and access to specialised counsel typically depends on family support or personal initiative. The Bar Association does not maintain records of specialisation within the legal aid system, relying instead on self-declaration of competence. Of more than 11,000 lawyers registered for legal aid, 8,935 list criminal law as a practice area, but no verification of expertise or practical experience occurs.

This lack of differentiation contributes to a system where access to prison law expertise depends largely on chance. Only one professional association—Fórum Penal—shows consistent, albeit limited, attention to prison law. Fieldwork identified very few lawyers regularly involved in prison litigation, most practising independently or within small firms. A notable number of cases pending before the European Court of Human Rights concerning detention conditions were submitted by a single lawyer, himself a former prisoner, widely known among inmates. There are no formal links between lawyers active in this area and NGOs, universities, or human rights organisations, further reflecting the marginality and isolation of prison law within the broader profession.

In Ukraine, the role of lawyers in detention is shaped by the ongoing war and the resulting strain on the national Free Legal Aid system. The capacity of the FLA network has declined sharply: in some regions, such as Kherson, the number of active legal aid lawyers has fallen from around 100 to fewer than 10. Many lawyers have left the country, leading to shortages even in comparatively safer regions such as Lviv. Unlike certain state institutions, the legal profession is not exempt from mobilisation, leaving lawyers vulnerable to conscription and further disrupting the continuity of legal aid provision.

Access and Communication: Practical Constraints on Lawyers' Work in Detention

For the few lawyers that do exist and practise in this area, they face a challenge shared across jurisdictions: the peculiar situation of their clients, who are by definition confined and unable to maintain easy contact with the outside world. When it comes to defending their rights, particularly concerning the conditions of their detention, the ability of lawyers to access their clients and communicate with them effectively becomes crucial. While legal provisions in each country formally regulate lawyers' access to detention facilities, the actual organisation and facilitation of such access remain inconsistent and dependent on the initiative of individual prisons or practitioners. Even where Bar Associations have some role in promoting or supervising lawyer access, their involvement rarely extends beyond formal regulation, leaving practical arrangements fragmented, uneven, and often ineffective in ensuring regular, confidential, and meaningful contact between lawyers and their detained clients.

In Greece, there are no specific practical arrangements established by law or internal regulations governing legal assistance missions in prisons. General provisions allow civil society organisations to visit detainees, subject to authorisation by the Prison Council, but lawyers do not enjoy unrestricted access to detention facilities and may meet clients only in designated areas. Although the Penitentiary Code formally guarantees detainees the right to meet with their lawyers without limitation as to number or duration, the internal rules of each prison ultimately determine the frequency, duration, and format of visits. In practice, conditions rarely allow for confidentiality; lawyer–client meetings are often conducted in shared spaces with several detainees present, undermining privacy.

Lawyers are entitled to receive information concerning their clients' case files and personal data but do not have access to classified documents relating to sentence execution or the broader status of detention. While pre-trial detainees also enjoy the right to communicate by telephone or correspondence, these are constrained by costs and by administrative discretion. Lawyers and former detainees reported that legal aid counsel rarely visit clients before hearings, leaving prisoners without meaningful communication or preparation time.

In Portugal, while the legal framework similarly guarantees confidential and unrestricted access between lawyers and prisoners, implementation is uneven. Meetings typically occur in designated rooms, but travel costs and reimbursement limits discourage frequent visits, particularly by legal aid lawyers. The legal aid scheme only compensates a small number of prison visits, often reimbursed years later at the end of proceedings. As a result, many inmates report never being visited by their appointed lawyer. Differences between facilities further compound these challenges—some prisons require prior booking of visits, while others impose ad hoc restrictions under the guise of security or administrative necessity. Smaller prisons tend to facilitate contact more flexibly than larger ones. The cumulative effect is an unequal system in which privately retained lawyers maintain far more regular contact with clients than those appointed under legal aid.

In Ukraine, the situation is aggravated by the ongoing war. The severe decline in the Free Legal Aid system's capacity has sharply reduced the number of lawyers available to visit detention facilities, particularly in conflict-affected regions such as Kherson. Mobility is further restricted by security risks, transport disruptions, and the fact that lawyers are not exempt from mobilisation. Reports from the Ukrainian National Bar Association describe cases of intimidation, searches, and even unlawful detention of lawyers by military recruitment centres and security services, creating a climate of fear and self-censorship. Male lawyers in particular avoid travelling to detention centres to minimise exposure to draft notices or reprisals, forcing some legal teams to adapt by dividing tasks; male lawyers preparing legal documents remotely, while female colleagues undertake in-person visits.

Role of NGOs, Legal Clinics, and National Monitoring Bodies of Prison Conditions

Across the three countries, the extent to which NGOs, legal clinics, and national monitoring bodies compensate for the weak institutional role of Bar Associations and the limited engagement of lawyers in prison-related work varies significantly. While in Greece and Portugal their contribution remains marginal and largely focused on reintegration or humanitarian support, in Ukraine civil society plays a more substantial and structured role in monitoring detention conditions, providing legal aid, and driving systemic reform efforts.

In Greece, civil-society involvement in prisons is fragmented and uncoordinated, with no national framework or protocol regulating NGO or academic engagement. Each prison independently decides whether and how to cooperate with external actors, resulting in inconsistent access and uneven support across facilities. NGOs and legal clinics must obtain prior authorisation from the Prison Council to visit detainees, and approval practices vary widely between facilities, depending largely on the discretion of prison directors. Their activities, where permitted, are typically irregular and focused on psychosocial or material assistance rather than sustained legal work. Legal clinics do not operate within prisons, and there are no structured networks of lawyers or NGOs engaged in systematic rights enforcement.

The National Preventive Mechanism (NPM), functioning within the Greek Ombudsman's Office, conducts prison monitoring visits and receives complaints, yet its mandate is preventive rather than remedial; it cannot offer legal advice or representation. Overall, NGOs and the NPM partially fill informational and humanitarian gaps but cannot substitute for the absence of organised legal aid or specialised lawyers in enforcing prisoners' rights.

In Portugal, there exists a formal legal framework for NGO involvement under Article 55 of the Prison Code and Article 99 of the General Regulation of Prisons, which allows cooperation through written agreements with the Directorate-General for Reintegration and Prison Services. In practice, however, the scope of NGO activity is heavily skewed toward reintegration rather than litigation. Their initiatives typically focus on social support, education, vocational training, employment, and family reintegration, not on providing legal advice or representation to prisoners.

There are no specific legal provisions enabling NGOs or university legal clinics to deliver legal advice within prisons, and their access to detainees is subject to general visitation rules and authorisation by the Director-General, which limits continuity. Furthermore, NGOs lack procedural standing before the courts for the execution of sentences, though administrative law allows them to bring or intervene in cases concerning constitutional rights, such as degrading treatment; a provision that could theoretically extend to detention conditions but remains underused in practice.

Portugal also lacks legal clinics authorised to practise law and NGOs specialising in prison litigation. Most organisations operate in the field of social reinsertion, and even the most active NGO in this area focuses on reintegration support and advocacy, relying on a private law firm for limited pro bono legal assistance to former prisoners. As a result, the NGO sector plays an important social and rehabilitative role but does not fill the legal vacuum created by the absence of specialised prison lawyers or clinics.

Ukraine presents the most developed example of civil-society involvement in prison oversight and legal protection among the three countries. NGOs, academic actors, and hybrid monitoring bodies play a central role in complementing the state-run Free Legal Aid system, particularly amid wartime constraints. The National Preventive Mechanism operates under an "Ombudsman+" model, combining state oversight with the participation of NGO experts, lawyers, and academics. This framework allows for unannounced visits to detention facilities, confidential interviews with detainees, and cooperation between the NPM and civil-society organisations. While the NPM does not provide direct legal aid, it refers cases requiring legal action to partner NGOs or specialised lawyers, bridging the gap between monitoring and representation.

In parallel, Public Councils established under the Ministry of Justice and its regional departments ensure civil-society participation in monitoring penitentiary institutions. They have broad powers to inspect facilities, review files, interview detainees, and report violations, though in practice they are frequently obstructed by prison staff, with no effective sanctions for such interference.

Several NGOs fill the space left by limited Bar and FLA engagement. The Ukrainian Helsinki Human Rights Union (UHHRU), a network of 26 organisations, provides legal aid, strategic litigation, and advocacy on issues such as torture, unlawful detention, and denial of medical care. The Kharkiv Human Rights Protection Group (KHPG) combines legal assistance, ECtHR litigation, and legislative advocacy, while Protection for Prisoners of Ukraine (PPU), a grassroots group founded by former detainees, engages in monitoring, documentation, and case-based legal support. The organisation Ukraine Without Torture (UWT), formed by NPM monitors, focuses on preventing ill-treatment and operates a hotline that refers detainees to partner organisations for legal or psychological help.

Legal clinics generally do not work with prisoners, though the Penitentiary Academy of Ukraine hosts a notable exception—a clinic providing direct consultations and correspondence-based legal aid to detainees.

Overall, in Ukraine, NGOs and hybrid monitoring mechanisms, unlike in Greece or Portugal, actively attempt to fill the institutional gap left by lack of Bar involvement and the strained FLA system, serving as the main actors in prisoners' rights protection and litigation. However, their capacity is now under severe strain due to war-related restrictions and funding uncertainty. Civil-society organisations rely entirely on donor funding, which ensures independence but leaves them vulnerable to financial instability. The situation has been aggravated by wartime conditions and the 2025 suspension of major U.S. aid programmes, which threaten the sustainability of ongoing projects. The scale of the war crimes perpetrated by Russian forces has led NGOs to mobilise to carry out documentation work, assist victims and take legal action, which represents a colossal burden, reducing the resources available for the usual issues related to detention.

2 CONCLUSIONS ON EUROPEAN AND INTERNATIONAL STANDARDS

UNITED NATIONS

UN bodies and human rights mechanisms have produced a significant number of norms and guidelines on access to justice, which however apply solely in part to prison litigation. The right to an effective remedy has been established as a cornerstone of international human rights law, which extends fully to persons in detention.[10] Key soft law instruments on prisoners' rights, such as the Mandela Rules (Rules 56-57) or the UN Body of Principles on Detention (Principle 33) consolidate this analysis.[11] Similarly, the application to prison litigation of central aspects of the right to a fair trial,

10 See in particular Article 8 UDHR and Article 2 (3) ICCPR.

11 On the specific case of victims of torture, see Article 14 CAT.

including the right to a fair and public hearing by an independent tribunal, has been established.[12]

However, the question of prisoners' right to free of charge legal assistance through legal aid, which is a central condition for the effective implementation of the rights guaranteed, remains unclear. While access to legal aid is addressed in both binding treaties and soft law standards, those standards are for the most part limited to the criminal proceedings,[13] or concern specific categories of persons – such as victims of torture.[14] There are notable exceptions in instruments that concern specifically prisoners' rights, which contain provisions in favour of prisoners' access to legal aid in instruments that concern specifically prisoners' rights, such as the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems,[15] or the Nelson Mandela Rules.[16] But there is a lack of comprehensive guidance on prisoners' access to legal aid that would take into consideration the specificities of litigation from within prison and impose strong requirements on States.

This is underscored by the UN Special Rapporteur on the independence of judges and lawyers, who states that UN standards on legal aid should not be limited to criminal proceedings but should extend to "the provision of effective legal assistance in any judicial or extrajudicial procedure aimed at determining rights and obligations".[17] To support this point, she refers to a variety of

12 A central provision in this respect is Article 14 (1) ICCPR, whose broad formulation supports the analysis that it applies to post-conviction detention.

13 See Article 14 (3) (d) ICCPR: "In the determination of any criminal charge against him, everyone shall be entitled to […] have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it".

14 Committee against Torture, 'General Comment No 3 (2012) Implementation of article 14 by States parties' (13 December 2012) UN Doc CAT/C/GC/3, para. 30: "States parties should provide adequate legal aid to those victims of torture or ill-treatment lacking the necessary resources to bring complaints and to make claims for redress".

15 See Guideline 6 on the post-trial stage, in particular para. 47 (c): "States should introduce measures: […] (t)o ensure that prisoners have access to legal aid for the purpose of submitting appeals and filing requests related to their treatment and the conditions of their imprisonment, including when facing serious disciplinary charges, and for requests for pardon, in particular for those prisoners facing the death penalty, as well as for applications for parole and representation at parole hearings".

16 United Nations General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), GA Res 70/175 (17 December 2015), Rule 61 (3).

17 UN Special Rapporteur on the independence of judges and lawyers, A/HRC/23/43, 15 March 2013, para. 27.

standards, positions and jurisprudence, highlighting the need for clarification and the provision of clear guidance. This is particularly necessary for legal aid in prison litigation, which is largely invisibilised by the prominence of guidance on criminal proceedings, since, as shown by this report, lawyers play a crucial role in securing prisoners' access to justice, yet CoE and EU standards do not provide a binding framework requiring states to ensure free legal aid in this area.

COUNCIL OF EUROPE

At the CoE level, for over a quarter century, ECtHR case law has contributed to the definition of CoE prison standards in a variety of areas – from material detention conditions to family visits, access to information, and the execution of life sentences. Through its "procedural turn"[18] in the handling of complaints concerning material detention conditions, it has also imposed on State parties the establishment of a system of remedies enabling prisoners held in detention conditions contrary to Article 3 ECHR to obtain an improvement of their detention conditions and compensation for the breach of their rights.[19] Ruling under Article 13 ECHR, the Court has articulated States' procedural obligations in this area with increasing precision, viewing the effectiveness of remedies as a matter of critical importance—and as a key contribution of its strategy to relocate litigation related to detention conditions to the national level.

However, an analysis of the Court's case law shows that instead of imposing measures that would allow detainees to bring their cases effectively before the ordinary courts with the assistance of lawyers, it has favoured an approach based on procedural simplification enabling prisoners to "avail themselves"[20] of the remedies in place. This approach remains ambivalent, as the simplification advocated for does not result in a dissolution of the procedural requirements

18 B Belda, Les droits de l'homme des personnes privées de liberté (Bruylant 2010)

19 See for instance Neshkov v. Bulgaria, no. 36925/10, 27 January 2015, J.M.B. and others v. France, no. 9671/15, 30 January 2020, Hungary (Varga and others v. Hungary, no. 14097/12, Torreggiani v. Italy, no. 43517/09, 8 January 2013, Petrescu v. Portugal, no. 23190/17, 3 December 2019, Ananyev v. Russia, no. 42525/07, 1 October 2012, Sukachov v. Ukraine, no. 14057/17, 30 January 2020.

20 Neshkov and Others v. Bulgaria, nos. 36925/10 and 5 others, § 191, 27 January 2015.

inherent in judicial review, leaving detainees without assistance when engaging in adversarial proceedings in which the prison administration, which is the sole party with access to evidence, has a considerable advantage.

The Court's case law on the basis of Article 6 has not resulted in increased procedural guarantees for prisoners either when it comes to access to legal information or to a lawyer. The Court has not deviated from its restrictive interpretation of the applicability of the criminal limb of Article 6§1, leaving the procedural guarantees set out in Article 6§3, including access to free legal aid, largely inapplicable beyond specific prison disciplinary offences.[21] The applicability of the civil limb of Article 6§1 has been extended to a number of aspects of prison life; from compensation claims on poor material conditions of detention or inadequate health care[22] to restrictions imposed on prisoners' right to receive money from outside prison,[23] the use of a separation during family visits,[24] as well as, more recently, the imposition of security measures and frequent prison transfers.[25] However, with regards to legal aid: Article 6 § 1 does not imply that the State must provide free legal aid for every dispute relating to a "civil right";[26] the Court makes it clear that there is a clear distinction between Article 6 as it applies to the criminal limb versus the civil limb which makes no reference to legal aid.[27] Nonetheless, legal aid may be required under Article 6§1 where it is indispensable for effective access to a court.[28] Whether the absence of legal aid results in a violation depends on a case-by-case assessment considering: the importance of what is at stake

21 Under the Court's current case law, Article 6 ECHR under its criminal limb applies solely to disciplinary proceedings when they entail an extension to the duration of the sentence to be served (See Ezeh and Connors v. the United Kingdom [GC], nos. 39665/98 and 40086/98, ECHR 2003-X and Ezeh and Connors v. the United Kingdom, nos. 39665/98 and 40086/98, 15 July 2002).

22 See respectively Beresnev v. Russia, no. 37975/02, § ..., 18 April 2013 and Vasiliev v. Russia (prev.).

23 Enea v. Italy [GC] no. 74912/01, 17/09/2009.

24 Stegarescu and Bahrin v. Portugal, no. 46194/06, 6 April 2010.

25 Wick v. Germany, no. 22321/19, 4 June 2024.

26 Airey v. Ireland (Article 50), 6 February 1981, §26, Series A no. 41.

27 Essaadi v. France, no. 49384/99, §30, 26 February 2002.

28 Airey v Ireland, §26.

for the applicant;[29] the complexity of the law or procedure;[30] the applicant's ability to represent themselves effectively;[31] and whether the law requires professional legal representation.[32]

Other Council of Europe bodies have not filled this gap; instead, they have largely reinforced the notion that procedural simplification and reduced reliance on lawyers are preferable to recognising that, for prisoners, legal assistance is an essential precondition for access to justice and the enforcement of their rights. This stance overlooks the particular vulnerabilities of prisoners and the practical, institutional, and informational barriers they face in reaching the courts. The Committee of Ministers, through its recommendations on access to justice and legal aid, has broadly affirmed that poverty or vulnerability should not bar individuals from protecting their rights. Yet, it has never explicitly extended this principle to those in detention. Its approach mirrors the Court's procedural orientation, prioritising simplification and administrative efficiency over ensuring access to professional legal assistance. As a result, the right to legal aid for prisoners who face prison litigation to enforce their rights, litigation of an inherently ambiguous legal nature that straddles administrative, disciplinary, and executive domains, has remained unrecognised. Even the European Prison Rules, while affirming a general right to legal advice, stop short of acknowledging a right to legal aid in prison matters, providing only that assistance may be permitted "when the interests of justice so require." This vague formulation echoes the broader stance that prisoners are largely expected to navigate complaints and disciplinary procedures without legal aid.

Moreover, the CPT, a key actor in developing standards in the field of prisons, has identified access to a lawyer in detention as central to prevent torture and ill-treatment, but it has paid comparatively little attention to the means through which that access is to be realised in practice, particularly for those without financial resources.[33] As a matter of fact, the question of whether legal assistance should

29 Steel and Morris v. the United Kingdom, no. 68416/01, §61, ECHR 2005-II.

30 Airey v Ireland, §24.

31 McVicar v. the United Kingdom, no. 46311/99, §48-62, ECHR 2002-III.

32 Gnahoré v. France, no. 40031/98, §41, ECHR 2000-IX.

33 Malcolm Evans, 'European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)' (November 2020) Max Planck Encyclopedia of International Procedural Law (OUP Online).

be freely available to detainees, and if so, to which categories of detainees and under what conditions, has remained unaddressed in the CPT's elaboration of standards. Furthermore, the Committee has remained focused on access to a lawyer during criminal proceedings, without linking access to a lawyer with the ability of detainees to challenge violations occurring within detention, such as through internal administrative or disciplinary proceedings, or external judicial mechanisms concerning conditions of detention and remedies for ill-treatment.

The ECSR, interpreting the ESC as a living instrument, has developed an interpretation of Charter provisions as requiring states to provide legal aid as a precondition for the realisation of social rights in specific contexts (for instance, the right to social and medical assistance, the right to housing).[34] However, and this is largely due to the relative inexistence of prison issues in the ESCR case law, no such requirement has been made so fair in relation to prisoners' rights under the ESC – although the application of the ESC in the prison context has been recognised for instance in the area of healthcare[35] or working conditions.[36]

EUROPEAN UNION

The EU, to date, has not significantly regulated prisoners' rights in relation to their detention conditions and their relation to the prison administration, let alone prisoners' access to justice. Consequently, the rights afforded in the CFR (including the right to an effective remedy and to a fair trial enshrined in Article 47 CFR), which apply only within the scope of EU law, remain largely inapplicable in the prison context.

The most prominent EU text on prison matters is the European Commission Recommendation "on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention

34 See respectively: ECSR, Conclusions XVI-1 (2003), Ireland: LINK; ECSR, Conclusions 2011, Azerbaijan: LINK.

35 ECSR, International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, no. 173/2018, 26 January 2021, para 218.

36 ECSR, Conclusions 2012, Statement of interpretation on Article 1§2: prison work, 2012_163_01/Ob/EN: LINK.

conditions", adopted in December 2022.[37] Although focusing on material detention conditions, the Recommendation also aims to enhance prisoners' access to a lawyer (paragraph 58), to legal information (paragraph 61) and to "internal and external complaint mechanisms" enabling prisoners to "challenge aspects of their life in detention" (paragraph 62). However, the non-binding nature of this document limits its capacity to harmonise EUMS legislation in this area.

This lack of EU intervention on prisoners' rights, which can largely be attributed to the reluctance of EUMS to grant the EU powers to regulate this essential area of State sovereignty, is paradoxical in view of the growing importance of prison issues for the proper functioning of judicial cooperation in criminal matters. Since 2016 and the landmark CJEU judgment Aranyosi and Căldăraru, EUMS must refuse to execute an EAW in cases of "systemic or generalised" deficiencies in detention conditions.[38] The Court has also recently further extended the possible grounds for refusing to execute a EAW to include the possible impacts of imprisonment on the requested person's health,[39] or their right to respect of private and family life as well as the best interests of their children.[40] The dynamism of the Court's case law in this area suggests that new issues might emerge and new possible grounds for refusal might be defined in the near future, underscoring the need for EU action to restore mutual trust between EUMS. [41]

37 European Commission, Recommendation (EU) 2023/681 on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions, 8 December 2022.

38 CJEU, joined cases C404/15 (Pál Aranyosi) and C659/15 PPU (Robert Căldăraru), ECLI:EU:C:2016:198, 5 April 2016, see in particular § 88: "[…] where the judicial authority of the executing Member State is in possession of evidence of a real risk of inhuman or degrading treatment of individuals detained in the issuing Member State, having regard to the standard of protection of fundamental rights guaranteed by EU law and, in particular, by Article 4 of the Charter […], that judicial authority is bound to assess the existence of that risk when it is called upon to decide on the surrender to the authorities of the issuing Member State of the individual sought by a European arrest warrant. The consequence of the execution of such a warrant must not be that that individual suffers inhuman or degrading treatment."

39 CJEU, C699/21 (E.D.L), ECLI:EU:C:2023:295, 18 April 2023.

40 CJEU, C261/22 (GN), ECLI:EU:C:2023:1017, 21 December 2023.

41 The Court has recently ruled on sentence adjustment procedures (in the frame of the surrender procedure provided for foreseen in the Trade and Cooperation Agreement between the EU and the United Kingdom, see CJEU, C743/24 (Alchaster II), ECLI:EU:C:2025:230, 3 April 2025); and a pending case concern the question whether a EAW can be rejected where the requested person has been sentenced in the issuing state to a "disproportionate minimum term of imprisonment": CJEU, C-583/24 (Tagu). Domestic case law could also lead to proceedings before the Court, compelling it to address new questions, such as the issue of informal prisoner hierarchy (Rechtbank Amsterdam, no. 13-349098-24, ECLI:NL:RBAMS:2025:1756, 19 March 2025).

Conversely, the position defended here is that an EU binding text guaranteeing prisoners' access to legal information, a lawyer, legal aid, and translation and interpretation, would make a significant contribution to the enforcement of prison standards. The reinforcement of prisoners' access to justice that such a measure would achieve would enable them to seek redress more efficiently before domestic courts. This, in turn, could set in motion a positive dynamic for prison reform on the longer term: as shown by the example of several EU countries, enhanced judicial scrutiny of prisons fosters the development of prison case law, whose interpretation in legal doctrine contributes to the autonomisation of prison law. This process contributes to moving the prison field beyond its traditionally marginal status and increases the visibility of detention conditions and their underlying causes in public debate.[42]

3 GENERAL CONCLUSION AND RECOMMENDATIONS

Overall, across the UN, EU, and Council of Europe frameworks, there is a lack of clarity, consistency, and practical applicability in existing standards, and no single instrument explicitly guarantees or recommends access to legal aid for prisoners in the context of prison litigation; that is, legal assistance in judicial or administrative procedures concerning the enforcement of rights during detention. Despite a proliferation of norms on access to justice and fair trial guarantees, these have remained largely confined to the sphere of criminal defence, leaving a gap in the enforcement of rights during imprisonment.

Indeed, in the absence of a recognised right to legal aid for prison litigation, the human rights architecture leaves a crucial gap between entitlement and enforcement. Bridging this gap requires a shift from formal equality to practical empowerment: embedding legal assistance as an essential safeguard in proceedings concerning the determination and enforcement of rights within detention.

Targeted standards recognising the crucial role of legal aid would make a significant contribution to the enforcement of prison

42 EPLN White Paper, cited above, p. 46, with examples from Belgium and France.

standards and serve as a corrector to the invisibilisation of prison litigation and its omission from existing access to justice frameworks. As seen in countries where access to legal aid has been extended to this area, it has a cascading effect that reaches far beyond individual cases.[43] By enabling prisoners to seek redress more effectively before domestic courts, it sets in motion a positive dynamic for prison reform: enhanced judicial scrutiny of prisons fosters the development of prison case law, whose interpretation in legal doctrine contributes to the autonomisation of prison law. This process, in turn, helps move the prison field beyond its traditionally marginal status and increases the visibility of detention conditions and their underlying causes within broader public and legal debate.

RECOMMENDATIONS AT UN LEVEL

Building on the UN Special Rapporteur on the independence of judges and lawyers' identification of the need for clarification and the provision of clear guidance on legal aid extending beyond criminal proceedings to any judicial or extrajudicial procedure determining rights, a need that is even more acute in the context of persons deprived of liberty, the UN should develop a dedicated UN Standard on Access to Justice for Persons Deprived of Liberty, devoted specifically to ensuring access to justice in prison litigation and the effective enforcement of rights in detention.

This standard should aim at the full recognition of the right to legal information and the right to free legal aid in detention. It should make it clear that legal aid must be available for all matters affecting fundamental rights in prison, including internal administrative procedures, disciplinary cases, and external judicial challenges concerning detention conditions or ill-treatment. It should ensure that detainees have clear information on eligibility and procedures, timely access to legal advice before and during proceedings, and an effective possibility to challenge refusals of legal aid before an independent authority.

43 Ibid.

RECOMMENDATIONS ON THE LEVEL OF THE COUNCIL OF EUROPE

Overall, ensuring an effective access to justice for pre-trial detainees requires member states of the Council of Europe a stronger recognition of the lived realities of prisoners and the barriers they face in accessing justice through the embedment of legal assistance and legal aid as core safeguards within detention. In line with its Recommendation Rec(2004)6 on the improvement of domestic remedies, the Committee of Ministers should issue recommendations aimed at strengthening the effectiveness of domestic remedies in prison matters, so as to draw conclusions from the obstacles encountered in practice by prisoners in accessing justice. In particular, such key aspects as the access to legal information in detention, legal assistance, legal aid in the context of judicial or administrative procedures concerning the enforcement of rights during detention and the conditions for NGO intervention should be considered as integral components of the effectiveness of remedies in the prison field.

Technical assistance actions, and in particular those carried out in the context of the execution of ECtHR's judgments involving the creation of an effective remedy, should take into account the determinants of access to the judge in prison, in particular access to an effective legal aid system.

Finally, access to legal aid is currently mentioned in limited areas of the European Social Charter. Yet these requirements have emerged during the European Committee of Social Rights' monitoring process of states' compliance with the Charter. Promoting further the recognising access to legal aid as a precursor to the enjoyment of the rights enshrined in the European Social Charter through soft-law and litigation in this field could be a forward-looking step to bridge the gap between social rights and civil and political rights, and improve access to justice for the vulnerable groups in society, including people in detention.

RECOMMENDATIONS AT EU LEVEL

Considering the well-developed Council of Europe standards on conditions of detention, yet the still limited safeguards in CoE law regarding prisoners' access to a lawyer, the European Union could make a decisive contribution to the enforcement of the Charter of Fundamental Rights in places of detention by establishing a binding instrument guaranteeing prisoners' access to legal information, to a lawyer, to free legal aid, and to translation and interpretation services.

Such a binding instrument, reinforced by the current dynamic jurisprudence of the CJEU on prison-related matters, could make a significant push towards ensuring that EU Member States enforce existing prison standards and effectively address the structural problems repeatedly identified by European bodies over the past decades, thereby contributing to the restoration of mutual trust between Member States.

The development of EU-level detention conditions standards, which seems to be the preferred approach of both the European Commission and the European Parliament, cannot on its own resolve the issue of poor detention conditions in EU Member States. The persistent failure to implement existing CoE and UN standards will not be remedied simply by adding new standards with EU legal authority; instead, meaningful progress requires decisive reform within national prison and criminal justice policies.[44]

Conversely, a binding EU instrument guaranteeing prisoners' access to legal information, a lawyer, legal aid, and translation and interpretation could make a significant contribution to the enforcement of prison standards. By strengthening prisoners' ability to defend their rights before competent authorities, such a measure would enhance the practical effectiveness of existing protections and support compliance across Member States.

44 Marcelo F. Aebi and Edoardo Cocco, cited above, p. 3: "[…] beyond crime rates or admission flows, sentencing practices—particularly the length of custodial sanctions—play a central role in shaping prison populations over time".

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