PRE-TRIAL DETAINEES' BARRIERS TO ENFORCING RIGHTS AND ACCESSING JUSTICE FROM DETENTION

EUROPEAN PRISON LITIGATION NETWORK

ZMINA HUMAN RIGHTS CENTER

Centre for European Constitutional Law

FORUM PENAL Associação de Advogados Penalistas

This report is part of the project

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

Co-funded by the European Union

Funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the European Commission. Neither the European Union nor the European Commission can be held responsible for them.

October 2025

TABLE OF CONTENTS

Introduction 4

PART I European and International Standards on Access to Justice in Pre-Trial Detention 41

Chapter 1 The Council of Europe's Approach to Access to Justice, Legal Aid and the Enforcement of Rights in Detention 42

Chapter 2 The European Union's Limited Intervention on Prison Matters 79

Chapter 3 The United Nations' Standards on Pre-Trial Detention and Access to Justice 96

PART II National Frameworks and Practices of The Enforcement of Pre-Trial Detainees' Rights 121

Chapter 4 Access to Justice for Pre-Trial Detainees in Greece: Law and Practices 122

Chapter 5 Access to Justice for Pre-Trial Detainees in Portugal: Law and Practices 172

Chapter 5 Access to Justice for Pre-Trial Detainees in Ukraine: Law and Practices 232

Conclusions and Recommendations 303

INTRODUCTION

Author:
Viktoria Kasongo Akerø
European Prison Litigation Network

Editors:
Hugues de Suremain
Julia Krikorian
European Prison Litigation Network

TABLE OF CONTENTS

1 Genealogy of EPLN’s Research on Access to Justice 8

2 Context and Rationale of the Study 11

3 Shifting Penal Agendas and Their Consequences for Legal Protection in Detention 15

4 Austerity, Managerial Practices and Access to Justice in Remand Detention 17

5 Penal Populism and the Shift against Defence Rights 19

6 Greece, Ukraine and Portugal: Statistical Overview and ECtHR Requirements for Effective Remedies and Investigations 21

Greece 21

Portugal 25

Ukraine 28

7 Scope of the Study and Definition of Key Concepts 33

8 Roadmap of the Report 38

While the requirement of the right to an effective remedy has become a central parameter in the assessment of national penitentiary systems by Council of Europe institutions, far less attention has been paid to the concrete means by which detainees can formulate complaints against the prison administration and bring them before a judicial authority. In other words, through what legal processes can violations of fundamental rights—whether resulting from arbitrary security or disciplinary measures, deplorable material conditions of detention, lack of medical care, or deliberate ill-treatment—be transformed into legally cognisable claims capable of being declared admissible by a court and argued in a manner that can persuade a judge? In light of these determinants, what is the reality of detainees' access to a court in practice?

It is these questions that guide the present study. This report presents the findings of research conducted within the framework of the DIGNITY project "Bridging views for a rights-based approach to pre-trial detention",[1] funded by the Justice Programme of the European Union, which examines access to justice for pre-trial detainees in Europe. Building on earlier research by the French National Centre for Scientific Research (CNRS) and the European Prison Litigation Network (EPLN), the study investigates the legal, procedural, and structural barriers that detainees, particularly those held on remand, face in challenging violations of their fundamental rights in detention, and the extent to which existing legal frameworks, remedies, and support mechanisms render such litigation effective in practice.

1 The Project "101138693 – DIGNITY" is funded by the European Union's Justice Programme. It is coordinated by the Themistocles and Dimitris Tsatsos Foundation – Centre for European Constitutional Law (Greece) in partnership with the European Prison Litigation Network, Forum Penal – Associação de Advogados Penalistas (Portugal) and the Human Rights Centre ZMINA (Ukraine).

Focusing on Greece, Portugal, and Ukraine, the study situates national experiences within broader international and regional standards, with a view to advancing both European and global protections for one of the most vulnerable groups in the criminal justice system. The three countries have in common that they have been required to address structural problems in their prison systems and to establish effective remedies in this respect. The case of Ukraine is however more resistant to comparison, considering the penitentiary and judicial systems are forced to operate in a war context, As we shall see below, the process of accession of Ukraine to the European Union, which has become a key political issue, however implies the implementation of harmonisation policies, particularly in the judicial and penitentiary fields.

By linking international standards, national realities, and empirical evidence, the study seeks to advance both understanding and policy reform. The report is intended as a resource for legal practitioners, policymakers, and civil society actors working to improve the protection of detainees' rights in Europe and beyond.

1 GENEALOGY OF EPLN'S RESEARCH ON ACCESS TO JUSTICE

The study departs from the European Prison Litigation Network's former research projects,[2] notably an inquiry centred on legal mechanisms of access to legal remedies for detained persons in European prisons.[3] Great disparities were observed with regards to access to a judge and the effectiveness of rights. Access to legal resources in detention and the external intermediaries for prisoners' complaints were found to be critical factors in the judicial protection in detention. This fact could be explained by a "marked overrepresentation in prison of the populations that have the least financial resources and are least educated", who are often disarmed before legal procedures.[4] The structure and volume of the remedies were equally found to be determined by the actors who are active in the field of justice.

These findings highlighted the need for a more systematic examination of effective access to legal resources, legal practitioners, and ultimately to judicial oversight during detention. In response, a new research project was developed with the aim of undertaking a broader and deeper study: Improving Protection of Fundamental Rights and Access to Legal Aid for Remand Prisoners in the European Union (EUPRETRIALRIGHTS).[5] The programme brought together teams of experienced scholars in law and social sciences, enabling them to produce a detailed account of both the legal provisions governing remand prisoners' access to justice

2 The Programme EUPRETRIALRIGHTS, which ran between 2017 and 2019, was funded by the Justice Programme of the European Union and brought together the European Prison Litigation Network, Bulgarian Helsinki Committee (Bulgaria), the Helsinki Foundation for Human Rights (Poland), Fachhochschule Dortmund (Germany), the Spanish Bar Associations, the Universities of Florence (Italy), Utrecht (the Netherlands), Ghent (Belgium), and Comillas Pontifical University (Spain).

3 Gaëtan Cliquennois and Hugues de Suremain European Prison Litigation Network (eds), Monitoring Penal Policy in Europe (Routledge 2017).

4 European Prison Litigation Network, 'Bringing Justice into Prison: For a Common European Approach – White Paper on Access to Justice for Pre-Trial Detainees' (EUPRETRIALRIGHTS, June 2019): LINK.

5 The Programme EUPRETRIALRIGHTS, which ran between 2017 and 2019, was funded by the Justice Programme of the European Union and brought together the European Prison Litigation Network, Bulgarian Helsinki Committee (Bulgaria), the Helsinki Foundation for Human Rights (Poland), Fachhochschule Dortmund (Germany), the Spanish Bar Associations, the Universities of Florence (Italy), Utrecht (the Netherlands), Ghent (Belgium), and Comillas Pontifical University (Spain).

and legal aid, and the extent to which these provisions were implemented in practice across nine EU Member States: France, Germany, the Netherlands, Belgium, Italy, Spain, Poland, the Czech Republic, and Bulgaria.

The conclusions of that research highlighted a persistent and multilayered crisis in access to justice for prisoners, particularly those held in pre-trial detention. It found that pre-trial detainees often faced a convergence of social, economic, and educational disadvantages that significantly undermined their ability to engage with legal procedures. Many struggled with basic literacy and communication skills, and the inherently adversarial nature of legal action exposed them to the risk of both formal and informal reprisals. This fear was especially acute for individuals awaiting trial, who were often reluctant to assert their rights due to concerns that doing so might compromise their position in ongoing criminal proceedings. As a result, many refrained from seeking assistance, including from legal counsel, prioritising their defence strategy over complaints concerning detention conditions.

The research also found that the European legal framework had, up to that point, failed to adequately address this specific vulnerability. While the European Court of Human Rights had developed important jurisprudence on prisoners' access to remedies, it had largely overlooked the indispensable role played by legal professionals in realising those rights. The Court's emphasis on simplifying procedures so that prisoners could act without representation did not account for the material and practical barriers they faced. On the EU side, although minimum standards for criminal proceedings had been introduced, these did not extend to conditions of detention, creating a critical normative gap, while instruments such as the European Arrest Warrant (EAW), in the absence of shared standards, exposed individuals to degrading prison conditions in other Member States. These developments had far-reaching implications for mutual trust and the effective functioning of EU legal instruments.

Another central concern emerging from the study was the limited access prisoners had to legal information. In many Member States, prison administrations provided only basic materials, often limited to internal rules, that did little to equip detainees to assert their rights. Crucial legal sources such as ECtHR jurisprudence or relevant national legislation were often unavailable or inaccessible. The proliferation of unpublished administrative documents—circulars, memos, and informal rules—further obscured legal clarity and impeded both

accountability and legal action. This situation was exacerbated by a shift toward flexible, constantly evolving management tools under new public governance models, which further undermined legal certainty and external oversight.

Although national legal aid systems formally recognised prisoners' right to legal assistance, the research revealed widespread issues in implementation. Variability in eligibility criteria, combined with low remuneration and administrative delays, discouraged legal professionals from taking on prison litigation. Nevertheless, the findings suggested that when coherent and properly funded legal aid policies were in place, they could contribute to the development of prison law and the emergence of specialised legal expertise.

Finally, the research emphasised the critical, yet often unsupported, role of non-state actors, particularly NGOs and university law clinics, in upholding prisoners' rights. Despite their essential contributions, these actors remained marginalised in legal and procedural frameworks. Funding was limited, access to prisons was subject to administrative discretion, and procedural standing was often restricted. Unlike in other areas such as anti-discrimination or environmental law, NGOs were not granted favourable procedural regimes, significantly curtailing their ability to act. The research concluded that although these informal networks of legal support filled a void left by state inaction, their potential remained constrained by a lack of institutional recognition and structural support.

This work ultimately culminated in the White Paper on Access to Justice for Pretrial Detainees, published in 2019.[6] Beyond providing the readers with a comprehensive vision of the mechanisms, proceedings and strategies that may facilitate or hinder effective access to justice for remand prisoners and propose their critical analysis, the White Paper also proposed relevant, evidence-based recommendations to European stakeholders for legal improvement and committed policies for an effective access of remand prisoners to legal aid.

In this perspective, it was also conceived as a usable tool bringing the results of our research to national and European institutional stakeholders and promoting legal harmonisation as well as an adaptation of practical logics of access to legal aid within the EU.

6 EPLN White Paper, cited above.

2 CONTEXT AND RATIONALE OF THE STUDY

At its core, the present study asks whether pre-trial detainees can meaningfully access justice to claim the exercise of their rights and what legal, procedural and structural barriers stand in the way of turning rights on paper into effective remedies in practice. The research asks these questions in the light of three diverse, if not different national contexts, namely Greece, Portugal and Ukraine.

From a socio-economic perspective, the three countries present significantly different structural conditions. Ukraine, classified by the United Nations as a lower-middle income country prior to 2022.[7] It displayed high human development with an HDI of 0.734 according to UNDP HDI 2024[8] and a GDP per capita of approximately USD 5,389 based on World Bank data.[9] Although income inequality remained relatively low, with a Gini coefficient of 25.6 as reported by the World Bank,[10] more than 43% of the population was at risk of poverty in 2019 according to UNDP Multidimensional Poverty Index estimates, and at least 27% lived in poverty in 2023.[11] These indicators point to chronic economic fragility and significant territorial disparities.

Portugal is an EU high-income Member State[12] but continues to experience persistent social vulnerability.[13] In 2024, it recorded a GDP per capita of around USD 28,844.5 according to World Bank figures[14] and is classified within the "very high human development" category with

7 International Statistical Institute, Low and Middle Income Countries and Regions (ISI, 2025): LINK.

8 United Nations Development Programme, Ukraine still a country with high Human Development Index, new UNDP report says (Kyiv, 13 March 2024: LINK.

9 World Bank, GDP per capita (current US$): Ukraine: LINK.

10 World Population Review, Wealth Inequality by Country (2024): LINK.

11 World Bank, Listening to Ukraine: The Poverty and Human Impacts of Russia's Invasion of Ukraine (Listening to Ukraine Household Phone Surveys, Apr–Dec 2023) (World Bank, Europe & Central Asia Region, 2024): LINK.

12 Tax Foundation, Top personal income tax rates in Europe: LINK.

13 Christopher G. Burton and Vitor Silva, Map of social vulnerability for Portugal counties (Conference Paper, Integrated Risk Modelling within the Global Earthquake Model (GEM) Test-Case, Portugal, August 2014): LINK.

14 World Bank, GDP per capita (current US$): Portugal: LINK.

an HDI of 0.890 reported for 2023.[15] However, inequalities remain substantial. The World Bank recorded a Gini coefficient of 33.9 in 2023, and Eurostat reported that 16.6% of the population was at risk of poverty or social exclusion in 2024, a rate above the EU average.

Greece is likewise a high-income EU Member State.[16] The country has continued a period of slow recovery following its prolonged sovereign debt crisis. World Bank data estimated a GDP per capita of USD 24,752 in 2024.[17] UNDP reported an HDI of 0.908 in 2025.[18] Despite this, Greece faced one of the highest unemployment rates in the EU at the time, recorded at 8.0% in 2025 by Eurostat,[19] and a high AROPE rate of 26.9% in 2025.[20] Income inequality also remained above the EU average, with a Gini coefficient of 33.4 according to the World Bank.[21] These indicators reflect persistent socio-economic vulnerability and limited welfare resilience.

From the perspective of prisoners' rights, the three countries share a common feature: they have each been required by European bodies to address endemic problems within their respective penitentiary systems and to establish effective remedies in this regard. However, the relative homogeneity of the European response to these three national penitentiary systems with respect to the right to an effective remedy should not obscure the diversity of the legal dynamics that led to such intervention.

Greece and Ukraine have been the subject of extensive litigation before the European Court of Human Rights due to structural problems, particularly in relation to material conditions of detention and deficiencies in medical care. Greece was, moreover, the first country to be condemned by the Court for its material conditions of detention. Yet, it has not been the subject of a judgment under Article 46 explicitly characterising the violations found as systemic or structural in

15 World Bank, GDP per capita (current US$): Portugal: LINK.

16 OECD, Country Fact Sheet – Greece (2023): LINK.

17 World Bank, GDP per capita (current US$): Greece: LINK.

18 United Nations Development Programme, Country Insights – Human Development Reports Data Center (HDRO, 2025): LINK.

19 Eurostat, Euro area unemployment at 6.2% (Euro Indicators 1 Sept 2025) (1 September 2025): LINK.

20 Eurostat, Living conditions in Europe – poverty and social exclusion (Statistics Explained): LINK.

21 World Bank, Gini index (World Bank estimate) – European Union: LINK.

nature. Nevertheless, in September 2025 the Committee of Ministers expressed concern over "a clear upward trend in the prison population since the Committee's last examination, with overcrowding now affecting 23 out of 35 prison facilities across the country."

In Ukraine, penitentiary reform has long been a priority for the Council of Europe. The country has been the subject of a significant number of judgments concerning detention conditions, and long-standing cooperation programmes have supported the reform of a penitentiary system historically vast and inherited from the Soviet era. Ukraine also stands out for the existence of a robust ecosystem of human rights NGOs capable of coordinating and centralising strategic litigation before the Strasbourg Court in the field of prison law. By contrast, Portugal has so far experienced relatively limited Strasbourg case law in the prison field. The European Court of Human Rights showed a degree of judicial voluntarism when, in Petrescu v. Portugal (no. 23190/17, §119, 2019), it identified the existence of a structural overcrowding problem and called on the government to adopt general measures to remedy it, including the establishment of an effective remedy.

In all three countries, strong legal and political pressure is exerted at the European level to ensure that recurring violations of fundamental rights in detention are addressed and remedied by domestic courts. When the Strasbourg Court identifies the structural nature of such violations, it triggers "enhanced supervision" by the Committee of Ministers regarding the measures adopted by States to comply with the judgment. In addition, at the European Union level, a distinct response has emerged in recent years, reinforcing the impact of the legal obligations arising from ECtHR judgments and the political pressure exerted by the Committee of Ministers. According to the case-law of the Court of Justice of the European Union (CJEU), degraded national penitentiary situations may hinder or even paralyse the execution of the European Arrest Warrant. Such interference with judicial cooperation in criminal matters between Member States brings EU law and its legal dynamics into play, even though criminal justice and prison matters formally fall within State competence. The judicial systems of Greece and Portugal are thus functionally affected, as they may be deprived of the automatic benefit of the principle of mutual trust that ordinarily facilitates cross-border cooperation. In the case of Ukraine, this line of case-law operates in a more programmatic manner, since the country is required to progressively incorporate the EU acquis as part of its accession process.

This study does not overlook the fact that these internal and European dynamics in favour of the recognition of prisoners' rights do not operate in isolation. They are shaped by political, social, cultural, and economic forces and, particularly in the case of Ukraine, geopolitical dynamics.

In this regard, the decision to include Ukraine in this analysis may appear questionable, if not inappropriate, at a time when the country is fighting for its very survival and its entire population is exposed to daily attacks by an invading army. However, several considerations justify this choice. First, the issue of detainees' access to investigative bodies and courts has been treated by European institutions as a priority since Ukraine's accession to the Council of Europe—well before the onset of Russian aggression in 2014. At that time, the country had already been urged to dismantle the Soviet-era institution of the Prokuratura, responsible inter alia for supervising the execution of sentences and the oversight of penitentiary institutions.[22] Second, the efforts undertaken by Ukraine to address structural problems in its penitentiary system are directly linked to monitoring by European institutions of its progress under the accession criteria (the so-called Copenhagen criteria), as outlined below. As a result – perhaps counter-intuitively – the prison question has gained unprecedented political importance in recent months, despite the expectation that military priorities would dominate public policy. Finally, from a symbolic perspective, the persistent lineage connecting the Ukrainian penitentiary system to the Soviet camp system—historically associated with mass political crimes—means that a profound reform of the prison system is widely seen as an important step in the country's anchoring within the European democratic project.

In all three countries, the current systems of access to legal rights and judicial remedies in prison are the product of penitentiary policies long marked by institutional inertia and a weak culture of respect for prisoners' rights. While prison-specific factors are decisive in shaping

22 Ukraine joined the Council of Europe on 9 November 1995. Upon accession, it committed itself to respect its general obligations under the Statute of the Council of Europe, namely pluralist democracy, the rule of law and respect for human rights and fundamental freedoms of all persons under its jurisdiction. At that moment, Ukraine also agreed to comply, within set deadlines, with a number of specific commitments listed in Assembly Opinion N°. 190 (1995). This implied modifying the role and functions of the Prosecutor's Office (particularly with regard to the exercise of general legality supervision), and transforming it into an institution that complies with Council of Europe standards.

access to justice behind bars, the analysis cannot overlook the exogenous influences of broader public policies that directly affect detainees' ability to access rights and judicial protection. As noted above, this analysis must be situated within the wider framework of public policy affecting detainees' access to rights and the judicial system's capacity to address dysfunctions within prisons.

3 SHIFTING PENAL AGENDAS AND THEIR CONSEQUENCES FOR LEGAL PROTECTION IN DETENTION

Evolving penal agendas have reshaped sentencing patterns and incarceration rates across Europe. This often leads to overcrowding, which in turn undermines the exercise of fundamental rights in detention and fuels disciplinary tensions, thereby significantly increasing the need for legal assistance behind bars.

Indeed, across Europe the overuse of pre-trial detention remains a pressing concern,[23] with one of its most serious consequences being its role in driving prison overcrowding. In a majority of Member States, the prison conditions of remand prisoners are considered as raising questions of compatibility with the right to respect for dignity, often linked to overcrowding,[24] which exacerbates poor conditions and heightens the risk of ill-treatment.[25] As the CPT has repeatedly emphasised, remand prisoners in particular are too

23 Tim Smith, 'The practice of pre-trial detention in England & Wales – changing law and changing culture' (2022) European Journal on Criminal Policy and Research (Special Issue) PDF; G M de Vries, 'De recidivegronden voor voorlopige hechtenis getoetst aan artikel 5 EVRM: Drie aandachtspunten voor een verdragsconforme Nederlandse praktijk' (2022) Nederlands Juristenblad 1380 [NJB 2022/1076]; Christine Morgenstern, 'Need for Speed: Die neue Beschleunigungsfreude im Strafverfahren am Beispiel der Untersuchungshaft' (2020) 40 Zeitschrift für Rechtssoziologie 90.

24 Marcelo F Aebi and Edoardo Cocco, 'Council of Europe Annual Penal Statistics – SPACE I 2024: Prison Populations' (Council of Europe/University of Lausanne 2025) PC-CP (2024) 5: LINK, accessed 27 October 2025; European Committee on Crime Problems (CDPC), White Paper on Prison Overcrowding, Strasbourg, 30 June 2016. For an academic assessment, also see Walter Hammerschick, and others, DETOUR – Towards Pre-trial Detention as Ultima Ratio: Comparative Report (Institute for the Sociology of Law and Criminology 2018).

25 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 'CPT/Inf (2022) 5 – part: Combating prison overcrowding. Extract from the 31st General Report of the CPT (21 April 2022)': LINK.

often held in dilapidated and overcrowded cells and subjected to an impoverished regime.[26] In several visit reports, the CPT has found detention conditions in remand facilities to be totally unacceptable and, in some cases, tantamount to inhuman and degrading treatment.[27] Multiple studies further demonstrate that the overuse of pre-trial detention undermines detainees' well-being, while breeding ground for tensions and violence between staff and prisoners and among prisoners.[28] Pre-trial detainees are frequently placed in specialised remand centres or in prisons for short-term sentences, facilities which are also those most acutely affected by overcrowding.[29] As a result, they are often subjected to cramped and unhygienic accommodation, vermin infestation, poor hygiene, inadequate heating or insufficient ventilation,[30] constant lack of privacy (including when using sanitary facilities), overstretched healthcare services, and heightened tension leading to increased violence between prisoners and between prisoners and staff.[31]

Beyond material conditions of detention, persons held in pre-trial detention are frequently subjected to an even more exceptional legal regime, characterised by de jure or de facto restrictions on work, education and training opportunities.[32] They are also frequently subjected to restrictions on contact with the outside world and, in a number of countries, may be held in solitary confinement by court order, sometimes for prolonged periods.[33] Judicial and penitentiary authorities often exercise overlapping competences, resulting in more complex decision-making processes and procedures for challenging measures that interfere with fundamental rights. Overall, the need to protect detainees' rights is both greater and more difficult to meet in practice. In addition to persistent legal grey areas,

26 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), '26th General Report of the CPT: Remand detention' CPT/Inf(2017)5-part (2017): LINK.

27 Ibid.

28 Council of Europe, Committee of Ministers, White Paper on Prison Overcrowding PC-CP (2015) 6 rev 7: LINK.

29 Ibid.

30 Ibid.

31 Ibid.

32 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Remand detention – Extract from the 26th General Report of the CPT (2017) para 52.

33 Ibid.

detainees frequently refrain from asserting their rights in detention for fear of jeopardising their position in the criminal proceedings—both because they fear being perceived unfavourably by judges and because they wish to avoid diverting their lawyer from the conduct of their criminal defence.

4 AUSTERITY, MANAGERIAL PRACTICES AND ACCESS TO JUSTICE IN REMAND DETENTION

Another factor influencing access to justice in prison is that the administration of justice has been profoundly affected by austerity measures, managerial practices, and an overarching emphasis on cost-efficiency and risk management. These policies directly shape the conditions under which legal professionals, and lawyers in particular, engage in the defence of detainees' fundamental rights, whether through constraints on the funding of legal aid or indirectly through the bureaucratisation of procedures under the influence of New Public Management, all in the name of efficiency.

In addition, as Council of Europe bodies have warned, underfunded legal aid schemes have been linked directly to the misuse of remand detention, exacerbating inequality in justice systems and contributing to the over-representation of poor and marginalised people in prisons.[34] Research shows that national courts often rely on criteria such as community ties, integration, or a fixed address when assessing flight risk, which automatically disadvantages foreign nationals,

34 Catherine Heard and Helen Fair, Pre-trial detention and its over-use: Evidence from ten countries (Institute for Crime & Justice Policy Research 2019): PDF; Fair Trials, A Measure of Last Resort? The Practice of Pre-trial Detention Decision-Making in the EU (2016): LINK.

the homeless[35], and those with limited means.[36] This runs contrary to ECtHR case law, which has found that the mere absence of a fixed residence does not constitute a danger of flight[37]; yet data reveal persistent discrimination, with non-nationals vastly overrepresented in pre-trial detention in countries such as Austria, France, Belgium, Luxembourg, Greece, and Malta.[38]

At the same time, the most socio-economically disadvantaged groups are less able to defend their rights once detained and have been hit hardest by austerity measures and resource shortages that undermine procedural safeguards.[39] Those with limited socioeconomic resources, low literacy, or a reliance on interpretation,[40] as well as individuals with intellectual, cognitive or psychosocial disabilities, face particular barriers to asserting their rights whilst in pre-trial detention.[41] This manyfold impact has made austerity a central factor in both the overuse of pre-trial detention and the erosion of protections for those held within it.

35 In France, being without a fixed address increases by five the likelihood of being placed in pre-trial detention and by three the likelihood of being tried under expedited proceedings. Due to very rapid investigative procedures, which leave little time to prepare a defence, and very short hearing times, expedited proceedings are particularly conducive to incarceration; being tried under such a procedure increases eightfold the probability of receiving a custodial sentence. See Virginie Gautron and Jean-Noël Retière, 'Des destinées judiciaires pénalement et socialement marquées' in Jacques Danet (coord), La réponse pénale: Dix ans de traitement des délits (Presses Universitaires de Rennes 2013).

36 Fair Trials, Unravelling Flight Risk: Pre-trial Detention Trends Across Europe (2016): LINK.

37 Pshevecherskiy v. Russia, no. 28957/02, § 68, 24 May 2007.

38 European Committee on Crime Problems (CDPC), White Paper on Prison Overcrowding (Directorate General Human Rights and Rule of Law, Council of Europe, Strasbourg 30 June 2016) PC-CP (2015) 6 rev 7: LINK.

39 Commissioner for Human Rights, 'National Human Rights Structures Can Help Mitigate the Effects of Austerity Measures' (Council of Europe, 31 May 2012): LINK.

40 EPLN White Paper, cited above.

41 Fair Trials, Study on Procedural Adjustments for Defendants with Cognitive Impairments, Neuro-Diverse Conditions, Mental Health Conditions (2022): LINK.

5 PENAL POPULISM AND THE SHIFT AGAINST DEFENCE RIGHTS

The exercise of defending rights in detention has become increasingly complex on two levels. First, political narratives framing prisoners' rights as illegitimate privileges have proliferated, generating pressure on justice system actors, particularly the judiciary. This forms part of a broader instrumentalisation of prison issues by "populist and authoritarian attitudes [which] may have major implications for the criminal justice system," as pointed out by prison officials themselves.[42] Moreover, this development is closely connected to the austerity policies discussed above. As Zelia Gallo recently observed with regard to Italy, "austerity policies" may have contributed to weakening social cohesion, thereby undermining one of the fundamental principles of traditional Italian penal orthodoxy, namely "penal welfare".[43] These dynamics are accompanied by growing challenges to the rule of law, notably through the contestation of the authority of supranational courts.[44] A striking illustration is the public consultation initiated by the Office of the President of Ukraine in October 2020, conducted alongside local elections, which asked: "Should life imprisonment be introduced for cases of large-scale corruption?"[45] This initiative was launched only a few months after the European Court of Human Rights had firmly reiterated the systemic shortcomings of the Ukrainian legal system in relation to the imposition and enforcement of life sentences.[46] In France, the Ministry of Justice has in recent months multiplied highly publicised measures in the field of penal policy and prison administration, including the creation of ultra-high-security facilities, the abolition of recreational activities for detainees, the introduction of mandatory minimum sentences, and accelerated trial procedures for minors.[47] Such political positioning at the highest level of the State

42 Nadya Radkovska, 'Conclusions from the 28th Council of Europe Conference of Directors of Prison and Probation Services' (13 June 2023): LINK.

43 Zélia Gallo, 'The Penal Implications of Austerity: Italian Punishment in the Wake of the Eurozone Crisis' (2018) 16(2) European Journal on Criminal Policy and Research 147-169: LINK.

44 Lettre des Etats à l'initiative.

45 Office of the President of Ukraine, 'President of Ukraine announced the first question of the nationwide poll: "Is life imprisonment needed for large-scale corruption?"' (14 October 2020): LINK.

46 Petukhov v. Ukraine (no. 2), no. 41216/13, 12 March 2019.

47 Prune Missoffe, 'Punir, exclure et faire souffrir (Punish, exclude and cause suffering)' (July 2025) Dedans Dehors no 127.

inevitably exerts pressure on courts tasked with examining detainees' complaints, requiring defence lawyers to demonstrate intensified levels of engagement to uphold fundamental safeguards. As a leading figure at the Paris Bar has emphasised: "being a defence lawyer often means defending the rule of law and inviting judges to remain anchored to it. Resisting today ultimately means fighting against an arbitrariness that is spreading".[48]

Second, the defence of fundamental rights in prison has also become more complex due to the weakening of civil society actors who play a pivotal role in supporting detainees' access to justice. CSOs constitute essential intermediaries between detainees and the judicial system by providing legal assistance, documenting violations, initiating strategic litigation, and sustaining advocacy for structural reform. Yet austerity policies have significantly reduced their financial and operational capacities, resulting in staff shortages, the closure of legal assistance programmes, and a reduction in in-prison legal support services. At the same time, the multiplication of legislative and administrative initiatives that restrict rights in several European countries has intensified the demand for CSO involvement in litigation and advocacy, while the demand for legal assistance from detainees remains consistently high and, in contexts where the prison situation deteriorates, even increases. This combination of shrinking resources and rising needs has created a critical imbalance. As noted by the Council of Europe Commissioner for Human Rights, civil society organisations in Europe are operating in an increasingly hostile environment, facing not only financial pressure but also growing administrative obstacles, smear campaigns, and forms of intimidation.[49] As a result, detainees, already among the most legally and socially marginalised individuals, are left with fewer avenues to challenge rights violations and seek redress.

With this overview in place, attention now turns to access to justice in detention across the selected national contexts.

48 Michel Dosé, interview by Nathalie Sarthou-Lajus and François Euvé, 'Les transformations du métier d'avocat (Transformations in the lawyer's profession)' (2024) (2) Études 43–54.

49 Commissioner for Human Rights, 'Alarming trends: the crisis facing civil society and human rights defenders in Europe' (9 October 2025): LINK.

6 GREECE, UKRAINE AND PORTUGAL: STATISTICAL OVERVIEW AND ECTHR REQUIREMENTS FOR EFFECTIVE REMEDIES AND INVESTIGATIONS

GREECE

In September 2025, the Secretariat of the Committee of Ministers noted that the prison population currently stands at 12 351 detainees,[50] bringing the prison population rate in Greece to 118.7 per 100,000 inhabitants. While this figure is below the Council of Europe average of 121.7 on 31 December 2024, it still places Greece in the 'high' category, with the Council of Europe's median rate standing at118,7. In addition, the authorities have observed a 9% increase in the prison population between mid-May 2024 and mid-December 2024. They "consider that Law no. 5090/2024, which introduced stricter provisions in the Penal Code, may have contributed to this rise, although no definite conclusion can yet be drawn".[51] The Secretariat refers to an overcrowding rate of an occupancy rate of 114%, reflecting "a clear upward trend (...) overcrowding now affects 23 out of 35 prison facilities in the country. Some of these are functioning under severe overcrowding, such as Tripolis (247%), Kos (189%), Neapolis (175%), Komotini (165%), Korydallos (164%), Ioannina (157%), Amfissa (152%) and Chios (147%)".[52]

The composition of the prison population further highlights the distinctive features of the Greek system. The CPT and the study prepared by the Council of Europe on Reducing Prison Overcrowding in Greece[53] pointed to the high number of persons sentenced to long terms of imprisonment as a factor driving overcrowding. As of January 2021, 84% (6,856) of sentenced prisoners were serving long-term

50 Council of Europe, Committee of Ministers, '1537th meeting (15-17 September 2025) (DH) – H46-14 Nisiotis v Greece group, notes of the Secretariat' CM/DH(2025)1537/H46-14.

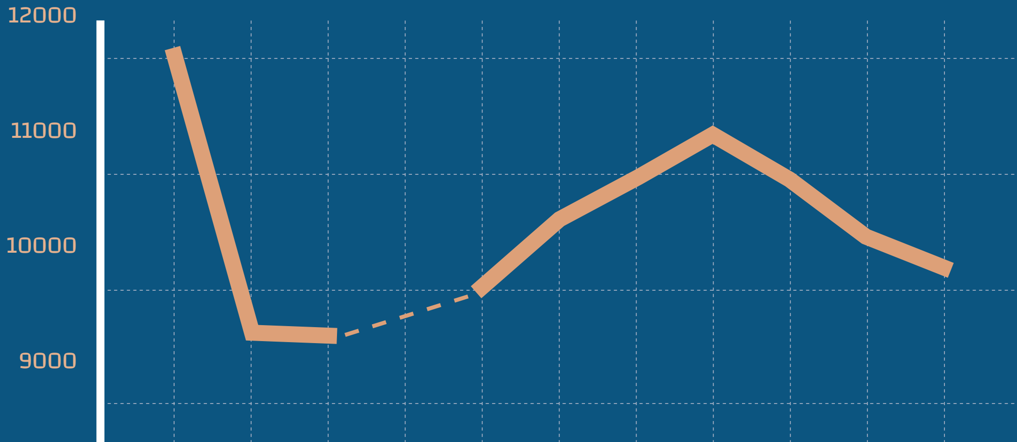
51 Ibid.

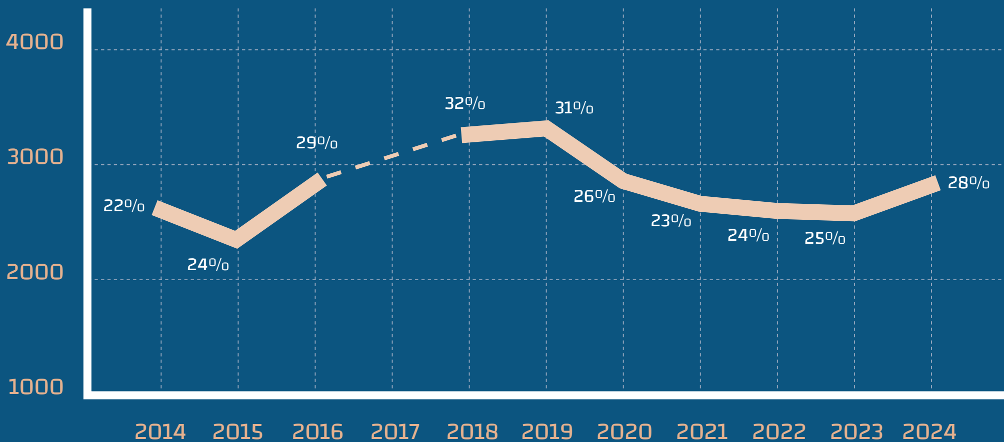
52 Ibid.

53 Council of Europe, Action Against Crime Department, Report on Reducing Prison Overcrowding in Greece (Directorate General Human Rights and Rule of Law, March 2019).

Table 1

Prison Population in Greece between 2014 and 2024





Prison Population

Pretrial Detainees

Source: Council of Europe, SPACE I – Council of Europe Annual Penal Statistics: Prison Populations (respective annual reports 2014–2024, Council of Europe).

prison sentences of over five years in Greece compared to a Council of Europe median of 35% (CPT/Inf (2022)16, §§ 16-17) Pre-trial detention accounts for 27.6% of the total population, close to the European average of 29.4%, but the average length of remand custody, at 28.3 months, stands out as exceptionally high. This duration is more than 25% above the European median and situates Greece in the "very high" category, underscoring a systemic reliance on extended pre-trial detention rather than its frequency of use. A striking feature of the Greek prison system is the very high proportion of foreign nationals in custody, at 54.1% as of 2024—more than double the European average. Older inmates are also overrepresented, with 20.7% aged 50 or above. Women constitute 4.9% of the prison population, a figure slightly below the European mean.[54]

The ECtHR has repeatedly condemned Greece for violations of Article 3 ECHR in relation to detention conditions. In Peers v. Greece[55] in 2001, the Court found that severe overcrowding, lack of ventilation, and poor hygiene amounted to inhuman and degrading treatment. Subsequent judgments confirmed that these were not isolated cases but reflected a broader problem. A key turning point came with Nisiotis v. Greece (2011),[56] in which the Court highlighted that existing complaint mechanisms, particularly applications to the supervising prosecutor under Article 572 of the Code of Criminal Procedure, were incapable of addressing general conditions of detention, rendering them ineffective remedies. Later cases[57] continued to reveal overcrowding and inadequate living conditions. Mounting pressure from the Council of Europe's Committee for the Prevention of Torture,[58] and the Committee of Ministers further reinforced the Court's demand for an effective domestic remedy. In response, Greece amended its Penitentiary Code in 2022 through Law 4985/2022, introducing Article 6A, which established a dedicated complaint mechanism for detainees alleging violations of Article 3 ECHR. The reform grants detainees

54 Marcelo F Aebi and Edoardo Cocco, Council of Europe Annual Penal Statistics – SPACE I 2024: Prison Populations (Council of Europe/University of Lausanne 2025) PC-CP (2024) 5: LINK.

55 Peers v. Greece, no. 28524/95, ECHR 2001-III.

56 Nisiotis v. Greece, no. 34704/08,10 February 2011.

57 Papakonstantinou v. Greece, no. 50765/11, 13 November 2014; Samsonidis and Others v. Greece in 2015; Koutsoglou v. Greece in 2015; Kargakis v. Greece in 2016.

58 In 2021, the CPT found that "the Greek prison system remained in a dire state with inadequate progress in addressing the systemic deficiencies of overcrowding, high levels of inter-prisoner violence, chronic staffing shortages, inadequate material conditions and poor healthcare" (see CPT, 32nd General Report).

access to the Court for the Execution of Sentences and requires enforceable decisions within thirty days, signalling an effort to align national law with Strasbourg standards.

The Court also addressed the issue of the lack of effectiveness of remedies in relation to complaints concerning the provision of medical care. In Martzaklis and Others v. Greece,[59] the Court held that the authorities failed to ensure adequate medical care and humane conditions for the HIV-positive applicants detained in Korydallos Prison Hospital, where severe overcrowding, unsanitary conditions, irregular or interrupted access to antiretroviral treatment, and unjustified segregation exposed them to physical and mental suffering exceeding the unavoidable level inherent in detention. It further found a violation of Article 13 in conjunction with Article 3 because the remedies invoked by the Government, such as complaints to the prison council, the supervising prosecutor, or applications under Articles 497 CCP and 110A CC, were either inaccessible in practice, excessively slow, or incapable of preventing or redressing the alleged violations, and therefore did not satisfy the effectiveness requirement under the exhaustion rule.

59 Martzaklis and Others v. Greece, no. 20378/13, 9 July 2015.

PORTUGAL

Portugal reports a prison population of 12,193, with a prison population rate of 114.6 per 100,000 inhabitants, placing it in the 'high' category compared to the European median.[60] Prison density stands at 99 inmates per 100 places.[61] On 31 December 2023, out of 49 prisons, 25 were operating at an occupaton rate of 100% or more.[62] While, according to Council of Europe statistics, the proportion of inmates held without a final sentence (21.9%) is below the European average of 29.4%, the average length of remand custody is 11.9 months, more than 25% above the European median, placing Portugal in the "very high" category.[63] The demographic profile of the prison population is also distinctive. Older inmates are strongly overrepresented: 21.1% are aged 50–64 and 4.1% are aged 65 or above, bringing the total to 25.2%, well above the European average of 19.4%.[64] Women constitute 7.4% of prisoners, a proportion significantly higher than the European average, while foreign nationals account for 16.7%, below the European mean of 25%.[65]

Portugal's sentencing profile is marked by an unusually high proportion of long custodial terms. Only a very small fraction of the sentenced prison population is serving short sentences of less than one year, while the vast majority are serving three years or more, with sentences of five to ten years constituting the single largest group.[66] This results in one of the longest average lengths of imprisonment in Europe, estimated at around 31 months, placing Portugal among the Council of Europe member states with the longest custodial durations.[67]

60 Marcelo F Aebi and Edoardo Cocco, Council of Europe Annual Penal Statistics – SPACE I 2024: Prison Populations (Council of Europe/University of Lausanne 2025) PC-CP (2024) 5: LINK.

61 Action plan of the Governement, 25/06/2025, available at: https://hudoc.exec.coe.int/?i=DH-DD(2025)738E

62 Rule 9.2 Communication from NGOs (European Prison Litigation Network, FORUM PENAL - Association of Criminal Lawyer (19/07/2024)

63 Marcelo F Aebi and Edoardo Cocco, Council of Europe Annual Penal Statistics – SPACE I 2024: Prison Populations (Council of Europe/University of Lausanne 2025) PC-CP (2024) 5: LINK.

64 Ibid.

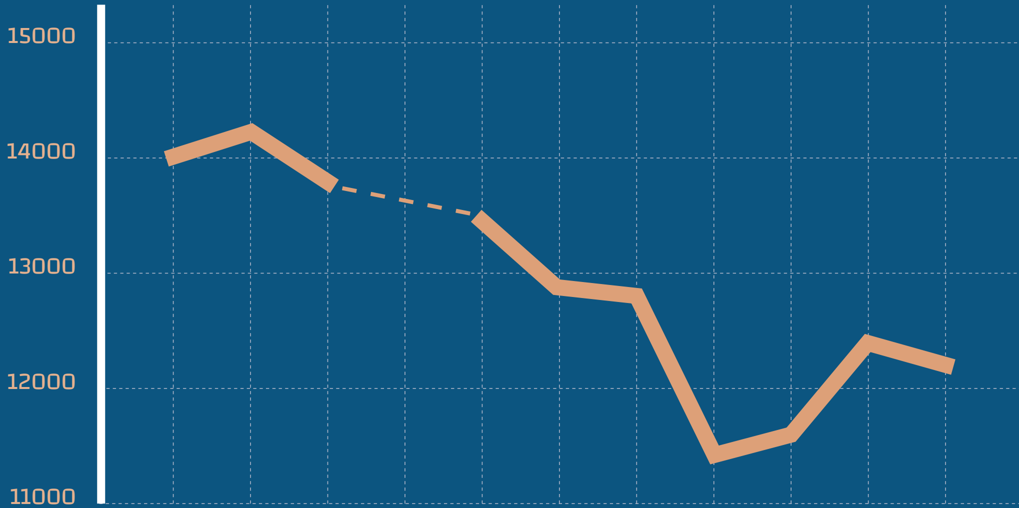
65 Ibid.

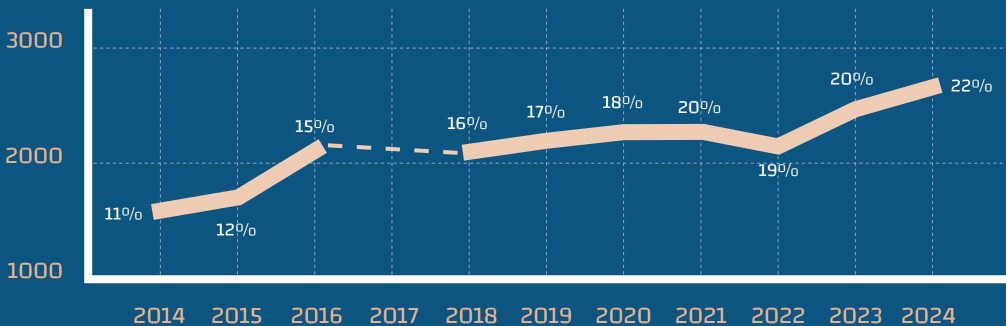
66 Ibid.

67 Ibid.

Table 2

Prison Population in Portugal between 2014 and 2024





Prison Population
Pretrial Detainees

Source: SPACE I, Council of Europe Annual Penal Statistics, respective annual reports 2014-2024.

In Petrescu v. Portugal (2019),[68] the Court examined the inhuman and degrading treatment suffered by the applicant in two prisons between 2012 and 2014, where overcrowding and poor material conditions prevailed. Relying on national and international reports, the Court concluded that overcrowding was of structural nature and that no preventive or compensatory remedies existed at domestic level to allow detainees to challenge their detention conditions. It recommended that the government adopt general measures to improve prison conditions and establish effective remedies, framing the judgment as a turning point in Strasbourg's position on Portugal. While all similar applications have been resolved by friendly settlements or unilateral declarations, the Court departed from this pattern in Petrescu, recognising that the scale of the problem raised issues going beyond the applicant's individual situation.

Following Petrescu, the Committee of Ministers has continued to monitor Portugal's compliance, with prison conditions representing a priority issue. Indeed, 80% of the applications lodged against Portugal before the ECtHR concern detention conditions, the highest proportion among Portuguese cases currently pending in Strasbourg. Yet substantive reform has been slow.[69]

68 Petrescu v. Portugal, no. 23190/17, 3 December 2019.

69 EPLN Rule 9, cited above.

UKRAINE

As of 1 January 2025, Ukraine's prison population[70] stood at 37,119 inmates,[71] corresponding to an incarceration rate of 98 per 100,000 inhabitants, placing the country below the European median. On the same date, the number of pre-trial detainees (including those awaiting final judgment) was 9,521 (25.64%), below the Council of Europe average of 29.4%.

Ukraine's prison population, which had previously reached very high levels, has steadily and significantly decreased since the early 2000s (–83% since 2000; –49.43% since 2015). The reform of the Code of Criminal Procedure in 2012 accelerated the decline in prisoner numbers. The situation resulting from the full-scale invasion likewise had a significant impact on detention figures, likely due both to the slowdown in the activities of police, investigative bodies and courts, and to the voluntary recruitment of prisoners into the armed forces.

However, given the scale of trauma suffered by the population, the growing number of veterans returning with PTSD, and the deterioration of the economic situation, a reversal of this downward trend cannot be ruled out.

According to SPACE 1 statistics as of 31 December 2024, women make up 5.7% of the prison population, slightly above the European mean of 5.4%, while the proportion of foreign nationals in custody is strikingly low at just 1.9%, compared to a European average of 25%.[72] At the same time, Ukraine's prison density is unusually low—53.9 inmates per 100 places, compared to the European average of 87.3.[73]

70 The figures refer only to prisons under government control. Since 2014, contact has been lost with 29 institutions located in the Donetsk and Luhansk regions, which are territories outside governmental control, as well as with five institutions in the temporarily occupied territory of Ukraine (formerly the Autonomous Republic of Crimea). As of 1 January 2025, seven institutions remain in areas outside governmental control.

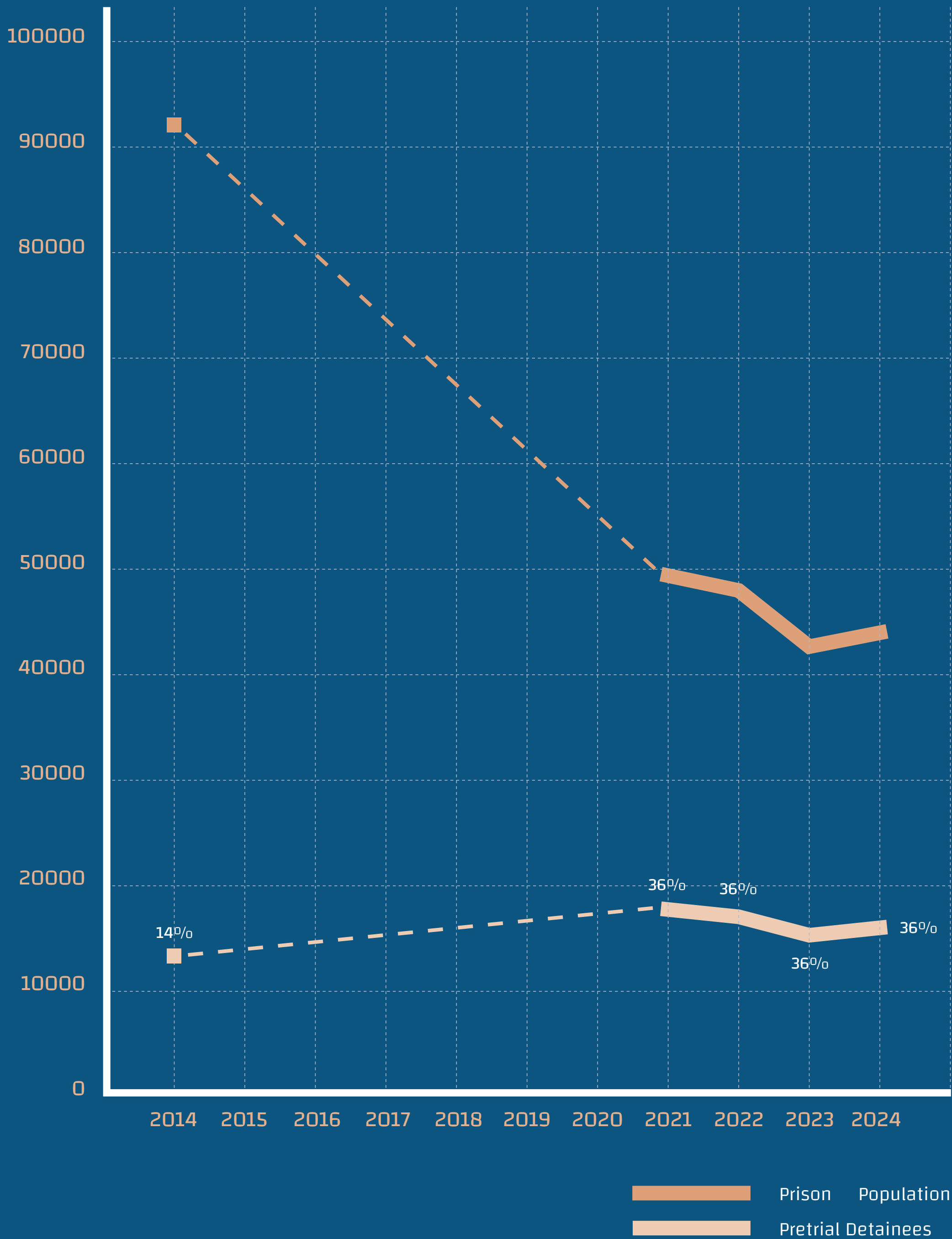
71 Response from the prison administration to the request from the NGO PPU, 23 January 2025.

72 Marcelo F Aebi and Edoardo Cocco, Prisons and Prisoners in Europe 2024: Key Findings of the SPACE I report (Series UNILCRIM 2025/3, Council of Europe and University of Lausanne 2025).

73 Ibid.

Table 3

Prison Population in Ukraine between 2014 and 2024



Source: SPACE I, Council of Europe Annual Penal Statistics, respective annual reports 2014-2024.

In view of the scale of the problem of material conditions of detention and the lack of significant progress since the first related judgment against Ukraine in 2005, the Court delivered a pilot judgment in the case of Sukachov.[74] The Court found that the recurrent structural problems of overcrowding and poor conditions of detention in pre-trial detention facilities, as well as the absence of effective domestic remedies thereof, remained unresolved at the domestic level.

It thus indicated under Article 46 that Ukraine must: (i) take measures aimed at reducing overcrowding and improving material conditions of detention, and (ii) introduce preventive and compensatory remedies by 30 November 2021.

A whole series of ECtHR cases concern the lack of medical care in detention, which has led to findings of violations of Articles 2, 3 and 13. The committee of ministers monitors the execution of the Logvinenko and Isayev groups of cases,[75] which concern the inadequacy of medical care in general, and for infectious diseases, drug addiction and physical disability in particular, and lack of effective preventive and compensatory remedies in this respect (violations of Articles 3 and 13). The Kats and Others, Salakhov and Islyamova, Karpylenko[76] and Kardava[77] cases also concern the authorities' failure to protect the lives of the applicants' relatives in custody due to inadequate medical care provided for their complex medical conditions and, in some cases, the denial of urgent hospitalisation, keeping them unnecessarily in custody while in critical health conditions (substantive violations of Article 2). The Kats and Others, Salakhov and Islyamova and Karpylenko cases further concern the failure to conduct effective investigations into the circumstances of the deaths, notably without an assessment of the quality of the medical treatment provided in detention (procedural violations of Article 2). In addition, the Salakhov and Islyamova case concerns the authorities' failure to comply with an interim measure indicated under Rule 39 by the Court on account of the delay in the hospitalisation of the first applicant while in detention on remand (violation of Article 34).

74 Sukachov v. Ukraine, no. 14057/17, 30 January 2020.

75 Logvinenko v. Ukraine, no. 13448/07, 14 October 2010; Isayev v. Ukraine, no. 28827/02, 28 May 2009.

76 Karpylenko v. Ukraine, no. 15509/12, 11 February 2016.

77 No. 19886/09, 17 December 2019.

Another group of cases under the supervision of the Committee of Ministers (group of cases Nadyon v. Ukraine[78]) concerns the authorities' failure to provide prisoners with effective access to the documents from their case files needed to substantiate their applications before the European Court (violations of Article 34). While these cases mostly concern the access of convicted persons to documents from their criminal files, some relate to the exercise of rights within the prison setting, such as the right to access adequate healthcare[79] and, more generally, the obstacles created by the prison administration in prisoners' interactions with the European Court.

This issue gave rise to a quasi-pilot judgment in Vasiliy Ivashchenko v. Ukraine,[80] in which the Court pointed to a systemic problem requiring the implementation of general measures. The problem stemmed from the lack of a clear and precise procedure enabling prisoners to obtain copies of documents relating to their cases, either by making photocopies themselves or by requesting the authorities to do so on their behalf. Although national regulations provided for public access to documents held by the authorities, including court files, the domestic judicial authorities did not consider themselves under any obligation to assist prisoners in obtaining copies. Nor was there any indication that the prison authorities complied with their duty under prison regulations to assist prisoners in this regard. Consequently, the Court ordered the respondent State to adopt without delay the necessary legislative and administrative measures to ensure that persons deprived of their liberty have effective access to the documents necessary to substantiate their complaints before the Court.

In Gemu,[81] the Court found a hindrance to the right of individual petition on account of psychological pressure exerted in 2008 by the prison authorities on the applicant, who had complained about his poor conditions of detention before the Court.

The pressing issue of the lack of effective investigations into violence perpetrated by prison staff is being monitored by the Committee of Ministers in the context of the Karabet v. Ukraine case. This issue is also addressed by the Commission in its reports

78 Naydyon v. Ukraine, no. 16474/03, 14 October 2010.

79 Vasiliy Ivashchenko v. Ukraine, no. 760/03, 26 July 2012.

80 Ibid.

81 Gemu v. Ukraine, no. 16025/06, 22 September 2022.

on EU enlargement, which assess the progress made by candidate countries in meeting the political, legal (acquis) and economic criteria required for EU membership, identifying the reforms that have been completed and the challenges that remain on the path to accession. In its 2023 report,[82] the Commission noted that, despite legal reforms, "torture and ill-treatment remain a systemic feature of Ukraine's prison system". The report pointed to the lack of effectiveness of investigative bodies both at the pre-trial stage and during sentence enforcement, and highlights "a general culture of mutual protection among law enforcement officials", which undermines the effectiveness of criminal prosecutions.[83] The 2024 report notes that despite some legal and local improvements in certain structures and investigations, "torture and ill treatment remain an issue of concern in Ukraine's prison and detention system".[84] The report emphasises that the prison system and places of detention remain problematic and calls for close monitoring of the CPT's recommendations and states that the "Ombudsperson still needs to strengthen cooperation with CSOs specialised in this area".[85]

82 European Commission, Commission Staff Working Document: Ukraine 2023 Report SWD(2023) 699 final (8 November 2023).

83 According to the report, in 2022, 30 criminal proceedings concerning allegations of torture and 990 concerning abuse of power were registered; 11 and 94 individuals respectively were formally notified of suspicion; and 6 and 58 proceedings were referred to court. From 2018 to 2022, a total of 484 proceedings for torture were registered, resulting in only 60 convictions and 15 prison sentences, which is indicative of an inadequate judicial response.

84 European Commission, Commission Staff Working Document: Ukraine 2024 Report SWD(2024) 699 final (Brussels, 30 October 2024): LINK.

85 Ibid.

7 SCOPE OF THE STUDY AND DEFINITION OF KEY CONCEPTS

The DIGNITY Project examines whether prisoners, in particular pre-trial detainees, can meaningfully access justice to claim the exercise of their rights and the extent to which existing legal frameworks, remedies, and support mechanisms make such litigation effective in practice in Portugal, Greece and Ukraine.

To address these questions, the research adopts a dual approach: the analysis of the international framing of access to justice in detention (as shaped by the CoE, EU and UN legal orders) and the examination of the distinct national dynamics shaping laws, policies and practices in Greece, Portugal and Ukraine.

Remand prisoners are the focus of the study,[86] meaning persons in pre-trial detention and broadly defined to include those who have received a first sentence but await a final decision in another trial. The scope covers remand institutions and prisons under the authority of the penitentiary administration. Police custody, institutions for minors, and immigration detention centres are excluded. Prisoners of war are outside the scope unless prosecuted for war crimes.

Moreover, the scope is limited to legal support for complaints about life in detention, particularly conditions of detention and aspects of the "external legal status" of prisoners, such as medical release for remand detainees. Legal aid for criminal proceedings themselves is excluded. Issues concerning detention conditions that arise within criminal proceedings are noted only where they intersect with the same legal aid mechanisms.

86 The term prisoners is used here in its generic sense of a person under the control of the penitentiary administration, regardless of the status of the persons concerned as accused or convicted persons.

In the context of this research, legal assistance[87] covers the provision of legal information to prisoners on their rights and duties from the first moment of deprivation of liberty, and access to a lawyer for advice or representation in relation to complaints about life in detention and aspects of "external legal status", such as medical release for remand prisoners, but not for criminal proceedings themselves. It includes legal aid schemes for prison litigation, covering funding, eligibility, application and appeal procedures, as well as the practical means to initiate and pursue cases, including filing motions and accessing forms. Legal assistance also encompasses material and organisational measures that facilitate access to court within penitentiary institutions or through state and non-state actors such as Bars, NGOs, legal clinics, universities, and monitoring bodies, including, where applicable, their role in initiating or representing cases on behalf of prisoners, or the limitations on such standing, along with the role of go-betweeners and non-legal actors who enable access. Finally, it includes the use of technical and digital tools that support communication with lawyers, access to legal information, and interaction with courts.

87 For the purposes of this study, the term "legal advice" refers to personalized information about rights within the prison; 'legal aid' refers to funding of the assistance of a lawyer by a Member State, enabling the exercise of the right of access to defense. The term lawyer refers to a legal professional who is authorized to pursue his or her professional activities under one of the professional titles listed in the "Establishment Directive" (Directive 98/5/EC).

OVERVIEW OF THE EUROPEAN SITUATION REGARDING PRE-TRIAL DETENTION

On average, 29% of the total of 1,021,431 individuals held in custody across Europe were in pre-trial detention as of 31 January 2024.[1] Pretrial detention does not follow a consistent regional pattern like many other prison indicators. Indeed even neighbouring countries can display stark differences.[2] These divergences suggest that country-specific legal and institutional factors play a more decisive role than regional context in shaping pre-trial detention practices.

Overall, according to Council of Europe statistical studies, prison population rates in Europe have undergone three distinct phases in the past decades. From 2005 to 2011, the average prison population rate rose steadily from 127 to a historic peak of 145 prisoners per 100,000 inhabitants, reflecting a period of expanding incarceration across many countries. Between 2011 and 2020, this trend reversed, with rates gradually declining to 118 per 100,000 by 2020, likely influenced by the long-term impacts of the 2008 financial crisis and shifts in penal policy. The onset of the COVID-19 pandemic brought an unprecedented drop in prison populations, as emergency releases and reduced admissions during lockdowns lowered the rate to a two-decade low of 112 per 100,000 in 2021. Since then, the prison population rate has increased steadily, reaching 123 per 100,000 in 2024, close

1 Marcelo F Aebi and Edoardo Cocco, Prisons and Prisoners in Europe 2024: Key Findings of the SPACE I report (Series UNILCRIM 2025/3, Council of Europe and University of Lausanne 2025) 14.

2 Ibid. Figure 5.

to the levels observed in 2018. This rebound, coupled with consecutive increases in 2023 and 2024, suggests more than a simple return to pre-pandemic figures and may indicate a shift towards renewed expansion in the use of imprisonment across Europe.[3] The median prison population rate followed a similar pattern, rising slightly from 106 in 2019 to 107 in 2024.[4]

The proportion of pre-trial detainees in Europe has risen significantly in recent years (Table 1). In 2014, they constituted approximately 20.3% of the prison population, a figure that remained relatively stable through 2016 and 2018. From 2019 onwards, this proportion began to rise, increasing from 21.9% in 2019 to 25.9% in 2024. The period coinciding with the COVID-19 pandemic saw a temporary fall to 21.7% in 2021 before rising sharply again in subsequent years. The growing share of individuals held in custody without a final sentence underscores ongoing concerns about the overuse of pre-trial detention in Europe, over which Council of Europe bodies have expressed great concern.[5] It is clear that pre-trial detention is not used as a means of last resort, and there are systematic failures in ensuring appropriate standards of protection for the presumption of release, equality of arms, and proportionality.[6]

As of 31 January 2024, the average prison density in Europe was 87 inmates per 100 available places, with the median density slightly higher at 94.[7]

3 Ibid.

4 Ibid, page 27.

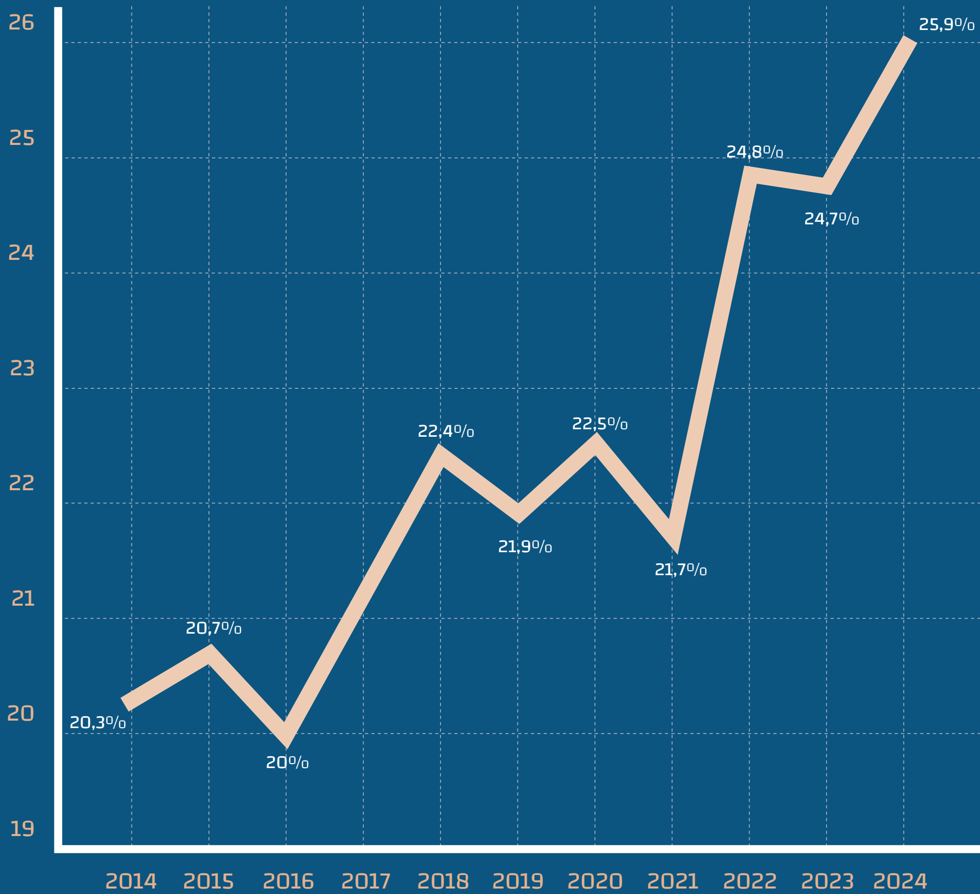
5 Council of Europe, Pre-trial Detention Assessment Tool (Council of Europe/EU project, [date of publication unknown]): LINK.

6 Fair Trials, 'A Measure of Last Resort? The Practice of Pre-trial Detention Decision-Making in the EU' (2018): LINK.

7 Ibid.

Table 4

Pre-Trial Detainee Ratio to Overall Prison Population in Europe



Source: Council of Europe, SPACE I – Council of Europe Annual Penal Statistics: Prison Populations (respective annual reports 2014–2024, Council of Europe).

8 ROADMAP OF THE REPORT

The report is organised into three substantive parts. The first part examines international and regional standards on access to justice for pre-trial detainees. It provides an overview of how the Council of Europe, the European Union, and the United Nations approach procedural rights in detention. In this regard, it takes into account the latest developments in case law under Article 13 (right to an effective remedy) and Article 6 (right to a fair trial) in this area. It also considers how soft-law instruments address these issues. Finally, in a more forward-looking perspective, the report explores how a quasi-judicial body, the European Committee of Social Rights, could address these matters within the scope of its competence. The following chapter outlines the limited intervention of the EU on prison matters, charting the growing relevance of the EU Charter of Fundamental Rights and recent CJEU case law for detention issues, noting that EU action has so far focused mainly on procedural rights in criminal proceedings. The chapter also considers current debates on EU-level detention standards and assesses how EU intervention could complement Council of Europe mechanisms, particularly by strengthening prisoners' practical access to lawyers, legal aid, and legal information. The final chapter in this section turns to the United Nations framework. It provides an overview of UN standards governing pre-trial detention, including the right to an effective remedy, the applicability of fair-trial guarantees to detention-related proceedings, and the international legal basis for access to legal assistance and legal aid. It maps both treaty obligations and key soft-law instruments.

The second part of the report presents the national case studies of Greece, Portugal, and Ukraine. National Chapters were structured around common guidelines to enable comparative clarity, covering legal norms, actors, remedies, and barriers in practice. Empirical research included interviews with key stakeholders, including lawyers, NGOs, Bar Associations, Prison Authorities, courts and detainees, ensuring that both formal frameworks and lived experiences were captured. Each chapter synthesises findings on the strengths and weaknesses of national systems for providing legal information to the prison population and for delivering secondary legal aid, with a particular focus on the situation of detainees held in pre-trial detention.

The third part, namely, the conclusion, synthesises the findings from Portugal, Greece and Ukraine, identifying shared structural barriers that prevent pre-trial detainees from enforcing their rights in practice despite the existence of formal safeguards. It highlights cross-cutting deficits: limited access to legal information and advice in detention, legal aid systems ill-adapted to prison-related litigation, and the marginal involvement of the legal profession in defending prisoners' rights. Building on this analysis, the conclusion proposes targeted recommendations at Council of Europe, EU and UN level to strengthen access to justice for detainees.

PART I

EUROPEAN AND INTERNATIONAL STANDARDS ON ACCESS TO JUSTICE IN PRE-TRIAL DETENTION

EUROPEAN PRISON LITIGATION NETWORK

ZMINA HUMAN RIGHTS CENTER

Centre for European Constitutional Law

FORUM PENAL
Associação de Advogados Penalistas

Chapter 1

The Council of Europe's Approach to Access to Justice, Legal Aid and the Enforcement of Rights in Detention

Author:
Viktoria Kasongo Akerø
European Prison Litigation Network

Editors:
Hugues de Suremain
Julia Krikorian
European Prison Litigation Network

TABLE OF CONTENTS

1 The European Court of Human Rights and Access to Justice in the Context of Prison Litigation 47

The Effective Remedy Model under Article 13: A Remedy to Be Exercised Alone by the Prisoner 50

The Court's Preference for Simplified Remedy Mechanisms over Legal Representation 50

Procedural Design for Prison-Based Litigation: Limits of an Individually Driven Model 52

The Right to a Fair Trial: A Missed Opportunity for Robust Safeguards 54

Criminal Procedural Safeguards: Restrictive Scope in the Prison Context 54

The Civil Limb of Article 6: Expansive in Scope, Limited in Protection 55

Conclusion 59

2 Efficiency as Justice?
The Committee of Ministers' Standards on Legal Aid and their Blind Spot on Detention 60

Recommendations on Access to Justice and Legal Aid 62

Dedicated Legal Aid Standards 64

Recommendation on the Improvement of Domestic Remedies 65

The European Prison Rules 66

Recommendation on the Use of Remand in Custody 69

Recommendation on Foreign Prisoners 70

Conclusion 70

3 The Lawyer as a Safeguard Against Ill-Treatment:
The CPT's Standards and Its Unfulfilled Potential 71

4 Legal Aid as a Gateway to the Realisation of Social Rights:
Its Increasing Recognition in the European Social Charter System 75

5 Conclusion 77

The Council of Europe, comprising 46 member states, has become particularly influential in extending the recognition of human rights to all individuals, including prisoners.[1] Its primary task is to promote the emergence of a common democratic and legal space in Europe. and to negotiate conventions that establish shared legal standards and practices among its Member States.[2] The cornerstone of its work to protect fundamental rights and the rule of law is the European Convention on Human Rights, which entered into force in 1950, guaranteeing human rights to all citizens. Since its creation in 1949, this mission, together with the cohesion between its organs, has afforded the Council of Europe significant influence over the scope and content of European policy.

In the penal and prison sphere, the Council of Europe is undoubtedly the most influential body in recognising and monitoring respect for the fundamental rights of prisoners in Europe. Overall, the Council of Europe's norms and legal standards on prisoners' rights have been shaped by the interaction and mutual reinforcement of three key bodies that have acquired new powers and competences: the European Court of Human Rights, the Committee for the Prevention of Torture, and the Committee of Ministers.[3] The European Court of Human Rights occupies a pre-eminent position, as its judgments are binding; however, its approach is informed by its dialogue with the other bodies, which enhances both its understanding of the realities on the ground and its interpretation of the Convention's provisions relating to prisons. The Committee of Ministers, acting under Article 46 of the Convention, also plays

1 Maurice Bond, The Council of Europe: Structure, History and Issues in European Politics (Routledge 2013).

2 ibid.

3 Jonathan Simon, Editorial: Mass incarceration on trial. Punishment and Society, 13(3), 251–255.

a crucial role in supervising the execution of the Court's judgments and in influencing the development of general standards, thereby contributing to a coherent and evolving European framework governing the rights of prisoners.

The dialogue between these bodies, which operate on a functional and complementary basis, has contributed to the establishment of a genuine legal status for prisoners, encompassing virtually all aspects of life behind bars. However, the proliferation of case-law and norms on prisoners' rights has coincided with a marked reluctance to intervene in domestic penal policies and has been accompanied by an increasing emphasis on the principle of subsidiarity.

1 THE EUROPEAN COURT OF HUMAN RIGHTS AND ACCESS TO JUSTICE IN THE CONTEXT OF PRISON LITIGATION

The European Court of Human Rights (ECtHR) has progressively moved from a "stage of ignorance" of conditions of detention to a full recognition of prisoners' right to detention conditions that respect human dignity.[4] In particular, the decade from 2000–2010 has seen a genuine increase in case law aimed at regulating aspects of life in prison. A major development in this area was the Grand Chamber Judgment Kudła v. Poland, which consecrated, under Article 3, the right to conditions of detention that are compatible with the principle of human dignity and imposed on States the obligation to protect detainee's health.[5] A few months later, the Court declared that physical conditions should be taken into account in and of themselves, thus abandoning the intentional infliction of pain as a decisive criterion for inhuman or degrading treatment.[6] Article 3 being a non-derogable right, States must "organise [their] penitentiary system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties".[7]

Beyond the issues of material conditions of detention and health care, the Court has constructed a category-based protection for detainees, incorporating the doctrine created by other bodies of the Council of Europe, particularly the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

4 Françoise Tulkens, 'Droits de l'homme en prison' in Jean-Paul Céré (ed), Panorama européen de la prison (L'Harmattan 2002) 39 (own translation).

5 Kudła v. Poland [GC], no. 30210/96, ECHR 2000-XI. It is said that prisoners' right to adequate detention conditions and prisoners' right to the protection of their health find their "common matrix" in this judgment. See Françoise Tulkens, 'Les prisons en Europe: Les développements récents de la jurisprudence de la Cour européenne des droits de l'homme' (2014) 38 Déviance et Société 425.

6 Peers v. Greece, no. 28524/95, ECHR 2001-III; Dougoz v. Greece, no. 40907/98, ECHR 2001-II.

7 See for example, Sándor Varga and Others v. Hungary, nos. 39734/15 and 2 others, §103, 17 June 2021. Scholars have analysed the development of the Court's case law under Article 3 as the creation of an "Article 3bis" guaranteeing human detention conditions. See Frédéric Sudre, 'L'article 3 bis de la Convention européenne des droits de l'homme: le droit à des conditions de détention conformes au respect de la dignité de la personne humaine' in (ed) J-P Céré, Mélanges G. Cohen-Jonathan (Bruylant 2004).

On the basis of Article 3, the Court's case law has addressed for example high-security regimes, body searches, life sentences.[8] Beyond Article 3, it has also addressed many other aspects of life in detention—from use of force within prison, to prisoners' contacts with their family and prisoners' right to information.[9]

To ensure respect for the wide range of rights recognised in its case law, the Court has imposed a series of positive procedural obligations—chief among them, the right to an effective remedy, specifically in relation to material detention conditions. Indeed, the scope of the obligation under Article 13, in cases concerning inhuman or degrading conditions of detention under Article 3, encompasses two forms of appropriate redress recognised by the Court: improvement of the conditions (preventive relief) and compensation for the harm suffered (compensatory relief). The Court has consistently reaffirmed that these remedies must operate in a complementary manner to ensure the effectiveness of the protection afforded under the Convention.[10] Such mechanisms must, inter alia, be independent, possess the power to issue binding decisions, and be capable of both preventing further violations and securing adequate redress for the injured party.[11] The Court has also ruled on the compensation afforded: not only has it assessed whether the monetary compensation was sufficient to compensate the harm suffered,[12] it has also examined (and validated) specific reforms such the possibility for prisoners to be granted a reduction of their sentence as a compensation for inadequate material detention conditions.[13] The Court has also specified the States' procedural obligations by holding that the release of a prisoner who had been detained in poor detention conditions

8 See respectively Piechowicz v. Poland, no. 20071/07, 17 April 2012; Van der Ven v. the Netherlands, no. 50901/99, ECHR 2003-II and Frérot v. France, no. 70204/01, 12 June 2007; Murray v. the Netherlands [GC], no. 10511/10, 26 April 2016.

9 See respectively Kukhalashvili and Others v. Georgia, nos. 8938/07 and 41891/07, 2 April 2020; Khoroshenko v. Russia [GC], no. 41418/04, ECHR 2015; Osman and Altay v. Türkiye, nos. 23782/20 and 40731/20, 18 July 2023.

10 see, e.g., Barbotin v. France, no. 25338/16, §46, 19 November 2020.

11 Béatrice Belda, Les droits de l'homme des personnes privées de liberté: Contribution à l'étude du pouvoir normatif de la Cour européenne des droits de l'homme (Bruylant 2010).

12 Barbotin v. France, no. 25338/16, 19 November 2020; Ananyev and Others v. Russia, nos. 42525/07 and 60800/08, §117, 10 January 2012.

13 Stella v. Italy (dec.), no. 49169/09 and ten others, 16 September 2014; see also Dîrjan and Ştefan v. Romania (dec), nos. 14224/15 and 50977/15, 15 April 2020.

does not absolve the relevant domestic authority from examining the complaint of inadequate conditions of detention and providing reasoning in that respect.[14]

The Court has articulated States' procedural obligations in this area with increasing precision, viewing the effectiveness of remedies as a matter of critical importance. Its policy has been to make the right to an effective remedy a privileged means for the eradication of endemic problems in Europe's prison systems, as identified in its pilot and quasi-pilot judgments in the 2010s-2020s.[15] The handling of this dispute by the domestic courts was a vital necessity for the Court: large portions of its backlog consists of repetitive applications concerning conditions of detention.

In this context, it could have been expected that the Court would be particularly attentive to the obstacles encountered by detainees in accessing redress mechanisms.

What, then, does the Court's case law reveal? The purpose of enumerating the developments in the following section is not simply to recall the procedural requirements identified by the Court in prison matters; rather, it is to consider the Court's approach to overcoming these structural difficulties, as well as the procedural means it promotes in this area.

14 Kargakis v. Greece, no. 27025/13, §81-84, 14 January 2021.

15 Countries subject to pilot or quasi-pilot judgments (alphabetical order): Belgium (Vasilescu v .Belgium, no. 64682/12, 25 April 2014), Bulgaria (Neshkov v. Bulgaria, no. 36925/10, 27 January 2015), France (J.M.B. and others v. France, no. 9671/15, 30 January 2020); Greece (Nisiotis v. Greece, no. 34704/08, 10 February 2011); Hungary (Varga and others v. Hungary, no. 14097/12), Italy (Torreggiani v. Italy, no. 43517/09, 8 January 2013), Moldova (Ciorap v. Moldova, no. 12066/02, 19 June 2007 and I.D. v. Moldova, no. 47203/06, 30 November 2010), Poland (Orchowski v. Poland, no. 17885/04, 22 October 2009 and Norbert Sikorski v. Poland, no. 17599/05, 22 October 2009), Portugal (Petrescu v. Portugal, no. 23190/17, 3 December 2019), Romania (Rezmiveș v. Romania, no. 61467/12, 25 April 2017), Russia (Ananyev v. Russia, no. 42525/07, 1 October 2012), Ukraine (Sukachov v. Ukraine, no. 14057/17, 30 January 2020).

THE EFFECTIVE REMEDY MODEL UNDER ARTICLE 13: A REMEDY TO BE EXERCISED ALONE BY THE PRISONER

The Court's Preference for Simplified Remedy Mechanisms over Legal Representation

Although the Court has abstained from providing a model for the system of remedy, its clear preference for independent authorities or penitentiary judges takes into account not only a specific concern for the responsiveness of the mechanism and its knowledge of the penitentiary environment, but also its accessibility for detainees. The Court appears to be fully aware of the specific problems of the prison population when it comes to access to courts, yet, it approaches the issue primarily through the lens of procedural simplification, rather than through an insistence on legal assistance or structural support. To remain schematic, it can be said that the Court's response aims to adapt the characteristics of the appeal bodies themselves, rather than imposing legal assistance measures that would allow detainees to bring their cases before the ordinary courts.

Various factors are taken into account in this regard: the cost of proceedings, the complexity of related rules and procedures, protection against reprisals, etc. In the Ananyev pilot judgment, the Court is satisfied that the procedure for preventive remedy provided for by domestic law is implemented at no cost to the applicant (§109). As to the compensatory remedy to be established in execution of the judgment, the Court asserts that it must not include a regime with legal costs which place an excessive burden on an applicant whose action is with good cause (§98-99).

As for access to legal aid in the context of Article 6, case law appears to be rather sparse. From the perspective of a fair trial, the Court takes into account the absence of legal aid but declares in its conclusions, not on the grounds of a right to judicial access—but rather in terms of a failure to be personally heard before a judicial body.[16] However,

16 Vladimir Vasilyev v. Russia, no. 28370/05, 10 January 2012; Beresnev v. Russia, no. 37975/02, 18 April 2013.

in its judgment in Aden Ahmed v. Malta (23 July 2013),[17] regarding physical conditions for the retention of illegal immigrants, the Court expressly asserted that the absence of a structured system of legal aid posed in itself a problem in terms of access to recourse, regardless of the merits. However, it does not seem that such a position has been taken at this time in a penitentiary case. In prison settings, the Court insists rather on the filing of the complaint before the competent organs by the detainees themselves, emphasising the simplicity of the procedures[18] or requiring the adaptation of rules governing the establishment of facts (see below).

Specific obligations are imposed on authorities in cases involving prisoners with mental health issues, requiring them to act on their own initiative to assess the situation. In Sławomir Musiał v. Poland,[19] the Court found that, because the applicant suffered from a psychiatric disorder that impaired his mental faculties, he "should not be expected or required to act with the utmost scrupulousness in availing himself of all the remedies available under the Code of Execution of Criminal Sentence" (§73). In some cases involving detainees without such impairments, the Court has suggested a duty for authorities to act proprio motu,[20] though this obligation does not appear to be applied systematically in the case law, unlike in situations involving mental illness.

One major obstacle to exercising rights in prison, the fear of reprisals, also seems to be taken into account. In the judgment Neshkov and Others v. Bulgaria, the Court explicitly stated the detainees must be able to complain with no fear of punishment or prejudicial

---

17 Aden Ahmed v. Malta, no. 55352/12, §66, 23 July 2013.

18 See also Neshkov and Others v. Bulgaria, nos. 36925/10 and 5 others, §191, 27 January 2015: "[…] prisoners must be able to avail themselves of remedies […]".

19 Aden Ahmed v. Malta, no. 55352/12, §66, 23 July 2013: "The Court would finally point out that had these remedies been effective in terms of scope and speed, there may still have been an issue in relation to accessibility. The Court is struck by the apparent lack of a proper structured system enabling immigration detainees to have concrete access to effective legal aid." See also M.S.S. v. Belgium and Greece [GC], no. 30696/09, §319, ECHR 2011: "In addition, although the applicant clearly lacks the wherewithal to pay a lawyer, he has received no information concerning access to organisations which offer legal advice and guidance. Added to that is the shortage of lawyers on the list drawn up for the legal aid system (see paragraphs 191 and 281 above), which renders the system ineffective in practice. Contrary to the Government's submissions, the Court considers that this situation may also be an obstacle hindering access to the remedy and falls within the scope of Article 13, particularly where asylum-seekers are concerned".

20 See for example, Kalashnikov v. Russia, no. 47095/99, § 96, ECHR 2002-VI.

consequences due thereto (§191).[21] However, to date, the Court's recognition of the issue has not translated into a systematic requirement for protection mechanisms. The emphasis remains on a framework more concerned with formal accessibility than with the real conditions under which that accessibility must be exercised.

Procedural Design for Prison-Based Litigation: Limits of an Individually Driven Model

The Court has developed dense procedural requirements allowing for the effective intervention of an external body, despite the fact that applicants remain entirely under the control of the administration and that the latter represents the sole party with access to evidence. It has worked to simplify the procedural mechanisms in order to bring the protection afforded by Article 13 within the reach of detainees. This rationale makes it arguably possible for prisoners to file complaints on the most common issues in European penitentiary systems: promiscuity related to overcrowding, insalubrity, constructions that are unfit for human habitation, etc. In other words, issues in which the dispute involves chiefly descriptions and discussions on evidence in fairly simple terms. The pilot judgment in Ananyev recalls in a very explicit manner (§228) that it should merely be required that interested parties produce elements that are easily accessible to them, such as detailed descriptions of their conditions of detention, declarations by witnesses, or responses from inspection bodies; it would then be up to the authorities to refute these allegations by producing their own documents, demonstrating that the conditions of detention do not contradict Article 3 of the Convention.

The Court generally operates on the assumption that this system is also capable of ensuring the appropriate treatment of disputes involving complex issues. Until recently, case law had not explicitly engaged with the role of investigatory measures, particularly expert reports, which are often essential for informing judges on technical or specialised questions. In Barbotin v. France (2020, §§ 50–59), the Court confronted this issue directly, and found that requiring the applicant to bear the cost of an expert opinion on his detention conditions, despite the

21 The Court made direct reference to the European Prison Rules (Rule 70.4), and referred to another Bulgarian case where the applicant was placed in isolation due to his complaints to the prosecutor (Kostov v. Bulgaria, no. 13801/07, §§ 47-48, 24 July 2012).

success of his claim, rendered the compensatory remedy ineffective.[22] In doing so, the Court recognised that procedural barriers related to expert evidence can undermine the effectiveness of remedies.

It is important to note, however, that this concern for simplification does not result in dissolution of the procedural requirements inherent in judicial review. Under Article 13, the consideration of claims by detainees must follow a procedure which is defined by law and that ensures the participation of interested parties. This means both allowing relevant facts to be independently established and also avoiding claims of detainees being ignored. The interested parties must be able to respond to observations made by the administration, in order to prevent their allegations from being negated by contradictory statements made by penitentiary services.

In Shmelev and Others v. Russia (dec.), 2020, §§ 107–131 and 153–156,[23] the Court emphasised that applicants must not be subjected to undue procedural burden. In particular, the compensatory procedure must be equipped with adequate procedural safeguards typical of adversarial judicial proceedings—including the right to legal assistance—to ensure that it is truly effective in practice.

In addition, the body must be obliged by law to rule effectively on the claims. In this respect, authorities such as the Prosecutor—responsible in some central and eastern European States for checking the legitimacy of authoritative acts—were considered to be inadequate for the purposes of Article 13, as they did not allow detainees to follow the progress of their proceedings nor to dispute the statements of authorities.[24] The same considerations, further to those regarding the absence of an enforceable power, led the Court to refuse to see Ombudsman institutions as an effective remedy.[25] In G.T. v. Greece (2022), the Court reaffirmed this position in the context of a refusal of prison leave to attend a parent's funeral, where the Prosecutor's

22 Barbotin v. France, no. 25338/16, 19 November 2020. The Court also noted that the compensation awarded by the domestic court was significantly lower than what would have been awarded under the Convention, see above.

23 Shmelev and Others v Russia (dec), nos 41743/17, 60185/17, 66806/17 and others, 17 March 2020.

24 Pavlenko v. Russia, no. 42371/02, §88-89, 1 April 2010; Aleksandr Makarov v. Russia, no. 15217/07, §86, 12 March 2009; and Ananyev, cited above, §99. Neshkov and Others v. Bulgaria, nos. 36925/10 and 5 others, §212, 27 January 2015

25 See for example Ananyev and others, cited above, §§105-106.

decision could not be appealed and no effective remedy existed to challenge or prevent the violation. The Court reiterated that remedies must offer a reasonable prospect of success and be capable of either preventing the violation or offering redress.[26]

The Court's approach remains fundamentally ambivalent. On one hand, it defines formal standards for effectiveness, independence, and participation. On the other, it implicitly accepts a reality in which detainees are left to face the full procedural weight of the administration alone.

THE RIGHT TO A FAIR TRIAL: A MISSED OPPORTUNITY FOR ROBUST SAFEGUARDS

Criminal Procedural Safeguards: Restrictive Scope in the Prison Context

Article 6§3, which applies to "criminal" charges, in the autonomous sense given to it by the European Court, i.e. independently of national legal classifications, contains potentially safeguards that could considerably strengthen detainees' position in disputes with the administration. In particular, a person charged with a criminal offence who does not wish to defend himself or herself in person must be able to have recourse to legal assistance of his own choosing from the initial stages of the proceedings (Article 6§3(c)). In addition, Article 6§3(c), encompassing the right to legal aid, is subject to two conditions, which are to be considered cumulatively: (1) the accused must show that he lacks sufficient means to pay for legal assistance; (2) the interests of justice require an accused to be provided with free legal representation.[27]

The question of the scope of application with regard to the criminal aspect of Article 6 is therefore decisive. In this respect, the main issue is the assimilation of disciplinary proceedings to a "criminal

26 G.T. v. Greece, no. 37830/16, 13 December 2022.

27 This requirement is looked at especially with regard to the capacity of the prisoner to present their case – for example, on account of unfamiliarity with the language used in court and/or the particular legal system.

charge" within the meaning of Article 6. Under current case law, disciplinary proceedings are considered as criminal charges only if they entail an extension to the duration of the sentence to be served.[28] In the absence of a practical extension to the duration of a detainee's deprivation of liberty, the guarantees of Article 6§1 (criminal) and 6§3 do not apply in principle.[29] The case law in prison matters has remained unchanged, even though the criteria of Article 6§1 (criminal limb) have significantly changed[30] and could have led to an extension of the criminal field in prison disciplinary litigation.

This lack of prison case law under the criminal limb of Article 6§1 is compensated by the significant extension of the scope of application of the civil limb of this article. However, the procedural guarantees provided in this context are insufficient.

The Civil Limb of Article 6: Expansive in Scope, Limited in Protection

The civil aspect of Article 6§1 seemed to be, in the early 2000s, a potential vector for the establishment of the procedural rights for the detained population. Taking an incremental approach, the Court has recognised the applicability of this text to several categories of measures, for instance compensation claims filed by prisoners concerning poor material conditions of detention[31] or inadequate health care.[32] Article 6§1 also applies to restrictions imposed on a detainee's right to receive money from outside prison[33] or on family rights, whether the question is a limitation of access to the visiting room[34] or security measures surrounding visits by relatives, such as the use of a separation system.[35]

28 In relation to the date of release that the person may have anticipated under domestic law. See Ezeh and Connors v. the United Kingdom [GC], nos. 39665/98 and 40086/98, ECHR 2003-X; Young v. the United Kingdom, no. 60682/00, 16 January 2007.

29 See Payet v. France, no. 19606/08, 20 January 2011; Štitić v. Croatia, no. 29660/03, 8 November 2007.

30 Jussila v. Finland [GC], no. 73053/01, ECHR 2006-XIV. In principle, the criterion of the nature of the offence must take precedence over the others.

31 Beresnev v. Russia, no. 37975/02, 18 April 2013.

32 Vasiliev v. Russia (cited above).

33 Enea v. Italy [GC], no. 74912/01, ECHR 2009.

34 Gülmez v. Turkey, no. 16330/02, 20 May 2008; Enea v. Italy (cited above).

35 Stegarescu and Bahrin v. Portugal, no. 46194/06, §35-39, 6 April 2010.

Besides this central core of rights of a private character, the Court's conception of what falls within the scope of the "sphere of personal rights" comprises a potentially wide variety of prison situations: limitations of access to the prison yard, resulting from the implementation of a high security regime,[36] confinement of a prisoner to the disciplinary block,[37] the imposition of security measures and frequent prison transfers.[38]

The right of access to a court has been established as such by the Court in the renowned case Golder v. The United Kingdom [GC], which concerns the rejection of a prisoner's claim to the right to consult a lawyer, with the aim to bring defamation proceedings against a warder.[39] The Court stresses that such a hindrance to access can contravene the Convention (§26).

In an exemplary manner, the Court ruled that such an opportunity had not been granted to the applicants in the case Stegarescu and Bahrein v. Portugal, which concerned the isolation of prisoners accused of preparing a prison break. The Court took account of the fact that the applicants in that case had never had access to the text of the decisions ordering their confinement. In the eyes of the European judges, such a procedure did not enable the persons concerned to effectively challenge the measure at issue.

This requirement seems to be particularly relevant and could then be the starting point for developing a consistent case law in disputes concerning security measures, where the prison administration is ready to invoke public order in order to refuse an explanation to the persons concerned about the decisions that have been made against them.

The concern about ensuring a viable referral to the courts is present in the cases in which the Court ruled that excessive procedural constraints, such as the one requiring a list of all persons concerned by the procedure, are a breach of the right of access to a court, as is the exceedingly short timeline of the procedure.

36 ibid.

37 Razvyazkin v. Russia, no. 13579/09, 3 July 2012.

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

39 Golder v. the United Kingdom, 21 February 1975, §36, Series A no. 18

Unsurprisingly, the question of accessibility to the court comes up in terms of its financial dimension in prison litigation. This is the case because, to begin with, such accessibility entails the cost of fees. In this respect, the capacity of the applicant to pay for the legal costs, and the stage of the proceedings when these costs are due, are elements to be taken into account. These purely financial restrictions, totally decoupled from the prospects of success of the appeal, must be the subject of particularly rigorous scrutiny.

In the case Ciorap v. Moldova,[40] the applicant was denied access to a court on the grounds that he had not paid the fees of the proceedings. According to the Court, the person concerned should have been exempted from the payment, regardless of his capacity to pay, taking into account the severity of his allegations (in this case, torture).

As far as free legal aid is concerned, the case law considers that, unlike what is common in criminal matters, Article 6§1 does not imply such support in all litigation related to a "right of a civil character". The situation could differ, though, when this assistance is indispensable in gaining effective access to a court, on the basis of the particular circumstances of the case, and in particular on the basis of the importance of the issue for the applicant, of the complexity of the right or of the applicable procedure, and of the capacity of the defendant to effectively present his case in person.

In prison-related matters, the Court seems quite reluctant to take a stance. In several cases, it took into account the absence of legal aid, but only with the purpose of reinforcing its line of argument, and not on the grounds of the right of access to a court, but rather on the grounds of the failure to appear before the judicial body.[41]

Taking into account the tendency of States to circumvent the logistical constraints associated with transferring prisoners to the courthouse, failures to ensure a detainee's appearance before the court and the absence of a public hearing constitute key areas where a breach of Article 6 §1 is often found. These violations, which frequently occur together, are typically assessed alongside other

40 Ciorap v. Moldova, no. 12066/02, 19 June 2007.

41 Larin v. Russia, no. 15034/02, 20 May 2010; Beresnev v. Russia, no. 37975/02, § 18 April 2013.

elements of the proceedings, with the aim of determining their overall fairness in light of the principles of equality of arms and adversarial procedure.

Article 6 does not guarantee the right to personal presence before a civil court, but rather a more general right to effectively present one's case, provided that the principle of equal arms vis-à-vis the opposing party is respected.[42] To ensure compliance with the requirements of Article 6, domestic courts must conduct a comprehensive analysis of the nature of the dispute to determine whether the incarcerated litigant's presence is required.[43] The Court requires national authorities to consider concrete reasons for and against the litigant's appearance, interpreted in accordance with the Convention and all relevant factors, such as the nature of the dispute and the civil rights at issue.[44] The State retains discretion in choosing the means by which these rights are secured. As for the hearing requirement, it does not apply systematically in cases where written exchanges are deemed appropriate—particularly when no issues of fact or law arise that cannot be adequately resolved on the basis of the file and written submissions.

This approach was reaffirmed in Ivan Karpenko v. Ukraine (No. 2), where the applicant, an unrepresented prisoner, was denied the opportunity to participate via videolink in administrative proceedings concerning the monitoring of his correspondence. The domestic courts rejected his requests, citing the lack of specific legal provisions for videolink participation from prison, and failed to assess whether his presence was necessary to ensure the fairness of the proceedings. The Court found a violation of Article 6 §1, emphasising that Convention standards cannot be curtailed by deficiencies in domestic legislation, and that the nature of the dispute, centred on contested facts, required the applicant's personal input. It also found a violation of the principle of equality of arms, as the prison administration was able to make oral submissions, while the applicant had no comparable opportunity to respond.

42 Larin v. Russia (cited above).

43 see Ivan Karpenko v. Ukraine (no. 2), no. 41036/16, §33, 24 April 2025; Yevdokimov and Others v. Russia, nos. 27236/05 and 10 others, §33-35, 16 February 2016.

44 ibid.

Personal presence, the oral or written form of proceedings, and legal representation must therefore be analysed in the broader context of the "fair trial" safeguard: it must be verified whether the applicant was given a genuine opportunity to comment on the observations or evidence produced by the other party, and to present his or her case under conditions that did not place them at a disadvantage vis-à-vis the opposing party.

The Court's jurisprudence under Article 6 thus reveals a persistent disjunction: it recognises that prisoners face distinctive procedural barriers, yet stops short of mandating the structural supports, such as legal aid, that would render fair trial rights truly effective in the detention setting.

CONCLUSION

The situation of detainees' procedural rights under the Convention is marked by a paradox. On the one hand, the Court has developed an extensive body of case law to give effect to the substantive rights of detainees and has shown an ongoing commitment to addressing the practical obstacles they face in accessing a judge. On the other hand, when it comes to procedural guarantees, particularly under Article 13, the Court continues to overlook the central role of legal representation in ensuring genuine access to justice, a role that is all the more vital in the prison context.

The model the Court promotes rests on a dual assumption: first, that detainees are autonomous legal actors, capable of navigating complex legal procedures without assistance; and second, that judges will, of their own motion, apply Convention standards robustly and effectively. Yet, this vision is sharply at odds with empirical evidence and field research, as will be shown in the following chapters.

Fair trial principles, in particular those derived from Article 6, could in theory serve as powerful safeguards for the fundamental rights of prisoners. In practice, however, the protection afforded under this provision remains limited in scope. The Court's case law continues to treat the structural disadvantages faced by prisoners, stemming from their total dependence on the prison administration, their socio-economic precarity, and the barriers to accessing legal mechanisms outside the prison system, as peripheral issues rather than central concerns.

By neglecting these realities and placing the burden of procedural navigation on detainees themselves, the Court risks undermining the very framework of protection it has so carefully built. In doing so, it leaves a gap between the formal recognition of rights and the conditions necessary for their effective exercise, thus weakening the force and coherence of its own jurisprudence.

2 EFFICIENCY AS JUSTICE? THE COMMITTEE OF MINISTERS' STANDARDS ON LEGAL AID AND THEIR BLIND SPOT ON DETENTION

The Committee of Ministers is the decision-making body of the Council of Europe;[45] a governmental body where national approaches to European problems are discussed and a forum to find collective responses to these challenges. It is, along with the Parliamentary Assembly, the "guardian of the Council's fundamental values, and monitors member states' compliance with their undertakings." Indeed, one of its key roles is to supervise, under Article 46 ECHR, the execution of the ECtHR's judgments, ensuring that States take the necessary individual and general measures to comply with the Court's findings.

Another function of the Committee of Ministers is the development of soft-law standards through Recommendations addressed to member states, including in areas such as access to justice, legal aid, and the treatment of pre-trial detainees. Despite their non-binding nature, these recommendations have the potential to significantly impact upon both national and regional prison standards through their use as a benchmark by the CPT during inspections and by the ECtHR as an interpretative tool.[46] For instance, several European States such as France and the Netherlands have passed or reformed their prison legislations under their influence.[47]

45 Dirk van Zyl Smit and Frieder Dünkel, Imprisonment Today and Tomorrow: International Perspectives on Prisoners' Rights and Prison Conditions (Kluwer Law and Taxation Publishers 2001).

46 Dirk van Zyl Smit and Sonja Snacken, Principles of European Prison Law and Policy: Penology and Human Rights (Oxford University Press 2009).

47 Ibid.

The standards of the Committee of Ministers have the advantage that they are drafted specifically to give clear guidance to national governments on a range of topics relating to imprisonment. The most recent recommendations in particular draw explicitly on the decisions of the ECtHR and the reports of the CPT.

Overall, the Committee's soft-law on access to justice and legal aid remain silent on detention, despite their broad scope and stated concern for vulnerability and structural disadvantage. None of the instruments explicitly mention persons deprived of liberty or the prison context. Although their focus on civil and administrative law could, in theory, encompass certain aspects of prison litigation, this remains implicit, and the guidelines offer no interpretative basis for extending their principles to detention. As a result, they fail to address the continued exclusion of detention-related procedures from legal aid schemes. This gap is reinforced by assumptions about accessibility that are incompatible with closed institutions: prisoners cannot freely contact legal aid providers, obtain information, or seek early advice. Their access depends on institutional mediation and is limited by censorship, fear of reprisals, and logistical barriers. The recommendations also omit safeguards such as on-site legal clinics, confidential communication channels, or protections for legal aid providers in prisons, leaving little practical guidance to strengthen prisoners' right to legal aid.

The standards that do address detention explicitly nonetheless treat access to justice and legal aid in a limited and fragmented manner. The EPR establish broad procedural safeguards and acknowledge prisoners' entitlement to legal advice, yet stop short of recognising a right to legal aid or addressing how such access can be made effective within prisons. The 2006 Recommendation affirms the right to legal assistance for remand prisoners but confines it to the criminal process, omitting any reference to legal aid in connection with complaints or other detention-related procedures. Similarly, the 2012 Recommendation on Foreign Prisoners recognises the need for legal advice and interpretation but provides no concrete obligations or mechanisms to ensure their realisation.

Across its standards, the Committee of Ministers demonstrates a tension between the formal recognition of access to justice as a principle and the failure to operationalise it in contexts of detention. Legal standards that recognise access to justice and legal

assistance in general cannot effectively benefit prisoners, as they face specific barriers that must be addressed directly if such safeguards are to have meaning in practice. The recommendations that do address detention explicitly fail to acknowledge that prisoners require free legal assistance and face unique practical obstacles in obtaining legal aid. They also stop short of affirming that prisoners should have access to a lawyer not only in the context of criminal proceedings but also in matters relating to the enforcement of their rights within detention.

RECOMMENDATIONS ON ACCESS TO JUSTICE AND LEGAL AID

When it comes to access to justice, the Committee of Ministers have expressed their commitment to this issue since 1981, when it adopted Recommendation No. R (81)7 on measures facilitating access to justice,[48] and later Recommendation No. R (93)1 on effective access to the law and to justice for the very poor in 1993.[49] Although neither instrument refers specifically to prisoners, both reflect the early development of a European concern with improving legal accessibility. At the same time, they suggest an underlying tension within the Council of Europe's approach, between an emphasis on procedural efficiency and the recognition of legal aid and representation as fundamental components of equal justice.

Through its 1981 Recommendation, the Committee of Ministers took a strong stance on access to justice, recognising that complex, costly, and time-consuming procedures often prevent individuals, particularly those in weak economic or social positions, from exercising their rights effectively. It emphasised that court fees and legal costs should not constitute barriers to justice, framing access to justice as dependent on both effective legal aid and systemic reforms to eliminate procedural and financial obstacles. However, even at that stage, the Council of Europe's approach revealed a preference for

48 Recommendation No. R (81) 7 of the Committee of Ministers to Member States on Measures Facilitating Access to Justice (Adopted by the Committee of Ministers on 14 May 1981 at its 68th session).

49 Recommendation No R (93) 1 of the Committee of Ministers to Member States on Effective Access to the Law and to Justice for the Very Poor (Adopted by the Committee of Ministers on 8 January 1993).

procedural simplification over structural guarantees of legal representation. The Committee urged member states to ensure that proceedings were simple, speedy, and inexpensive, underscoring the value of streamlined processes. Although it affirmed that no litigant should be prevented from obtaining legal assistance, it simultaneously cautioned against unnecessary reliance on lawyers and encouraged limits on the appointment of experts. This emphasis on efficiency reflected a broader concern with administrative practicality rather than with reinforcing substantive safeguards through guaranteed access to professional legal support.

The 1993 Recommendation on effective access to the law and to justice for the very poor, while not mentioning the situation of prisoners specifically, goes further in emphasising access to legal advice and representation as a substantive precondition for equality before the law. Through the Recommendation, the Committee urged member states to strengthen legal advice and aid systems to meet the specific needs of the very poor, including by promoting awareness among legal professionals, establishing advice centres in disadvantaged areas, and covering the costs of legal advice through legal aid. Crucially, the Committee called for assistance to extend not only to judicial proceedings but across all areas of law, including quasi-judicial procedures and that legal aid should be broadly available, simplified, and refused only in limited cases. It also highlights the involvement of NGOs as crucial in supporting those unable to defend themselves. Overall, the Committee framed access to justice for the very poor as integral to human dignity and as a necessary complement to broader anti-poverty strategies.

The CM Recommendation No. R (93) 1 On Effective Access to the Law and to Justice for the Very Poor invites the member States to promote legal advice services to the very poor by defraying the cost of legal advice through legal aid schemes, by supporting advice centres in underprivileged areas, and by enabling non-governmental organisations or voluntary organisations providing support to the very poor, to give legal assistance.

Taken together, these early recommendations illustrate the Council of Europe's longstanding engagement with the question of access to justice, but also the tension at the heart of its approach, between procedural efficiency and substantive access to legal representation. While the 1981 Recommendation prioritised simplification and

cost reduction, the 1993 Recommendation took a stronger stance by recognising legal aid as an essential corrective to financial inequality that determines who can effectively enforce their rights, and by calling for such assistance to extend across all procedures, including quasi-judicial ones.

DEDICATED LEGAL AID STANDARDS

The Committee of Ministers has adopted two key instruments on legal aid: Resolution (78) 8 on Legal Aid and Advice and the Guidelines on the Efficiency and Effectiveness of Legal Aid Schemes in the Areas of Civil and Administrative Law (2021). The first calls on States to ensure that persons in an economically weak position can obtain necessary legal advice in civil, commercial, administrative, social, or fiscal matters. It recommends that States support advice centres in underprivileged areas and enable non-governmental organisations to provide legal assistance. The 2021 Guidelines, prepared by the European Committee on Legal Co-operation, expand on this, with the aim of making national legal aid systems more efficient and effective within civil and administrative domains. They define legal aid broadly to include legal advice, assistance, and representation, emphasising non-discrimination, early intervention, quality assurance, user consultation, and data collection. It links legal aid to Article 6 of the European Convention on Human Rights, the Guidelines affirm its function as an essential precondition for access to justice, particularly for vulnerable groups.

Through these standards, the Council of Europe underscores the centrality of legal aid as a mechanism for ensuring that individuals in situations of vulnerability have equal access to the protection of their rights. It positions legal aid as essential to liberty and to guaranteeing that access to justice is not contingent upon wealth. However, these standards also reflect a recurrent tension within the Council of Europe's policy orientation: a tendency to frame the reduction of lawyers' involvement as a desirable efficiency measure. They place particular emphasis on the use of online technologies and digital tools as instruments for streamlining procedures and limiting the role of lawyers at certain stages of the legal aid process.

Despite their expansive scope and general emphasis on vulnerability and structural disadvantage in the enforcement of rights, these

instruments remain notably silent on detention. Neither instrument has any mention of persons deprived of liberty or the prison context. Their focus on civil and administrative law does, in theory, encompass prison litigation—such as challenges to disciplinary sanctions, administrative decisions, or conditions of detention—but this remains implicit. Even if, in principle, certain aspects of prison litigation could fall within the administrative sphere envisaged by the Guidelines, their generic framing fails to accommodate the particularities of detention. The Guidelines provide no interpretative leverage to extend their principles to detention. As a result, they cannot meaningfully challenge, for instance, the continuing practice of several States treating detention-related procedures as falling outside the scope of legal aid schemes, and this remains a blindspot.

This limitation is compounded by the Guidelines' underlying assumptions about accessibility. They presuppose that applicants can freely initiate contact with legal aid providers, obtain information about eligibility, and seek early advice—conditions that are structurally incompatible with life in closed institutions. Prisoners' access to legal information and assistance depends on institutional mediation, while their ability to pursue internal and external remedies is constrained by censorship, fear of reprisals, and logistical barriers. Yet the Guidelines make no reference to mechanisms for in situ legal assistance—such as on-site legal clinics, confidential communication channels, or dedicated safeguards for legal aid providers operating in prisons. As a result, even if their formal scope could, in theory, extend to certain aspects of prison litigation, they offer little that can be relied upon to strengthen prisoners' right to legal aid.

RECOMMENDATION ON THE IMPROVEMENT OF DOMESTIC REMEDIES

Another relevant instrument is Recommendation Rec(2004)6 on the improvement of domestic remedies, which seeks to strengthen the effectiveness of national remedies under Article 13 ECHR. It urges member states to ensure that domestic remedies are both effective in law and practice, capable of providing a decision on the merits and adequate redress for violations, and regularly reviewed in light of the Court's case law. While it reflects a strong procedural orientation, emphasising speed, accessibility,

and responsiveness, it remains silent on the role of legal assistance as a precondition for effective remedy. The Recommendation assumes that remedies can be rendered effective through structural and procedural measures alone, without addressing the reality that many individuals, particularly prisoners, cannot meaningfully access or pursue remedies without legal support.

THE EUROPEAN PRISON RULES

The European Prison Rules (EPR) are the most significant of the Council of Europe's recommendations on imprisonment, often described as resembling a code.[50] First adopted in 1973 as the European Standard Minimum Rules for the Treatment of Prisoners, they adapted the UN Standard Minimum Rules to the European context. Subsequent revisions in 1987, 2006, and 2020 reflected evolving legal standards and practices, particularly those developed through the jurisprudence of the European Court of Human Rights (ECtHR) and the monitoring work of the European Committee for the Prevention of Torture (CPT).[51] The 1987 revision marked a turning point in European prison policy by establishing common principles that placed the right to respect for human dignity at the core of prison functioning, advancing a distinctly European approach to detention standards and synthesising earlier trends in prison reform. The EPR thus stand in close relationship with other European and international instruments, including CPT standards, ECtHR case law, and UN norms.[52]

The 2006 EPR further consolidated these developments and gained wide political support as one of the Council of Europe's most authoritative instruments in the prison field in particular the dissemination efforts that have been devoted to it.[53] Their authority was reinforced by the Committee of Ministers, which promoted

50 Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules (Adopted on 11 January 2006 at the 952nd meeting of the Ministers' Deputies) and Recommendation CM/Rec(2020)3 of the Committee of Ministers to Member States on the European Prison Rules (Adopted on 1 July 2020 at the 1380th meeting of the Ministers' Deputies).

51 Rule 1 of the 1987 EPR.

52 CPT 15th General Report [CPT/Inf (2005) 17C] § 50.

53 Dirk van Zyl Smit, Strategies for Improving Prisoners' Rights and Prison Conditions in Europe: Summary and Recommendations, cited above.

their dissemination and encouraged implementation at the national level.[54] Their reception, however, has been uneven: while some states have integrated the EPR into domestic law and practice, it has at times been only a partial implementation and, others, such as the Netherlands and the UK, have stressed their "soft law" status and relied instead primarily on domestic legislation.

When it comes to access to legal advice and representation, the EPR are explicit that "all prisoners are entitled to legal advice, and the prison authorities shall provide them with reasonable facilities for gaining access to such advice".[55] However, on the issue of legal aid, the Rules are notably limited. They provide that "prisoners may consult on any legal matter with a legal adviser of their own choice at their own expense" and only add that, "where there is a recognised scheme of free legal aid, the authorities shall bring it to the attention of all prisoners".[56] The EPR therefore stop short of recognising a right to legal aid or even recommending that member states establish schemes that include prisoners within their scope. For pre-trial detainees, the EPR stipulate that they should be explicitly informed of their right to legal advice and that necessary facilities must be provided to assist them in preparing their defence and meeting with legal representatives.[57] Yet, this provision is clearly oriented towards criminal defence rather than the enforcement of prisoners' rights within detention itself and the Rules are silent on how such detainees are expected to fund their defence, obtain access to legal assistance, or overcome practical barriers in doing so.

When it comes to foreign nationals, the EPR establish specific provisions aimed at safeguarding communication rights and ensuring access to assistance. The Rules stipulate that foreign national prisoners must be informed without delay of their right to contact, and be provided with reasonable facilities to communicate with, the diplomatic or consular representative of their state.[58] Where prisoners are stateless, refugees, or nationals of states without diplomatic

54 Reply adopted by the Committee of Ministers on 27 September 2006 at the 974th meeting of the Ministers' Deputies to the Parliamentary Assembly Recommendation 1747 (2006) on the European Prisons Charter (CM/AS (2006) Rec1747 final 29 September 2006)

55 EPR Rule 23.1.

56 EPR Rule 23.3.

57 EPR Rule 98.1-2.

58 EPR Rule 37.1.

representation, they must be granted similar facilities to communicate with the relevant authority responsible for protecting their interests.[59] The Rules further require prison authorities to cooperate fully with diplomatic or consular officials in addressing the needs of foreign national prisoners,[60] to provide them with specific information about access to legal assistance,[61] and to inform them of the possibility of applying for a transfer of sentence to another country.[62] While these provisions reflect a recognition of the particular vulnerabilities of foreign nationals in detention, they stop short of imposing substantive obligations on states to ensure effective access to legal assistance or to address linguistic, cultural, and financial barriers that often impede foreign prisoners from exercising their rights in practice.

When it comes to prison litigation, the EPR set out procedural safeguards in the context of disciplinary proceedings and in relation to requests and complaints within prison. In relation to disciplinary proceedings, the EPR set out procedural safeguards intended to ensure fairness and transparency. Rule 59 provides that prisoners charged with disciplinary offences shall be informed promptly, in a language they understand and in detail, of the nature of the accusation; be granted adequate time and facilities to prepare their defence; be permitted to call and examine witnesses; and be provided with the free assistance of an interpreter if necessary. However, the EPR place primary emphasis on prisoners defending themselves in person, rather than being afforded professional legal representation. Legal assistance is mentioned only conditionally, to be permitted "when the interests of justice so require".

Likewise, when it comes to requests and complaints within prison, the EPR only mention access to legal assistance conditionally, to be permitted "when the interests of justice so require".[63] The framework governing requests and complaints is set out in Rule 70, which provides that prisoners, individually or collectively, must have ample opportunity to make requests or complaints to the prison director or

59 EPR Rule 37.2.

60 EPR Rule 37.3.

61 EPR Rule 37.4.

62 EPR Rule 37.5.

63 EPR Rule 70.7.

other competent authority,[64] and that mediation should be attempted where appropriate.[65] If a request is denied or a complaint rejected, reasons must be provided, and prisoners must have the right to appeal to an independent authority.[66] The Rules further specify that prisoners must not be punished for lodging a complaint,[67] that authorities should consider written complaints from relatives where they have reason to believe a prisoner's rights have been violated,[68] and that no complaint may be brought by a legal representative or organisation on behalf of a prisoner without that prisoner's consent.[69] While these provisions do provide some vital safeguards, they ultimately place the burden of initiating and navigating the process squarely on prisoners themselves.

RECOMMENDATION ON THE USE OF REMAND IN CUSTODY

The 'Recommendation on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse' from 2006[70] is the sole recommendation of the Committee of Ministers focused exclusively on remand prisoners. It sets out fundamental principles governing pre-trial detention, including judicial oversight, protection against reprisals, and the requirement that remand conditions be distinct from those of sentenced prisoners, while guaranteeing access to family contact, medical care, and education. Although the Recommendation affirms the right of pre-trial detainees to legal assistance and representation, it does so solely within the framework of criminal proceedings. It does establish that remand prisoners must have avenues of complaint both within and outside the remand institution, with the right to confidentially contact an authority competent to address

64 EPR Rule 70.1.

65 EPR Rule 70.2.

66 EPR Rule 70.3.

67 EPR Rule 70.4.

68 EPR Rule 70.5.

69 EPR Rule 70.6.

70 Recommendation Rec(2006)13 of the Committee of Ministers to Member States on the Use of Remand in Custody, the Conditions in which it Takes Place and the Provision of Safeguards against Abuse (Adopted by the Committee of Ministers on 27 September 2006 at the 974th meeting of the Ministers' Deputies).

their grievances, in addition to any right to bring legal proceedings, and that such complaints should be dealt with promptly. However, it makes no reference to legal assistance in connection with these complaint mechanisms.

RECOMMENDATION ON FOREIGN PRISONERS

In 2012, the Committee of Ministers adopted Recommendation CM/Rec(2012)12[71] to address the situation of foreign prisoners, recognising the specific difficulties they face due to language barriers, cultural differences, lack of family contact, and uncertainty about their legal status. The Recommendation replaces an earlier 1984 text and sets out a comprehensive framework requiring that foreign prisoners be treated with respect for their rights and individual needs, and not be subjected to custody or harsher sanctions on the basis of their foreign status. It calls for equal access to non-custodial measures, interpretation and translation, consular contact, legal advice and aid, culturally appropriate food, clothing and healthcare, and meaningful opportunities for work, education, and religious practice. Special attention is given to maintaining family ties across borders, avoiding isolation, and ensuring preparation for release whether through reintegration in the detaining state, return to the country of origin, or transfer elsewhere. The Recommendation further highlights the need for staff training in cultural sensitivity, proper allocation of resources, and systematic evaluation of policies affecting foreign prisoners.

CONCLUSION

The Committee of Ministers' recommendations reveal a long-standing recognition of the importance of access to justice and legal aid as prerequisites for equality before the law. Yet, when viewed through the lens of pre-trial detention and prison litigation, they expose a significant normative and structural gap. While the Council of Europe

71 Recommendation CM/Rec(2012)12 of the Committee of Ministers to Member States concerning Foreign Prisoners (Adopted by the Committee of Ministers on 10 October 2012 at the 1152nd meeting of the Ministers' Deputies).

has progressively refined standards on procedural fairness, legal advice, and representation, these have not been meaningfully extended to the enforcement of rights within detention. Prisoners, including pre-trial detainees, remain at the margins of the Council's access-to-justice architecture: they are mentioned only tangentially, if at all, in instruments concerning legal aid, and their specific constraints are nowhere addressed. The outcome is a structural blind spot: although the Committee of Ministers has been instrumental in shaping European standards on both access to justice and prison conditions, it has yet to bridge the gap between the two.

3 THE LAWYER AS A SAFEGUARD AGAINST ILL-TREATMENT: THE CPT'S STANDARDS AND ITS UNFULFILLED POTENTIAL

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) is the body devoted to torture prevention within the Council of Europe. Founded to enforce the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, it functions as a non-judicial, preventive mechanism complementing also the Court's protection under Article 3 ECHR by carrying out periodic and ad hoc visits to places of deprivation of liberty to assess the treatment of persons held there. The CPT visits places of imprisonment in signatory countries and issues recommendations to States and adopts general recommendations.

One of the CPT's key contributions to the prevention of torture has been its consistent advocacy for three core 'fundamental safeguards' for persons deprived of their liberty,[72] grounded in the understanding that the risk of torture and ill-treatment is greatest during the initial stages of detention. Among these is the right of access to a lawyer. First articulated in the CPT's Second General Report (1992), these safeguards have since remained the

72 These three fundamental safeguards are the right of access to a lawyer, the right of access to a doctor, and the right to have one's detention notified to a relative or a third party of choice (CPT, 12th General Report on the CPT's Activities covering the period 1 January to 31 December 2002, CPT/Inf (2002) 15, para 37).

cornerstone of its preventive approach and are systematically examined in virtually all CPT periodic and ad hoc reports. While the precise formulation of these safeguards may vary to reflect the particularities of national legal systems, the CPT considers them universally applicable, regardless of whether concrete evidence of ill-treatment has been found. Over time, the CPT has maintained its emphasis on these principles, an approach further reinforced by empirical research demonstrating their preventive effectiveness.[73]

The CPT has made clear that these "three fundamental safeguards" against ill-treatment "should apply as from the outset of deprivation of liberty, regardless of how it may be described under the legal system concerned (apprehension, arrest, etc.)". The 1992 statement also introduced a fourth, complementary safeguard: detainees must be both informed of and granted these rights "without delay." Moreover, any possibility for the authorities to postpone the exercise of these rights "should be clearly defined and their application strictly limited in time".[74]

A blind spot in the CPT's approach to access to a lawyer is that it has primarily focused on criminal proceedings, particularly during police custody and interrogation, but has failed to emphasise the crucial role of legal assistance in enabling detainees to enforce their rights in detention, including at the pre-trial stage. The CPT has not explicitly linked 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. As this research shows, effective access to legal advice and representation for enforcing rights in detention, and not only in relation to criminal proceedings, is essential to ensuring that rights are enforceable in practice and that safeguards against torture and abuse are not merely theoretical but practical and effective.

When it comes to access to a lawyer, the CPT has over time elaborated in detail what effective access entails; however, its focus has implicitly referred to access in the context of police custody,

73 See, e.g., Richard Carver and Lisa Handley, Does Torture Prevention Work? (Liverpool University Press 2016).

74 CPT Second General Report, 1992, § 37.

and its ratio legis has been to protect those concerned against the extortion of confessions in this setting. The CPT has responded to persistent reluctance among states to apply the safeguard "from the very outset" of custody. In its Twelfth General Report (2002), the CPT observed that many states limited access until after a certain period or a formal declaration of suspect status, and it rejected these delays as inconsistent with prevention. It accepted that brief postponements could occur for compelling investigative reasons but insisted that in such cases detainees must still have access to another independent lawyer. It further clarified that this right extends to anyone obliged to attend police premises, includes the right to consult privately, to have a lawyer present during questioning, and requires the availability of legal aid to ensure effectiveness. In its Twenty-first General Report (2011), the CPT reinforced that the safeguard applies from the moment of deprivation of liberty, regardless of legal status, and must cover those detained as "witnesses" or for "informative talks," who remain at serious risk of ill-treatment. It underlined that the right applies irrespective of the seriousness or category of the offence, warning that excluding "minor" or "administrative" offences creates loopholes enabling abuse. The CPT has also opposed blanket restrictions under anti-terrorism or similar laws, insisting that any limitation be assessed case by case. Despite this sustained clarification, it has continued to find widespread non-compliance, reflecting both institutional resistance and the practical challenge of ensuring the availability of lawyers nationwide, including in remote areas.[75]

Moreover, the CPT has underscored that effective grievance and inspection systems are vital safeguards against ill-treatment in places of detention. According to its standards, prisoners must have accessible complaint mechanisms both within the prison and through external authorities, including the right to communicate confidentially with a competent body by correspondence or during visits.[76] In line with this, the European Prison Rules provide that "national law shall specify national and international bodies and officials with whom communication by prisoners shall not be restricted".[77]

75 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).

76 CPT 2nd General Report [CPT/Inf (92) 3] § 54.

77 EPR Rule 24.3.

However, the CPT has not fully confronted the practical and structural dimensions of compliance with its own safeguard on access to a lawyer. While the CPT has long affirmed that this safeguard is "one of the fundamental guarantees against ill-treatment",[78] its engagement has remained largely limited to the formal right of access and its timing; that is, the need for access "from the very outset of deprivation of liberty".[79] 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.[80] The Committee itself has acknowledged that "in order for the right of access to a lawyer during police custody to be effective in practice, appropriate provision should be made…for persons who are not in a position to pay for a lawyer".[81] Yet it has never elaborated this point into a substantive requirement or standard.

The question of whether legal assistance should 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. As this research demonstrates, legal aid frameworks in many States are structurally and financially constrained, and detainees face distinct structural and practical barriers to accessing them. This omission by the CPT significantly weakens the preventive value of the safeguard, as the right to a lawyer, absent accessible legal aid, risks remaining a theoretical protection, available only to those with the means to exercise it.

78 CPT Second General Report, 1992, §36.

79 CPT Twenty-first General Report, 2011, §19.

80 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).

81 CPT Twenty-first General Report, 2011, §25.

4 LEGAL AID AS A GATEWAY TO THE REALISATION OF SOCIAL RIGHTS: ITS INCREASING RECOGNITION IN THE EUROPEAN SOCIAL CHARTER SYSTEM

Access to legal aid is not explicitly mentioned or guaranteed under the European Social Charter (ESC). Nevertheless, through its monitoring practice, the European Committee of Social Rights (ECSR) has interpreted several Charter provisions as implicitly requiring states to provide legal aid in specific contexts. Its case law increasingly recognises that access to justice is a precondition for the realisation of social rights, positioning legal aid as a gateway, a procedural guarantee that enables the enforcement of other substantive rights. The Committee has done so on the basis of its mandate to interpret the rights and freedoms set out in the Charter in light of current conditions,[82] relevant international instruments,[83] and newly emerging issues and situations; in other words, the Charter operates as a living instrument.[84]

The Committee has recognised legal aid as a necessary safeguard under several rights: the right to social and medical assistance,[85] the right to housing,[86] and the right of children and young persons to social, legal and economic protection.[87] In these areas, the ECSR has established that legal aid is indispensable to the effective exercise of procedural rights. For example, under Article 13, states must provide legal aid to guarantee applicants the "effective [exercise of their] right of appeal" in matters relating to social or medical assistance.[88]

82 Marangopoulos Foundation for Human Rights v. Greece, Complaint No. 30/2005, decision on the merits of 6 December 2006, §194.

83 European Federation of National Organisations working with the Homeless (FEANTSA), Complaint No. 39/2006, decision on the merits of 5 December 2007, §64.

84 Transgender-Europe and ILGA-Europe v. Czech Republic, Complaint No. 117/2015, decision on the merits of 15 May 2018, §75. On the Charter as a living instrument, see Digest of the case law of the European Committee of Social Rights, 2022, p. 34.

85 Revised ESC, Article 13.

86 Covered both by Revised ESC Articles 16 (the right of the family to social, legal and economic protection) and 31 (the right to housing).

87 Revised ESC Article 17.

88 Conclusions XVI-1 (2003), Ireland: LINK.

Likewise, in relation to the right to housing, the Committee has held that individuals at risk of eviction must be ensured access both to legal remedies and to legal aid as part of the procedural safeguards protecting against arbitrary interference.[89] Regarding “children in conflict with the law”,[90] the Committee has affirmed that legal assistance must be available from the outset of proceedings (and, in particular, during police questioning), and that states must ensure such assistance even where the child or guardian has not arranged it themselves.[91] The Committee has further clarified that this assistance is required where parents’ or guardians’ interests conflict with those of the child, that separate legal representation is crucial at the pre-trial stage, and that the provision of legal aid must not be left to administrative discretion.[92]

The Committee is increasingly recognising that access to justice, and legal aid in particular, is a crucial precondition for the enjoyment of a wide range of social rights. 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 for prisoners.

89 Conclusions 2011, Azerbaijan: LINK.

90 The situation of “children of conflict with the law” is in the scope of Article 17 of the Revised ESC on the right of children and young persons to social, legal and economic Protection. See International Commission of Jurists (ICJ) v. Czech Republic, Complaint No. 148/2017, decision on the merits of 20 October 2020, § 45 and § 82: LINK.

91 Ibid., §93.

92 ibid, §99, §94.

5 CONCLUSION

A central finding of this chapter is that none of the Council of Europe's standards explicitly link the right to a lawyer, access to legal aid, or similar procedural guarantees to the context of prisoners enforcing their rights from within detention. Indeed, there are no Council of Europe standards that directly address access to a court or funded legal assistance for prisoners seeking to enforce their rights from within detention. Insofar as they do apply—or where the patchwork of applicable standards does address this in part—the prevailing approach favours procedural simplification over an explicit recognition of the right to a lawyer or to legal aid in the context of prison litigation.

The European Court of Human Rights has played a central role in shaping the Council of Europe's standards on detention and access to remedies, yet its jurisprudence also reflects significant gaps in ensuring effective access to justice for prisoners. Over the past two decades, the Court has progressively required States to establish domestic remedies for violations of Article 3, framing the effectiveness of these remedies as a procedural obligation under Article 13. However, rather than mandating structural measures that would enable prisoners to pursue such remedies with legal assistance, the Court has endorsed an approach grounded in procedural simplification—emphasising accessibility in form rather than substantive equality in practice. This position assumes that prisoners can "avail themselves" of remedies independently, even within inherently adversarial proceedings where the prison administration holds exclusive control over relevant evidence. The Court's jurisprudence under Article 6 similarly falls short of extending procedural guarantees to prisoners. Its restrictive interpretation of the criminal limb has confined the right to free legal assistance to a narrow subset of disciplinary offences, while under the civil limb it has refrained from recognising access to legal aid as an essential component of the right to a fair hearing. Although the Court has occasionally found violations linked to the absence of legal aid, it has done so only when this absence resulted in a procedural default, not as a broader barrier to access to a court.

While the Committee of Ministers' access-to-justice standards do underscore the centrality of legal aid as a mechanism for ensuring that individuals in situations of vulnerability have equal access to the protection of their rights, these standards also reflect a recurrent

tension within the Council of Europe's policy orientation: a tendency to frame the reduction of lawyers' involvement and the simplification of procedures as a desirable efficiency measure. None of these instruments refer explicitly to prison litigation or adapt the delivery of legal aid to the prison context. The standards that do explicitly address legal aid in the prison context do so primarily in the context of criminal proceedings, and where they do address legal aid for prison litigation they say legal representation need only be made available where the interests of justice so require, showing the primary approach echoed throughout the standards is leaving the burden on prisoners themselves to navigate most requests, complaints, and disciplinary proceedings.

The CPT echoes this approach; while it underscores that the role of the lawyer is crucial in preventing ill-treatment, it does so only in relation to criminal proceedings and fails to recognise the vital role that legal aid and assistance play in enabling prisoners to enforce their rights, including the right to freedom from torture and ill-treatment. Its engagement has largely remained confined to the formal right of access and its timing, without elaborating on how such access is to be ensured in practice or connected to detainees' ability to enforce their rights beyond the criminal process.

Overall, the Council of Europe's approach to prisoners' access to justice reflects a structural paradox. While it has been pivotal in articulating that human rights extend behind prison walls, it has failed to ensure the conditions for those rights to be effectively enforced. Across its institutions the emphasis has remained on procedural accessibility rather than substantive capability, on the assumption that simplification can substitute for legal assistance. This orientation obscures the fundamental truth that prisoners, by virtue of their confinement, dependence, and vulnerability to reprisals, cannot meaningfully enforce their rights without professional support. In the absence of a recognised right to legal aid for prison litigation, the Council's human rights architecture leaves a crucial gap between entitlement and enforcement.

Chapter 2

The European Union's Limited Intervention in Prison Matters

Author:
Béranger Dominici
European Prison Litigation Network

TABLE OF CONTENTS

1 The EU’s Limited Intervention in Prison Matters: Exploring a Paradox 83

Two Categories of EU Texts in Prison Matters 83

The Growing Importance of Prison Issues in EU Policy 87

2 Two Ways for an EU Intervention in the Area of Prisons 90

The Uncertain Proposal of Binding EU Detention Condition Standards 90

Advancing Prisoners’ Access To Justice 92

Unlike the Council of Europe (CoE), the European Union's (EU) intervention in the area of prisons has remained very limited to date.[1] One explanation is to be found in the evolution of the EU's powers, which had limited competence in the area of criminal law until the end of the 1990s, when the Amsterdam Treaty (1999) introduced the Area of Freedom, Security and Justice (AFSJ). At the same time, the European Council of Tampere (1999) gave a "new impetus" to European intervention in criminal law policy.[2] A decade later, the Lisbon Treaty (2009) provided a stronger legal basis for an EU intervention in the field of criminal law – in addition to facilitating the enactment of EU law in this area by replacing the unanimity system in force until then by majority voting. A central provision in this matter is Article 82 (2) of the Treaty on the Functioning of the EU (TFEU), which gives EU institutions the power to establish minimum rules, by means of directive and "[t]o the extent necessary to facilitate [...] judicial cooperation in criminal matters", concerning "(b) the rights of individuals in criminal procedure; (c) the rights of victims of crime; (d) any other specific aspects of criminal procedure which the Council has identified in advance by a decision [...]".

The extent to which this provision constitutes a valid ground for the EU to intervene in the area of prison issues remains a matter of debate (see below, 2.2.). Setting aside this question temporarily, a second explanation to the EU's relative inaction in the field of prison lies in the constant reluctance of EU Member States (EUMS) to grant the EU powers to regulate this essential area of State sovereignty. This was for

1 In this chapter, the terms "area of prisons', "prison issues" or "prison matters" are used in a narrow sense, referring both to the internal status of prisoners (such as detention conditions and relations with the prison administration) and to their external status (in particular, access to justice, which constitutes the main focus of this report).

2 Taru Spronken, 'EU Policy to Guarantee Procedural Rights in Criminal Proceedings: an Analysis of the First Steps and a Plea for a Holistic Approach', European Criminal Law Review, vol. 1, issue 3, 2011, p. 217.

instance made explicit in EUMS' response to the European Commission's 2021 non-paper proposing the adoption of EU detention condition standards. The EUMS argued that "there is no need for additional legal instruments on minimum standards at EU level as these standards are already set out in various international fora" and that "the focus should [instead] be on a more effective application of existing standards, e.g. those laid down [by the CoE]".[3] The first information getting out of the High-Level Forum on the future of EU criminal justice held in 2025, shows stability in this matter[4] – and contributes to explaining why, more than fifteen years after the entry into force of the Lisbon Treaty, no significant EU texts came to regulate prisoners' rights – let alone prisoners' access to justice. Consequently, the rights guaranteed by the EU Charter of Fundamental Rights (CFR) – including the right to an effective remedy and to a fair trial under Article 47 CFR, which encompasses a right to legal aid for "those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice" – do not apply in the prison context, in the narrow sense in which this notion is used here (see footnote no. 1).

3 Council of the European Union, 3816th Council meeting, Home Affairs, 12574/21, 7 October 2021, p. 3. See the complementary document: Council of the European Union, Non-paper from the Commission services on detention conditions and procedural rights in pre-trial detention, 12161/21, 24 September 2021.

4 In the absence, at the time of writing, of any official EU press releases, we are forced to rely on social media posts from participants: see Gustav Tallving (Executive Director of the European Organisation of Prison and Correctional Services (EUROPRIS)), LinkedIn post of 2 October 2025: "EU Member States show a strong reluctance to further regulate procedural justice or detention conditions. Some even argue that this is not allowed in the EU Treaty (article 82) [...]. With this position of the EU MS the further regulation of detention conditions, and procedural justice, is not probable in a foreseeable future."

1 THE EU'S LIMITED INTERVENTION IN PRISON MATTERS: EXPLORING A PARADOX

TWO CATEGORIES OF EU TEXTS ON PRISON MATTERS

Two categories of EU texts touching upon prison issues can be identified: on the one hand, texts that directly address prison issues, but are unable to bring about harmonisation between EUMS prison systems because there are not legally binding; on the other hand, texts that are legally binding but which address prisoners' rights in an incidental manner.[5]

Within the first category of texts, the most prominent is the recent European Commission Recommendation "on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions", adopted in December 2022.[6] This Recommendation, which "mainly consist of a consolidation of existing [prison] standards"[7] on material detention conditions also contains two sections directly aiming at setting standards on

5 This section focuses on EU texts that address prison policy and prisoners' rights. It does not extend to EU texts that may influence prison systems through their impact on the prison population. This is the case of EU substantive criminal law, which, by making imprisonment the "barycentre" of the EU's approach to punishment, can be said to have an impact on prison systems (see Leandro Mancano, The European Union and Deprivation of Liberty: A Legislative and Judicial Analysis from the Perspective of the Individual, Hart Publishing, Oxford, 2019, Part II). Similarly, the EU's attempts to regulate recourse to pre-trial detention "as a measure of last resort" (2022 Recommendation, paragraph 10) are not covered in the examples below.

6 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.

7 Anne Weyembergh and Julia Burchett, Prisons and detention conditions in the EU, Study commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the LIBE Committee, 6 March 2023, pp. 71-72. See also Recital (20) of the Recommendation: "The Commission aims to consolidate and build on those minimum standards established within the framework of the Council of Europe as well as the case law of the Court of Justice and of the European Court of Human Rights [...]"; and Recital (31): "Only an overview of selected standards is provided in this Recommendation and it should be considered in light of, and without prejudice to, the more detailed guidance provided in the Council of Europe standards and of the case law of the Court of Justice and of the European Court of Human Rights".

prisoners' access to justice. Paragraphs 58 to 60 regulate prisoners' access to legal assistance and provide that detainees should have "effective access to a lawyer" (58), that the confidentiality of any form of communication between detainees and their lawyers (including meetings and correspondence) should be guaranteed (59), and that EUMS should "grant detainees access to, or allow them to keep in their possession, documents relating to their legal proceedings" (60). However in the absence of any reference to legal aid in those paragraphs, the right to "effective access" to a lawyer risks remaining a formal guarantee rather than a fully effective safeguard in practice..

Paragraphs 61 to 63 concern "requests and complaints" and cover access to legal information and complaint procedures. Paragraphs 61 and 62 aim to guarantee prisoners' information on "the rules applicable in their specific detention facility" (61) and that prisoners can "challenge aspects of their life in detention" through "confidential requests and complaints […] through both internal and external complaint mechanisms" (62). Paragraph 63 concerns the body in charge of reviewing such complaints. This body must not be a judicial body but should be independent from the prison administration and be "empowered to order measures of relief". This Recommendation is, to date, the most comprehensive EU text on prisoners' rights. However, its non-binding nature limits its capacity to harmonise EUMS legislation in this area.[8]

The same can be said of texts adopted by the European Parliament and the Council on prisons. The European Parliament has adopted a number of resolutions and recommendations over the past 20 years, advocating specifically for the adoption of EU standards in

8 As of October 2025, the evaluation of the Recommendation, which should assess its implementation by EUMS, had not been finalised. However, first echoes from the High-Level Forum on the future of EU criminal justice suggest that the evaluation first results show an important discrepancy in the implementation at national level of the listed standards.

the area of material detention conditions.[9] The Council's intervention has remained more limited but has touched upon core elements of prison policies, such as prison regimes and counter-radicalisation programmes,[10] sentence adjustment mechanisms,[11] as well as the organisation of prison estate and the promotion of small-scale detention facilities.[12] Both categories of documents being non-binding, their actual impact on prisoners' rights is bound to be limited.

Other texts are of binding nature and concern the penal field, but they address prisoners' rights only incidentally. The procedural rights directives adopted between 2010 and 2016 were designed to enhance the rights of suspects and accused persons during criminal proceedings, including those subject to pre-trial detention.[13] Therefore, their impact on prisoners' rights in the frame of prison litigation remains overall constrained. However, Directive 2016/800 "on procedural safeguards for children who are suspects or accused persons in criminal proceedings" constitutes an exception to the extent that it places obligations on EUMS in respect of material detention condi-

9 European Parliament, Report on the situation as regards fundamental rights in the European Union (2002), 2002/2013(INI), 21 August 2003; European Parliament, Report with a proposal for a European Parliament recommendation to the Council on procedural safeguards for suspects and defendants in criminal proceedings throughout the European Union, 2003/2179(INI), 23 October 2003; European Parliament, Resolution on the Communication from the Commission to the European Parliament and the Council – An area of freedom, security and justice serving the citizen – Stockholm programme, P7_TA(2009)0090, 25 November 2009; European Parliament, Resolution on detention conditions in the EU, 2011/2897(RSP), 7 December 201; European Parliament, Resolution of 5 October 2017 on prison systems and conditions, 2015/2062(INI), 5 October 2017; European Parliament, Situation of Fundamental Rights in the European Union - Annual Report for the years 2018-2019, 2019/2199(INI), 26 November 2020; European Parliament, Resolution on the implementation of the European Arrest Warrant and surrender procedures between Member States, 2019/2207(INI), 20 January 2021. See Anne Weyembergh and Julia Burchett, op. cit., pp. 69-70.

10 Council of the European Union, Conclusions of the Council of the European Union and of the Member States meeting within the Council on enhancing the criminal justice response to radicalisation leading to terrorism and violent extremism, 14419/15, 20 November 2015.

11 Council of the European Union, Council conclusions on alternative measures to detention: the use of non-custodial sanctions and measures in the field of criminal justice, 2019/C 422/06, 16 December 2019.

12 Council of the European Union, Council conclusions on 'Small-scale detention: ocusing on social rehabilitation and reintegration in society', 10105/24, 14 June 2024.

13 The six directives establish common rules on suspects' and accused persons' right to information in criminal proceedings (Directive 2012/13/EU), right to interpretation and translation in criminal proceedings (Directive 2010/64/EU), right to a lawyer and to legal aid in criminal and EAW proceedings (Directive 2013/48/EU and Directive (EU) 2016/1919). They also strengthen certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (Directive (EU) 2016/343) and set specific safeguards for children who are suspects or accused in criminal proceedings (Directive (EU) 2016/800).

tions of children. Article 12 of the Directive ("Specific treatment in the case of deprivation of liberty") contains two sets of obligations. On the one hand, it requires EUMS to hold children in detention "separately from adults, unless it is considered to be in the child's best interests not to do so" (12 (1)). On the other hand, it provides that EUMS "shall take appropriate measures" to ensure the preservation of the health of children detained, their right to education and training, their right to family life, their access to reintegration programmes and to ensure that their freedom of religion is respected (12 (5)). It is important to note that children's right to legal information (Article 4 (1) (c)), extends to the rights set out in Article 12. To this extent, it is the only procedural rights directive with a significant impact on prisoners' rights beyond criminal proceedings, although limited to children in detention.

A second important text in this category is Directive 2012/29/EU "on the rights, support and protection of victims of crime" (VRD), and in particular the revised version proposed by the European Commission.[14] Indeed, the Commission's proposal integrates elements from the EU Strategy on victims' rights (2020-2025), which identified "victims of crimes committed in detention" as a "group of victims in a situation of particular vulnerability" and requiring therefore specific attention due to their limited access to justice.[15] Consequently, the Commission's proposal for a revised VRD contains provisions relating specifically to the situation of prisoners victims of crimes to guarantee that they receive adequate legal information, can "rely on facilitated crime reporting" and "have access to support and protection in accordance with their individual needs" (Article 26a (1) (b)). Furthermore, the report drafted by the European Parliament on the Commission's proposal contains amendment that, if adopted, could have very beneficial effects on prisoners' procedural rights.[16] In particular, Amendment 78 aims to extend

14 European Commission, Proposal for a Directive amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, COM(2023) 424 final, 12 July 2023. See in particular Recital (6), Article 5a, Article 22 (2) (d), Article 26a (1) (b). At the time of writing (September 2025), the revised VRD had yet not been adopted.

15 European Commission, EU Strategy on victims' rights (2020-2025), COM(2020) 258 final, 24 June 2020.

16 European Parliament, Report on the proposal for a directive of the European Parliament and of the Council amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, 25 March 2024.

access to legal aid for victims of crimes, which is currently limited to victims of crimes "where they have the status of parties to criminal proceedings" (Article 13 VRD). By proposing to remove this limitation, the amendment, if adopted, would extend the scope of legal aid to administrative proceedings that prisoners often must pursue before initiating criminal proceedings.

Beyond these two examples of binding texts that partially impact on prisoners' rights, other secondary law instruments could also be used in prison settings, but doing so requires creative legal work, the outcome of which is inherently unpredictable.[17]

THE GROWING IMPORTANCE OF PRISON ISSUES IN EU POLICY

The lack of EU intervention on prison issues, as illustrated by the examples above, is paradoxical in view of their growing importance in EU policy, and in particular on judicial cooperation in criminal matters. Although their impact "on mutual trust, and consequently on mutual recognition and judicial cooperation generally within the [EU]"[18] has been considered by the European Commission at least since the early 2010s', it is the case law of the Court of Justice of the EU (CJEU) on the European arrest warrant (EAW) that has given prison issues their current prominence in this area.

The Aranyosi and Căldăraru judgment issued in 2016 constituted a turning point.[19] By ruling that EUMS must refuse to execute a EAW in case of "systemic or generalised" deficiencies in detention

17 See for instance the recent attempt, before the French Supreme Administrative Court (Conseil d'Etat), to bring prisoners working in prisons within the scope of Directive 2003/88/CE (Working Time Directive). The Conseil d'Etat eventually rejected the application, even though it had been supported by the public rapporteur, who suggested lodging a request for a preliminary ruling to the CJEU. See Conseil d'Etat, no. 431775, ECLI:FR:CECHR:2020:431775.20201130, 30 November 2020; see also the public rapporteur's conclusions.

18 European Commission, Strengthening mutual trust in the European judicial area – A Green Paper on the application of EU criminal justice legislation in the field of detention, COM/2011/0327 final, 14 June 2011.

19 Adriano Martufi, 'Prison Conditions and Judicial Cooperation in the EU – What Future for the European Arrest Warrant?', European Criminal Law Review, Vol. 11, 2021, pp. 188-210.

conditions, the Court admitted an exception to mutual trust between EUMS, understood as a presumption that national authorities comply with fundamental rights.[20] The EAW being "one of the oldest and most used" instrument in judicial cooperation in criminal matters, the impact of this new approach could not be underestimated.[21] This position was subsequently confirmed by further CJEU judgments,[22] and the ECtHR reinforced it by requiring EUMS to exercise due diligence when examining assurances provided by the requesting state to ensure that the surrender would not breach the rights of the requested person under the ECHR.[23]

According to the figures provided by the Commission, between 2016 (year of publication of the Aranyosi and Căldăraru judgment) and 2022 (year of the latest available data), a total of 586 EAW were refused on fundamental rights grounds – a category that includes both refusals on grounds of poor detention condition and on grounds of risks to breach of the right to a fair trial.[24] Compared to the number of 115 344 EAW issued over the same period,[25] the quantitative impact of the introduction of a fundamental rights exception seems overall limited. However, as argued above, the matter is not purely quantitative: its importance is to be measured on its harmful effect on mutual trust and on the whole judicial cooperation architecture in the longer term.

Even more so that since 2016, the CJEU's case law has evolved to include other aspects of detention conditions. In April 2023, the CJEU ruled that EUMS must not execute a EAW if a surrender would expose

20 CJEU, joined cases C-404/15 (Pál Aranyosi) and C-659/15 PPU (Robert Căldăraru), ECLI:EU:C:2016:198, 5 April 2016, see in particular § 88. The Court imposed a two-steps test to determine whether the EAW should be executed or refused: first, the existing of "systemic or generalised" deficiencies in detention conditions must be determined; second, it must be demonstrated that the requested person would be exposed to these deficient detention conditions.

21 A. Weyembergh and J. Burchett, op. cit., p. 31.

22 See among others CJEU, C-220/18 PPU (ML), ECLI:EU:C:2018:589, 28 July 2018; CJEU, C-128/18 (Dumitru-Tudor Dorobantu), ECLI:EU:C:2019:857, 15 October 2019.

23 ECtHR, Bivolaru and Moldovan v. France, nos. 40324/16 and 12623/17, 25 March 2021.

24 European Commission, Replies to questionnaire on quantitative information on the practical operation of the European arrest warrant. See the report for 2022 for figures covering 2020-2022, the report for 2019 for figures covering 2018-2019, and the report for 2017 for figures covering 2016-2017.

25 European Commission, Replies to questionnaire on quantitative information on the practical operation of the European arrest warrant – Year 2022, 29 May 2024, see "Annex II – Overview of the number of issued and executed EAWs 2005-2022", pp. 47-50.

the requested person to "a real risk […] of suffering a serious, rapid and irreversible decline in his or her state of health or a significant reduction in life expectancy".[26] A few months later, the CJEU acknowledged that a refusal to execute a European Arrest Warrant (EAW) may also be justified in circumstances beyond those engaging the absolute prohibition of torture or inhuman or degrading treatment or punishment (Article 4 CFR).[27] In its GN judgment, it held that EUMS not execute a EAW where "systemic or generalised deficiencies in the conditions of detention of mothers of young children and of the care of those children in the issuing Member State" could lead to a violation of the right for respect of private and family life (Article 7 CFR) and the best interests of the child (specifically Article 24 (2) and (3) CFR).[28] More recently, in a case concerning the surrender procedure foreseen in the Trade and Cooperation Agreement between the EU and the United Kingdom, the CJEU had to examine whether changes to the parole regime for prisoners convicted of terrorist offences can be interpreted as a heavier penalty (Article 49 CFR), and set a number of conditions on the powers of review of the parole officers involved in the process.[29]

A variety of issues may also emerge in future CJEU case law. On the one hand, domestic practices could eventually be brought before the

26 CJEU, C-699/21 (E.D.L), ECLI:EU:C:2023:295, 18 April 2023, § 41. Importantly, in this case, the CJEU did not apply the two-step test established in Aranyosi and Căldăraru: specifically, it was not required to demonstrate that the identified deficiencies were of a structural nature. See Cécilia Rizcallah, 'Arrêt 'E.D.L.': mandat d'arrêt européen et risque pour l'état de santé, la confiance mutuelle recadrée en faveur de la dignité humaine', Journal des Tribunaux - Droit Européen, vol. 6, 2023, pp. 294-297.

27 The absolute nature of this prohibition has constituted a central element of the Court's reasoning in its case law, see Dorobantu: "As regards […] the question as to whether the existence of a real risk that the person concerned will be subjected to inhuman or degrading treatment because detention conditions in the issuing Member State do not meet minimum requirements according to the [ECtHR] case-law may be weighed […] against considerations relating to the efficacy of judicial cooperation in criminal matters and to the principles of mutual trust and recognition, it should be noted that the fact that the prohibition of inhuman or degrading treatment within the meaning of Article 4 of the Charter is absolute […] precludes the fundamental right not to be subjected to such treatment from being in any way limited by such considerations."

28 CJEU, C-261/22 (GN), ECLI:EU:C:2023:1017, 21 December 2023, § 59.

29 CJEU, C-743/24 (Alchaster II), ECLI:EU:C:2025:230, 3 April 2025. On the role of the parole commissioners, see especially § 45: "it is not apparent from the documents before the Court that the Parole Commissioners have a purely discretionary power that goes beyond the discretion relating to the assessment, inter alia, of the dangerousness of the sentenced person after that person has served a substantial part of his or her sentence in custody. In particular, it is not apparent from those documents that those commissioners could rely on criminal policy considerations independent of that assessment."

Court and may compel it to address new questions – such as the issue of informal prisoner hierarchy.[30] On the other hand, the tension between the increasing importance attached to prisoners' reintegration and the "new phase in European penal policy" identified by the Council of Europe,[31] characterised by longer prison sentences that further hinder reintegration, may influence future EAW proceedings.[32]

This dynamism of the CJEU's case law, and its potential future evolution, indicate that the operation of the EAW requires EU action to restore mutual trust between EUMS.

2 TWO WAYS FOR AN EU INTERVENTION IN THE AREA OF PRISONS

THE UNCERTAIN PROPOSAL OF BINDING EU DETENTION CONDITION STANDARDS

The priority direction explored by the EU to address the harmful impact of poor detention conditions on judicial cooperation in criminal matters has been that of advocating for the establishment of EU detention conditions standards. This is well reflected in the main documents issued on this matter, from the 2011 Green

30 See for instance the consistent line of decisions of the Amsterdam District Court, which was recently reaffirmed in its 19 March 2025 judgment refusing to execute a EAW issued by Latvia. In that case, the court found, inter alia, that the requested person could be exposed to inhuman or degrading treatment due to the informal prisoner hierarchy (the socalled "caste system"). See Rechtbank Amsterdam, no. 13-349098-24, ECLI:NL:RBAMS:2025:1756, 19 March 2025, especially the conclusion where the Court states: "the information regarding the requested person does not sufficiently guarantee that he will be protected against violence and other negative consequences of the caste system." (own translation).

31 Marcelo F. Aebi and Edoardo Cocco, Prisons and Prisoners in Europe 2024: Key Findings of the SPACE I survey, 16 July 2025, p. 27.

32 On the principle of prisoners' reintegration, see however this recent CJEU judgment declaring that this objective, in the operation of the EAW is secondary to the objective of combating impunity: CJEU, C-305/22 (C.J.), ECLI:EU:C:2025:665, 4 September 2025, §§ 62-63. On the length of sentences, see this case pending before the CJEU, which brings the question of 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), Request for a preliminary ruling from the rechtbank Amsterdam (Netherlands) lodged on 5 September 2024.

Paper[33] to the Recommendation adopted ten years later (2022). It is also the main proposal put forward in this area by the Commission in the frame of the High-Level Forum on the future of EU criminal justice. Similarly, this has been a constant recommendation of the European Parliament in its various resolutions (see above 1.1) and the CJEU itself suggested that it could be a proper solution, when declaring that "in the absence, currently, of minimum standards in that respect under EU law" it had to rely on ECtHR case law.[34]

However, as mentioned above, EUMS are strongly opposed to any EU intervention in this area, arguing that the European Commission lacks a legal basis in this respect. Independently of the question of the legal basis (discussed below in 2.2.), on which the Commission and the EUMS seem to disagree, the position of this report is that the definition of binding EU detention conditions standards is unable to effectively solve the issue it aims to address.

First, as illustrated by the 2022 Recommendation, EU standards on detention conditions risk duplicating existing and well-developed CoE standards, thereby limiting their added value. Second, and more importantly, the mere definition of standards is insufficient to bring about lasting improvements in material detention conditions, which depend on broader developments in prison and criminal justice policies.[35] The experience of the CoE illustrates this point: despite decades of standard-setting through treaties, case law, and soft law instruments, prison overcrowding persists in 11 EU Member States, and in five of them it has been identified as a structural problem requiring reforms "embedded in a rational and coherent penal policy, to identify and address [its] different root causes".[36] Third, and for this reason, the likely consequence

33 European Commission, Strengthening mutual trust in the European judicial area – A Green Paper on the application of EU criminal justice legislation in the field of detention, op. cit. See among other quotes: "Future European Union action in [the] field [of detention condition] could play a part in ensuring equivalent prison standards for the proper operation of the mutual recognition instruments".

34 CJEU, Dorobantu, § 71 (emphasis added).

35 Marcelo F. Aebi and Edoardo Cocco, op. cit., 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".

36 Committee of Ministers of the Council of Europe, Decision in respect of the execution of the judgment Petrescu v. Portugal, no. 23190/17' CM/Del/Dec(2024)1507/H46-23, 19 September 2024. On prison overcrowding in EUMS, see Marcelo F. Aebi and Edoardo Cocco, op. cit., p. 17.

of defining EU standards would be an observable implementation gap, potentially followed by infringement proceedings, the effectiveness of which remains uncertain – with damaging implications for the authority of EU law.

ADVANCING PRISONERS' ACCESS TO JUSTICE

By contrast, reinforcing prisoners' access to justice through EU binding legal instruments that would secure their access to legal information, a lawyer, legal aid and translation and interpretation, would have several advantages.

First, it would offer significant added value to the ECtHR's normative framework, which provides only limited safeguards concerning prisoners' access to a lawyer (see Chapter on Council of Europe standards), and would thus serve as a complementary legal framework to that of the CoE.[37] In other words, the strengthening of prisoners' procedural rights would enhance their access to justice and therefore the enforcement of existing standards by national courts – thereby contributing to restore mutual trust between EUMS.[38]

A key measure in this regard would be to strengthen prisoners' access to legal aid, which is essential to give full effect to their rights to legal information, legal assistance, and translation and interpretation. As shown by a previous study, lawyers play a crucial role in ensuring prisoners access to justice, given that the complexity of available remedies, combined with the specificities of the prison environment and the socio-demographic characteristics of the prison population (who often lack legal literacy), constitutes a

37 Anne Weyembergh and Julia Burchett, op. cit., p. 104: "it would be advisable to seek a complementarity with existing standards adopted at CoE level and thus avoid the risk of double standards".

38 The development of prisoners' capacity to engage in prison litigation is also aligned with the EU strategy to strengthen the application of the CFR, see European Commission, Strategy to strengthen the application of the Charter of Fundamental Rights in the EU, COM(2020) 711 final, 2 December 2020: "When other routes, such as prevention and dialogue, prove unsuccessful, effective judicial protection also includes strategic litigation, which contributes to a more coherent implementation and application of EU law and to the enforcement of people's rights".

major obstacle to their effective access to a judge.[39] Yet, access to justice is largely determined by "the cost of litigation",[40] consequently prisoners who cannot afford a lawyer are often unable, in practice, to effectively seek justice. Establishing clear rules on prisoners' entitlement to legal aid would thus enhance the financial accessibility of justice systems and, in turn, contribute positively to their overall quality.[41]

In a longer-term perspective, the expansion of prison litigation can also set 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 moves the field beyond its traditionally marginal status and increases the visibility of detention conditions and their underlying causes in public debate.[42]

Second, such an approach could also be regarded more favourably by EUMS than an EU intervention into material detention conditions. It would be aligned with the mutual recognition approach, which "[u]nlike harmonisation or approximation [...] only requires the adoption of limited procedural rules that allow the interaction between judicial actors operating under different (and potentially divergent) sets of domestic norms".[43]

39 European Prison Litigation Network (EPLN), Bringing justice into prisons: for a common European approach. White paper on access to justice for pre-trial detainees, 2019, pp. 40. Prisoners often belong to "marginalised and [...] most socially and economically disadvantaged" communities in a society (Henrique Carvalho and Anastasia Chamberlen, Questioning Punishment, Routledge, Abingdon, 2023, p. 49). Furthermore, people with mental health disorders make up one-third of the European prison population (World Health Organisation, "One-third of people in prison in Europe suffer from mental health disorders", 15 February 2023), and, on average, a quarter of the prison population is detained in a country of which they are not nationals, suggesting that they may lack the linguistic skills to participate in legal proceedings independently (Marcelo F. Aebi and Edoardo Cocco, op. cit., p. 11).

40 European Commission, The 2025 EU Justice Scoreboard, 1 July 2025, p. 20: "The cost of litigation is a key factor that determines access to justice" and legal aid "allows access to justice to people who would not otherwise be able to bear or advance the costs of litigation".

41 European Commission for the Efficiency of Justice (CEPEJ), European judicial systems CEPEJ Evaluation Report, Evaluation Cycle, PART I: General Analyses, 2024: LINK, p. 87: "[q]uality justice must be accessible to its users", and specifically concerning financial accessibility: "Crucial to individuals being able to pursue legal action is the ability to pay the associated costs, or the availability of free of charge state-based assistance and advice."

42 EPLN, op. cit., p. 46, with examples from Belgium and France.

43 Adriano Martufi, op. cit., p. 189.

Such proposal would also benefit from the precedent of the six procedural rights directives. One of the aims sought by the adoption of those directives was indeed to harmonise the implementation of CoE standards (here in the area of fair trial) through the reinforcement of the procedural rights of suspect and accused persons.[44] Similarly, providing binding EU rules on the procedural rights of prisoners would support the harmonisation of the implementation of CoE standards that are unevenly implemented.

It must be noted that such an initiative would not establish entirely new standards but would rather support the emerging consensus among EU Member States on recognising prisoners' right to legal assistance under national legal aid schemes when exercising their right to complain, while also addressing the significant disparities that persist between national models regarding the scope of the rights granted.[45]

Third, it can reasonably be argued that Article 82 (2) (b) TFEU, which enables the EU to establish minimum rules concerning "the rights of individuals in criminal procedure", constitutes a valid legal basis for such an initiative. Against the argument that this provision should be read in a restrictive manner, this report agrees with the view that the notion of "criminal procedure" referred to in this article should be understood as an autonomous concept of EU law that encompasses both "criminal proceedings" (which end with the final judgment, as defined by the procedural rights directives) and the execution of sentences.[46] Similarly, adequate conditions of detention (from sufficient personal space to the protection of prisoners' health as defined by existing standards) should be framed as "individual rights" (rather than impersonal standards), whose protection

44 Council of the European Union, Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, 2009/C 295/01, 30 November 2009: "there is room for further action on the part of the European Union to ensure full implementation and respect of [ECHR] standards, and, where appropriate, to ensure consistent application of the applicable standards and to raise existing standards".

45 EPLN, op. cit., p. 41. The report identifies a broad consensus in this respect among the nine countries studied (Belgium, Bulgaria, the Czech Republic, France, Germany, Italy, the Netherlands, Poland and Spain).

46 See Leandro Mancano, 'Storming the Bastille: detention conditions, the right to liberty and the case for approximation in EU law', Common Market Law Review, vol. 56, 2019. For the opposing view, see Irene Wieczorek, 'EU Harmonisation of Norms Regulating Detention: Is EU Competence (Art. 82(2)(b) TFEU) fit for Purpose?', European Journal on Criminal Policy and research, 2022, pp. 465-481. See also Anne Weyembergh and Julia Burchett, op. cit., p. 73 for a short discussion on this scholarly debate.

requires justiciability. In this respect, strengthening prisoners' access to justice, by guaranteeing their access to a lawyer, would strengthen the implementation of these individual rights.[47]

47 Leandro Mancano, op. cit.

Chapter 3

The United Nations' Standards on Pre-Trial Detention and Access to Justice

Author:
Mandeep Heer

Editors:
Viktoria Kasongo Akerø
Hugues de Suremain
European Prison Litigation Network

TABLE OF CONTENTS

1 Context: The UN's General Approach to Pre-Trial Detention 99

2 The Right to an Effective Remedy 101

Scope of the Right 103

Fair Trial Guarantees 104

3 The Right to Legal Aid 106

Scope of Legal Aid 109

Legislative Regime 111

Merit Testing 112

Training of Legal Aid Providers 112

Information on Legal Aid 113

Funding 113

Legal aid for Vulnerable and Marginalised Groups 114

4 The Right to Legal Assistance 115

5 Conclusion 117

This chapter maps the United Nations' standards pertaining to prison litigation and distils the UN norms that shape both the substance of such claims and the legal assistance and legal aid that make them effective in practice. For the purposes of this chapter, "legal aid" refers to the provision of legal advice, assistance and representation by the State (or through its established mechanisms) free of charge, while "legal assistance" denotes the guarantee that persons deprived of liberty or charged with offences have access to counsel or legal advisers of their own choosing from the earliest stages of proceedings, including the right to effective and confidential communication with them. Its focus is on the UN framework governing pre-trial detention in general, as well as on the mechanisms that enable pre-trial detainees to initiate, pursue and obtain remedies for violations while in custody. Anchored in that scope, the chapter unfolds along five lines. First, it sets out the UN's general approach to pre-trial detention. Second, it consolidates the right to an effective remedy for persons in detention, drawing together treaty obligations and soft-law standards. Third, it clarifies how fair-trial guarantees operate in detention-related proceedings. Fourth, it sets out and details the UN standards on legal aid and finally those concerning the right to legal assistance.

1 CONTEXT: THE UN'S GENERAL APPROACH TO PRE-TRIAL DETENTION

Shortly after its founding, the United Nations began to promulgate international norms for the protection of persons accused of crimes and/or deprived of liberty by their Government. The UN system overall promotes a general rule against pretrial detention. Article 9(3) of the International Covenant on Civil and Political Rights (hereinafter 'ICCPR'), sets out that "[i]t shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement [sic]." The UN Human Rights Committee has interpreted this provision to require an individualised determination of whether less restrictive measures are available to ensure a criminal defendant's appearance at trial.[1] The UN Human Rights Committee elaborates:

> "Detention pending trial must be based on an individualised determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. The relevant factors should be specified in law and should not include vague and expansive standards such as 'public security'.[2] "

If the pretrial detention period has reached or exceeded the longest sentence a person might receive for their charges, they must be released.[3] The UN Working Group on Arbitrary Detention (hereinafter 'WGAD') has adopted this stance in its jurisprudence and continuously emphasised that pretrial detention must be an individualised

1 Human Rights Committee, 'General Comment No 35: Article 9 (Liberty and Security of Person)' (16 December 2014) UN Doc CCPR/C/GC/35 para 38.

2 ibid.

3 ibid.

exception rather than a default mechanism.[4] The WGAD has also expressed concern over domestic systems that entrench pretrial detention.[5]

Moreover, two inter-related principles run throughout the UN framework on pre-trial detention: first, the principle that pre-trial detainees should be treated better than convicted prisoners, grounded in the presumption of innocence and the requirement that their detention not take on a punitive character; and second, that if they are detained rather than released pending trial, they must be separated from convicted persons and provided with their own distinct regime.[6] The Human Rights Committee has elaborated on this[7] and held that article 10(2)(a) of the Covenant requires that convicted and unconvicted persons be kept in separate quarters, but need not be kept in separate buildings.[8]

Another consistent concern across the UN system is the disproportionate use of pre-trial detention against economically and socially marginalised groups. The WGAD has observed that pre-trial detention "disparately impacts on vulnerable groups, such as the poor, persons living with mental health problems, indigenous people, and racial minorities."[9] During its visit to Australia, it noted that judges often assess an accused's "roots in the community" when determining the likelihood of attendance at future hearings, a criterion that, when applied to marginalised people, frequently results in denial of bail.[10] Similarly, on its visit to Germany, the WGAD highlighted the disproportionate number of foreigners in pre-trial detention, since "one of the deciding factors [in determining whether to grant bail] is whether the detainee has any links, including friends and family, to hold him or her in the city or country and hence prevent him or her from

4 Gloria Macapagal-Arroyo v. The Philippines, WGAD Opinion No. 24/2015, Adopted Sept. 2, 2015, §37; Teymur Akhmedov v. Kazakhstan, WGAD Opinion No. 62/2017, Adopted Aug. 25, 2017, §41.

5 Report of Working Group on Arbitrary Detention: Visit to Viet Nam, Commission on Human Rights, E/CN.4/1995/31/Add.4, Dec. 21, 1994, §50.

6 Human Rights Library, Human Rights and Pre-trial Detention: PDF ICCPR, Art 10(2)(a); Standard Minimum Rules, Rule A.

7 General Comment 9(2); Larry James Pinkney v. Canada (27/1978) (29 October 1981), Selected Decisions, vol. 1, p. 95, at p. 100, §30.

8 ibid.

9 Report of the Working Group on Arbitrary Detention: Mission to Canada, Commission on Human Rights, E/CN.4/2006/7/Add.2, Dec. 5, 2005, §63.

10 ibid.

jumping pretrial bail or release."[11] The WGAD explained that this logic effectively works against foreigners, as courts can easily argue that they lack ties to the country and may abscond, thereby contributing to their overrepresentation in pre-trial detention.[12]

2 THE RIGHT TO AN EFFECTIVE REMEDY

The right to an effective remedy is a cornerstone of international human rights law and extends fully to persons in detention. It guarantees that individuals whose rights have been violated can access procedures capable of addressing those violations, providing redress, and preventing recurrence. Within the UN system, this right is articulated across a range of binding treaties and soft-law standards.

The international legal basis for the right to a remedy and reparation is firmly enshrined in the corpus of international human rights instruments now widely accepted by States. Article 8 of the Universal Declaration of Human Rights (UDHR) provides that "[e]veryone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." The International Covenant on Civil and Political Rights (ICCPR) strengthens this guarantee by setting out a binding obligation in Article 2(3), which requires States to ensure that any person whose rights under the Covenant have been violated has access to an effective remedy, even where the violation has been committed by State officials, and that competent authorities enforce such remedies when granted. The ICCPR further specifies in Article 9(5) that anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation, while Article 14(6) provides for compensation in cases of wrongful conviction. Comparable protections are found in other core treaties: Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination guarantees effective

11 Report of the Working Group on Arbitrary Detention: Mission to Germany, Human Rights Council, A/HRC/19/57/Add.3, Feb. 23, 2012, §§43, 63.

12 ibid.

protection and remedies against acts of racial discrimination; and Article 39 of the Convention on the Rights of the Child requires measures of recovery and reintegration for child victims.

Overall, several key UN soft-law instruments consolidate the right to a remedy for detainees. The Mandela Rules (Rules 56–57) guarantee prisoners the right to make complaints without risk of reprisal, and to have such complaints examined promptly, impartially and with the possibility of appeal. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides in Principle 33 that damage caused by acts or omissions of officials contrary to its provisions must be compensated according to domestic liability rules. Most comprehensively, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by consensus by the General Assembly in 2005, affirm that victims are entitled to remedies including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. The significance of this instrument lies not in introducing new rights, but in consolidating what the international community had already recognised as existing rights. Although not legally binding, the Basic Principles have become a milestone in international law: they have catalysed a clearer understanding of the right to reparation, guided action at both domestic and international level, and are increasingly invoked in the jurisprudence of human rights bodies and courts.[13]

The significance of the Basic Principles and Guidelines lies in the way they function as both a consolidation and a practical roadmap. Although formally a non-binding resolution, the General Assembly made clear that the instrument restates existing law rather than creating new rights, thereby lending it considerable normative weight. The drafting process further underlined this approach: the Chairperson-Rapporteur noted that the use of "shall" marked binding norms already in force, while "should" denoted recommended practice. By categorising reparation into restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition, the Guidelines provided a taxonomy that has since been widely adopted by international and regional human rights bodies.

13 UN General Assembly, 'Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, Pablo de Greiff' (14 October 2014) UN Doc A/69/518: LINK.

SCOPE OF THE RIGHT

At its core, the right to a remedy encompasses access to justice, adequate redress, and measures to prevent recurrence of violations. It requires that victims be able to bring claims before competent, independent and impartial authorities; that such claims are examined fairly, promptly and effectively; and that remedies granted are enforced in practice. Reparation under international standards is understood broadly, extending beyond financial compensation to include restitution of liberty, employment or property; medical and psychological care; rehabilitation and reintegration; satisfaction through public acknowledgment or apology; and guarantees of non-repetition through legal and institutional reform. In this way, the right functions both as an individual entitlement and as a structural obligation on States to ensure accountability, restore rights, and prevent further harm.

As the Human Rights Committee has emphasised in its General Comment No. 31, the duty of States to make reparations to individuals whose rights under the ICCPR have been violated is an integral component of the obligation to provide effective domestic remedies: "Without reparation to individuals whose Covenant rights have been violated, the obligation to provide effective remedy … is not discharged." This approach reflects the growing body of jurisprudence across human rights bodies, which consistently affirms that effective remedies constitute a right of victims rather than merely a duty incumbent upon States.

In detention contexts, where detainees have been subjected to torture, ill-treatment, or other serious violations, remedies must include not only sanctions against responsible officials, such as suspension, dismissal, loss of benefits, or criminal prosecution, but also measures tailored to the victim's situation. For instance, a person who has suffered treatment more severe than any lawful sanction would have permitted must be entitled to remedies up to and including immediate release.[14] Article 14 of the CAT obliges States to ensure that victims of torture obtain redress, including an enforceable right to fair and adequate compensation as well as

14 United Nations, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (14 October 2014) UN Doc A/69/518: LINK.

rehabilitation. This establishes not only a duty to punish perpetrators but also a positive obligation to assist and restore victims. The Committee against Torture has clarified that Article 14 must be interpreted in light of the **Basic Principles and Guidelines on the Right to a Remedy and Reparation,** which identify restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition as essential components of reparation. Procedurally, States are required to establish suitable institutions, judicial, administrative, constitutional or specialised bodies, that enable victims to obtain redress, with the critical guarantee that victims themselves are entitled to initiate such proceedings.[15]

FAIR TRIAL GUARANTEES

The UN framework recognises that the right to a fair trial applies not only to the determination of criminal charges but also to procedures concerning issues in detention. Under Article 14 of the ICCPR, there is a structural distinction: paragraphs (2) to (5) and (7) are expressly limited to persons "charged with a criminal offence" and enshrine guarantees such as the presumption of innocence and protection against double jeopardy, which are not transferable to non-criminal proceedings. By contrast, Article 14(1) sets out the overarching right to a fair and public hearing by a competent, independent and impartial tribunal, which is applicable to both criminal and non-criminal proceedings.[16]

By contrast, Article 14(1) sets out the overarching right to a fair and public hearing by a competent, independent and impartial tribunal, which applies in both criminal and non-criminal proceedings.

The concept of the determination of rights and obligations "in a suit at law" (de caractère civil/de carácter civil) is complex, as emphasised by the UN Human Rights Committee in its General Comments and

15 UN Human Rights Council, 'Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak' (15 January 2007) UN Doc A/HRC/4/33: LINK.

16 Counter-Terrorism Implementation Task Force, 'Basic Human Rights Reference Guide: Right to a Fair Trial and Due Process in the Context of Countering Terrorism' (United Nations, October 2014) http://www.ohchr.org/EN/newyork/Documents/FairTrial.pdf, §16; UN Human Rights Committee, General Comment No. 32 (2007), §27 (right to trial without undue delay).

jurisprudence.[17] It is formulated differently across the equally authentic language versions of the Covenant (Article 53), and the travaux préparatoires do not resolve these discrepancies. The Committee has therefore clarified that the notion is defined by the nature of the right in question, rather than by the status of the parties or the type of forum before which the matter is heard.[18] It encompasses, in particular, (a) judicial procedures aimed at determining rights and obligations and (b) equivalent administrative-law proceedings.

The Committee has further affirmed through its case law that the right extends fully to civil proceedings, and that the principle of equality of arms applies therein. This requires, inter alia, that each party be afforded an opportunity to contest the arguments and evidence advanced by the other.[19] The same procedural rights must be granted to all parties unless distinctions are grounded in law and justified on objective and reasonable grounds, without resulting in disadvantage or unfairness to any party.[20]

The door is, therefore, open for UN bodies to apply core fair trial guarantees—such as equality of arms, impartial adjudication and the right to be heard—to proceedings concerning detention, including the enforcement of rights in detention through internal and external proceedings. Academic and civil society commentary underscores that while the full suite of fair trial rights attaches to the determination of guilt, many of the procedural safeguards contained in Article 14(1) apply in post-conviction contexts, ensuring that the treatment and continued detention of individuals remain subject to judicial oversight consistent with the principle of fairness.[21]

17 UN Human Rights Committee, General Comment No. 32 (2007), §16 (right to trial without undue delay).

18 Communication No. 112/1981, Y.L. v. Canada, paras. 9.1 and 9.2.

19 Communication No. 846/1999, Jansen-Gielen v. The Netherlands, para. 8.2 and No. 779/1997, Äärelä and Näkkäläjärvi v. Finland, para. 7.4.

20 Communication No. 1347/2005, Dudko v. Australia, para. 7.4.

21 See, e.g., Paul M Taylor, 'Article 14: Fair Trial Rights' in A Commentary on the International Covenant on Civil and Political Rights (Cambridge University Press 2020) which states that Article 14 paragraph 1 is applicable to "the determination of any … rights and obligations in a suit at law".

3 THE RIGHT TO LEGAL AID

Under international law the right to legal aid is recognised as a right in itself and an essential precondition for the rule of law and the exercise and enjoyment of a number of human rights, including the right to a fair trial and the right to an effective remedy.[22] It is firmly embedded in both binding treaties and soft-law standards.

The Universal Declaration of Human Rights enshrines the principles of equality before the law, the presumption of innocence, and the right to a fair and public hearing, forming the foundation for later treaty provisions.[23] The International Covenant on Civil and Political Rights, in particular article 14, further guarantees the right of anyone charged with a criminal offence to defend themselves in person or through legal assistance of their own choosing, or to have counsel assigned where the interests of justice so require.[24] Complementary standards reinforce these rights: the Standard Minimum Rules for the Treatment of Prisoners[25] recognise the right of untried prisoners to receive visits from their legal advisers; the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment[26] affirms the right of detainees to defend themselves or to be assisted by counsel; and the Basic Principles on the Role of Lawyers[27] establish that persons without sufficient means are entitled to free legal assistance by competent lawyers in the interests of justice. These guarantees have been further echoed in political declarations and resolutions, including the Bangkok Declaration,[28] the Salvador Declaration,[29] and Economic and Social Council

22 UN Human Rights Council, 'Report of the Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul' (15 March 2013) UN Doc A/HRC/23/43: LINK.

23 Resolution 217 A (III).

24 See resolution 2200 A (XXI).

25 Human Rights: A Compilation of International Instruments, Volume I (First Part), Universal Instruments (United Nations publication, Sales No. E.02.XIV.4 (Vol. I, PART I)), sect. J, No. 34.

26 Resolution 43/173.

27 Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August–7 September 1990: report prepared by the Secretariat (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.3.

28 Resolution 60/177.

29 Resolution 65/230.

resolution 2007/24,[30] all of which stress the centrality of legal aid in reducing pretrial detention and strengthening access to justice.

There are four dedicated texts at the UN level on legal aid. The main standard is the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, adopted in 2013, which remains the most comprehensive soft-law framework in this field. The scope of most of these instruments is confined to criminal proceedings. The exception is the first UN document on the subject, General Assembly Resolution 2449 (XXIII) on "Legal aid", adopted in 1968. Broader in scope than later instruments, this resolution recommends the development of comprehensive systems of legal aid to protect human rights and fundamental freedoms generally, while recalling article 14 of the International Covenant on Civil and Political Rights, without limiting itself to criminal proceedings.[31]

The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2013)[32] represent the most comprehensive legal instrument to date for the development and strengthening of legal aid systems at the national level.[33] They provide the most detailed international framework in the field of legal aid. They affirm that legal aid is a fundamental duty of States and a cornerstone of a fair and efficient justice system, requiring entrenchment at the highest legal level, adequate resources, and tailored provision for vulnerable groups. Effective implementation depends on the independence and protection of providers, respect for confidentiality, and safeguards for competence and accountability through training, accreditation, and oversight.

30 Resolution 2007/24.

31 Alongside these texts, the UN has also elaborated a Model Law on Legal Aid in Criminal Justice Systems, with detailed commentaries prepared by UNODC to guide states in translating principles into legislation, and the Commission on Crime Prevention and Criminal Justice adopted Resolution 25/2 on "Promoting Legal Aid, Including Through a Network of Legal Aid Providers" in 2016, encouraging cooperation and exchange of good practices to strengthen national systems.

32 General Assembly resolution 67/187.

33 UN Human Rights Council, 'Report of the Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul' (15 March 2013) UN Doc A/HRC/23/43: LINK.

Resolution 25/2, 'Promoting legal aid, including through a network of legal aid providers',[34] builds on the 2013 Guidelines and situates legal aid within the broader framework of access to justice and the Sustainable Development Goals, particularly SDG 16. It urges States to strengthen legal aid through legislation and policy, with tailored provision for vulnerable groups, diversification of delivery models, and the development of networks to share good practices and expand cooperation. Emphasising civil society participation and public awareness, the Resolution frames legal aid as a public good and a structural guarantee of fair trial rights, not a discretionary service.

Other human rights treaty bodies have also mentioned the right to have access to legal aid in their general comments or general recommendations. In its general comment No. 7 (1997), the Committee on Economic, Social and Cultural Rights included legal aid in the list of procedural guarantees that should be provided to persons who have been subject to forced eviction and seek redress from the courts.[35]

In its general recommendation XXXI (2005), the Committee on the Elimination of Racial Discrimination recommended that States parties to the Convention should (a) supply legal information to persons belonging to the most vulnerable social groups, who are often unaware of their rights; (b) promote, in the areas where such persons live, institutions such as free legal help and advice centres, legal information centres and centres for conciliation and mediation; and (c) expand their cooperation with associations of lawyers, university institutions, legal advice centres and non-governmental organisations specialising in protecting the rights of marginalised communities and in the prevention of discrimination.[36] In its general recommendation XXIX (2002), the Committee also recommended that States take the necessary steps to secure equal access to the justice system for all members of descent-based communities, "including by providing legal aid, facilitating of group claims and encouraging non-governmental organizations to defend community rights".[37]

34 Resolution 25/2.

35 Official Records of the Economic and Social Council, 1998, Supplement No. 2 (E/1998/22), annex IV, §15.

36 Official Records of the General Assembly, Sixtieth Session, Supplement No. 18 (A/60/18), general recommendation XXXI, §§ 7-9.

37 Ibid., Fifty-seventh Session, Supplement No. 18 (A/HRC/57/18), general recommendation XXIX.

In its general comment No. 3 (2012), the Committee against Torture stated that 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, and that the failure to provide sufficient legal aid and protection measures for victims and witnesses impede the enjoyment of the right to redress and prevent effective implementation of article 14.[38]

SCOPE OF LEGAL AID

Most UN standards on legal aid focus narrowly on criminal proceedings and do not explicitly extend their scope to prison litigation—that is, access to justice for those challenging prison conditions or ill-treatment. The text of the Principles and Guidelines themselves already reflects a relatively expansive understanding of legal aid. Beyond legal representation, they require States to ensure access to legal information and legal education, including through public legal awareness programmes and materials adapted to persons deprived of liberty.[39] They further provide that legal aid may be delivered through a variety of modalities—including public defender offices, specialist units, bar association schemes, law school clinics, paralegal services and cooperation with NGOs—and require that these be supported through dedicated legal aid funds.[40] This baseline, already embedded in the Guidelines, has been interpreted by the UN Special Rapporteur as supporting an even broader conception of legal aid that encompasses judicial and extrajudicial procedures relating to the determination of rights and obligations.[41] On the basis that the aim of legal aid is to remove obstacles that restrict access to justice by assisting those unable to afford legal representation, she has argued that its definition should be as broad as possible, extending beyond criminal cases to encompass any judicial or extrajudicial procedure aimed at determining rights and obligations.[42]

This expansive approach is supported by the position of treaty bodies.

38 CAT/C/GC/3, §§30-38.

39 Guideline 44(e).

40 Guideline 47(a)–(d).

41 UN Human Rights Council, 'Report of the Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul' (15 March 2013) UN Doc A/HRC/23/43: LINK.

42 Ibid.

In its general comment No. 32 (2007), the Human Rights Committee stressed that "the availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way," and encouraged States to provide free legal aid not only in criminal proceedings but also in other cases where individuals lack sufficient means. In certain circumstances, the Committee has considered that States may even be obliged to do so—for instance, where a person sentenced to death seeks constitutional review of irregularities in a criminal trial but lacks the means to pay for legal assistance (para. 10). In line with this jurisprudence, the Special Rapporteur has further argued that the notion of beneficiaries of legal aid should extend to any person who comes into contact with the law and lacks the means to pay for counsel, including (a) persons whose rights or freedoms have been violated by state action or omission, and (b) those engaged in judicial or extrajudicial procedures aimed at determining rights and obligations "in a suit at law."

Definition of Legal Aid

Human rights treaties do not contain an agreed definition of legal aid. The only internationally recognised definition is found in the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, which construes legal aid broadly to include legal advice, assistance and representation for victims and for arrested, prosecuted and detained persons in the criminal justice process, provided free of charge to those without means. The definition also encompasses legal education, access to legal information, and services delivered through alternative dispute resolution mechanisms and restorative justice processes.[43]

43 General Assembly resolution 67/187, §8.

LEGISLATIVE REGIME

Since access to legal aid constitutes an essential procedural guarantee for the effective exercise of a number of human rights, it must be legally guaranteed in national systems at the highest possible level, ideally through constitutional recognition.[44] Legislation on legal aid should therefore: (a) contain a broad definition of legal aid; (b) set out clear eligibility criteria; (c) ensure that effective assistance is available at all stages of the justice process, including pretrial proceedings and in any judicial or extrajudicial procedure aimed at determining rights and obligations; (d) guarantee access to legal aid for victims of human rights violations to secure their right to an effective remedy; (e) ensure public information on the availability and scope of legal aid, disseminated through appropriate channels including the media, the Internet, and facilities where persons are detained; and (f) establish minimum qualifications and training for professionals and paralegals working within the system.[45]

The structure of legal aid models varies according to scope, funding, and the characteristics of national justice systems. Common models include public defenders, private lawyers, contract lawyers, pro bono schemes, bar associations and paralegals. Although States bear the primary responsibility to provide legal aid, a range of stakeholders may contribute to its delivery. States are expected to identify the model most suited to their legal system and resources, with the aim of maximising access to free legal aid for all within their jurisdiction.

National legislation must also include specific financial and substantive criteria for eligibility, together with a right of appeal for persons denied legal aid.[46] In criminal cases, urgent preliminary assistance should be provided to persons held at police stations or detention centres while eligibility is being determined. The burden is on the accused to show lack of means, though only on the basis of "some indications" rather than proof beyond doubt; courts retain discretion to decide whether aid should be granted and whether the interests

44 United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, principle 1.

45 UN Human Rights Council, 'Report of the Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul' (15 March 2013) UN Doc A/HRC/23/43: LINK.

46 United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, guideline 1.

of justice require it.[47] In civil cases, eligibility criteria are generally more complex, combining financial thresholds with considerations of cost-benefit, likely prospects of success, and the potential gain or loss for the applicant.[48]

MERIT TESTING

Where means testing is applied, eligibility assessments must be accurate and sensitive to household dynamics, so as not to disadvantage individuals with restricted access to shared resources, such as women and older persons. Alongside financial criteria, many legal aid schemes impose substantive or "merit" criteria. While such tests, often based on the likelihood of success of a case, particularly in civil matters, can help ensure resources are used effectively, they must not be so restrictive as to deprive individuals of their right to legal assistance even in weak cases. Importantly, any person denied legal aid under national eligibility rules should have the right to appeal the decision of the court.

TRAINING OF LEGAL AID PROVIDERS

The quality of legal aid depends primarily on the qualifications and training of those who provide it. National legislation should therefore require that professionals working within the legal aid system possess qualifications and training appropriate to the services they deliver.[49] Where shortages of qualified lawyers exist, legal aid provision may also involve non-lawyers or paralegals. In such cases, legislation must ensure that paralegals meet minimum quality standards, receive appropriate training, and operate under the supervision of a qualified lawyer. It should also clearly distinguish between the types

47 Harris, O'Boyle and Warbrick, Law of the European Convention on Human Rights, p. 317; The European Court of Human Rights specified in Quaranta v. Switzerland that, when deciding whether legal assistance is required for the interest of justice to be met, domestic courts must consider the seriousness of the offence, the complexity of the case and the ability of the defendant to provide his or her own representation.

48 National Legal Aid and Defender Association, International Legal Aid and Defender System Development Manual: Designing and Implementing Legal Assistance Programs for the Indigent in Developing Countries, November 2010 (available from www.nlada.org), p. 44.

49 United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, guideline 13.

of legal services that may be provided by paralegals and those that require the expertise of a qualified legal professional.

INFORMATION ON LEGAL AID

Access to information on the right to legal aid, its scope, the services available, and the procedures for obtaining it is a necessary precondition for the effective exercise of this right. Such information should be made available to the general public through appropriate means, including the media and the Internet, and must be accessible in all facilities where persons are detained, including police stations, detention centres and prisons. Officials such as police officers, prosecutors, lawyers and judges should actively inform unrepresented persons of their right to legal aid and of other procedural safeguards. In addition, foreign detainees and prisoners must be informed, in a language they understand, of their right to request contact with their consular authorities without delay.[50]

FUNDING

Regardless of the model adopted, States must allocate sufficient budgetary resources to ensure that prompt and effective legal aid services are available to all individuals within their jurisdiction who cannot otherwise afford the costs of legal proceedings. Funding should cover criminal, civil and administrative cases. While some States operate separate systems for criminal and civil legal aid,[51] and others use merged schemes,[52] it is essential that civil and administrative legal aid are not undermined in single-budget systems. The United Nations has encouraged the establishment of dedicated "impact litigation" funds for civil cases—targeting matters likely to set precedents benefiting the wider population—as a cost-effective means of maximising limited resources.[53]

50 ibid, guideline 2.

51 For example, see the Criminal Defence Service and the Community Legal Service in England and Wales.

52 See for example the Legal Aid Board in South Africa (see LINK).

53 See for example the Special Impact Litigation Fund set up by the Board of South Africa in 2001 to support claims that have "a reasonable chance of success where a positive outcome will set a precedent that will benefit South Africa's indigent population". Legal Aid Board Annual Report, 2002.

Guideline 12 of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems further recommends that States establish dedicated legal aid funds to support a variety of schemes, including public defender offices, bar associations, university clinics, NGOs and paralegal organisations. States are also encouraged to identify sustainable fiscal mechanisms, such as earmarking a percentage of the justice budget for legal aid or allocating proceeds recovered from criminal activities to cover legal aid for victims.

LEGAL AID FOR VULNERABLE AND MARGINALISED GROUPS

The right to equality before the courts and tribunals, as enshrined in article 14(1) of the International Covenant on Civil and Political Rights, guarantees equal access to the administration of justice. This provision not only obliges States to prohibit any distinction in access to courts and tribunals that is not based on law and cannot be justified on objective and reasonable grounds, but also requires them to take positive measures to ensure that no individual is deprived of the ability to claim justice.

The Special Rapporteur on the independence of judges and lawyers has noted that the absence of public policies aimed at eliminating barriers to access to justice disproportionately affects those in vulnerable situations or living in extreme poverty, as well as groups that are culturally, economically or socially disadvantaged.[54] To ensure equal and effective access to legal aid for those lacking sufficient means, provision must be guaranteed to all persons regardless of age, race, colour, sex, language, religion or belief, political or other opinion, national or social origin, property, citizenship or domicile, birth, education, social status or other status.

In practice, special measures are needed to secure meaningful access to legal aid for women, children and groups with particular needs, including the elderly, minorities, persons with disabilities, persons with mental illness, persons living with HIV or other serious communicable diseases, drug users, indigenous and aboriginal peoples, stateless persons, asylum seekers, foreign citizens, migrants and migrant workers, refugees and internally displaced persons. These measures

54 A/HRC/8/4, §48.

must take account of the specific requirements of each group, including gender-sensitive and age-appropriate approaches.[55] The UN emphasises that developing joint strategies is vital to creating a more comprehensive, equitable and sustainable system of legal aid.

The Special Rapporteur has further observed that legal services tailored to the specific needs of women remain rare, particularly for women living in poverty. In the area of free legal aid, women are often forced to compete with men for scarce resources, which in any case are frequently channelled into uniform services that do not reflect differing needs.[56] To address this imbalance, guideline 9 of the United Nations Principles and Guidelines recommends the incorporation of a gender perspective into all policies, laws, procedures, programmes and practices relating to legal aid. This includes ensuring, as far as possible, that female defendants, accused persons and victims are assisted by female lawyers, and that legal aid, advice and court services are available to female victims of violence in all proceedings, thereby safeguarding access to justice and avoiding secondary victimisation.

4 THE RIGHT TO LEGAL ASSISTANCE

Closely intertwined with the right to legal aid is the right of access to counsel. Under international law, access to legal assistance is recognised as an essential safeguard against ill-treatment, arbitrary detention, and violations of due process, ensuring that the rights of detained persons are respected from the outset of proceedings. Access to legal advice and assistance is also an important safeguard that helps to ensure fairness and public trust in the administration of justice.

The right of access to legal assistance is firmly enshrined across international law. Article 14(3) of the International Covenant on Civil and Political Rights guarantees minimum rights for those facing criminal charges,

55 United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, principle 10.

56 A/HRC/8/4, §51.

including adequate time and facilities for the preparation of a defence, the right to communicate with counsel of one's own choosing, and the right to free legal assistance where an individual lacks sufficient means. The Standard Minimum Rules for the Treatment of Prisoners[57] (rule 93) likewise provide that untried prisoners may apply for free legal aid and consult their legal adviser in conditions of confidentiality, while the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment[58] (principle 17) requires that detainees be promptly informed of their right to legal assistance and provided with it whenever the interests of justice so require, at no cost if they cannot afford it. These guarantees are further reinforced by the Basic Principles on the Role of Lawyers,[59] which require states to allocate sufficient resources for legal services, guarantee access to a lawyer promptly and no later than 48 hours after detention, ensure full confidentiality of consultations, and protect the independence of the legal profession from interference or intimidation. Similar protections are embedded in specialised instruments, including the Rules for the Protection of Juveniles Deprived of their Liberty ("Havana Rules")[60] and the Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules").[61]

At the heart of these provisions is the recognition that access to counsel is an essential safeguard against ill-treatment, arbitrary detention, and violations of due process, ensuring that the rights of detained persons are respected from the outset of proceedings. Taken together, these standards affirm that effective legal assistance must be provided promptly and continuously at all stages of judicial and extrajudicial proceedings. It requires unhindered access to legal providers, confidentiality of communications, access to case files and information, adequate time and facilities to prepare legal cases, and where necessary, legal advice, legal education, and mechanisms for alternative dispute resolution.

The Human Rights Committee has clarified that this right cannot be reduced to a formal entitlement but must be effective in practice,

57 Economic and Social Council resolutions 663 C (XXIV) and 2076 (LXII), §93.

58 General Assembly resolution 43/173, annex, principle 17, §2.

59 Adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, §6.

60 General Assembly resolution 45/113, annex, §18(a).

61 General Assembly resolution 40/33, rule 15.1.

beginning at the earliest stages of detention.[62] Persons deprived of liberty must be informed, prior to any questioning, of their right to legal aid and of other procedural safeguards.[63] The Committee has further stressed that states are obliged not only to appoint counsel where required by the interests of justice but also to ensure that representation provided is effective and independent.[64] It has also criticised systems in which suspects are restricted to state-appointed counsel during the initial period of detention.[65]

Finally, the UN Special Rapporteur on the independence of judges and lawyers has highlighted legal assistance as a central component of broader efforts to safeguard judicial independence and the rule of law, and recognised it as a structural guarantee for the protection of justice systems as a whole. Recent thematic reports have addressed challenges such as protecting lawyers against undue interference (2022), reimagining justice in the face of systemic barriers (2023), and safeguarding judicial systems in the context of threats to democracy (2024).

5 CONCLUSION

Overall, UN standards articulate a comprehensive framework from access to justice, legal aid, and legal assistance to the prevention of arbitrary detention and the protection of fair trial rights. However, across this framework, a similar tension emerges as that observed within the Council of Europe: while the UN instruments affirm access to justice as a fundamental principle, they stop short of concretising it to the specific context of detention. None of the instruments reviewed—whether the International Covenant on Civil and Political Rights, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Basic

62 UN Human Rights Council, 'Report of the Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul' (15 March 2013) UN Doc A/HRC/23/43.

63 United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, principle 8.

64 See Miguel Angel Estrella v. Uruguay (74/1980) (29 March 1983), ibid., p. 93, at p. 95, §1.8.

65 See Official Records of the General Assembly, Forty-sixth Session, Supplement No. 40 (A/46/40), §166 (Spain).

Principles on the Role of Lawyers, or the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems—is devoted specifically to ensuring access to legal aid for prison litigation, nor do they adequately reflect the structural and practical constraints faced by prisoners when seeking to enforce their rights from within closed institutions. Even where the standards acknowledge the importance of legal assistance for persons deprived of liberty, their focus remains limited to criminal proceedings, leaving a normative gap in respect of legal aid for proceedings concerning the enforcement of rights in detention. As a result, legal aid and legal assistance remain recognised in principle but only partially realised in practice for prisoners—underscoring the need for explicit standards that account for the realities of incarceration and ensure effective access to justice within detention itself.

PART II

NATIONAL FRAMEWORKS AND PRACTICES OF THE ENFORCEMENT OF PRE-TRIAL DETAINEES' RIGHTS

EUROPEAN PRISON LITIGATION NETWORK

ZMINA HUMAN RIGHTS CENTER

Centre for European Constitutional Law

FORUM PENAL
Associação de Advogados Penalistas

Chapter 4

Access to Justice for Pre-Trial Detainees in GREECE: Law and Practices

Authors:
Zoe Kasapi
Natasha Alexopoulou
Center for European Constitutional Law

Editor:
Viktoria Kasongo Akerø
European Prison Litigation Network

TABLE OF CONTENTS

1 Introduction 126

Roadmap of National Chapter 126

Methodology 127

2 Overview of Detention Regime for Pre-Trial Detainees 128

Legal Framework Shaping Rights of Pre-Trial Detainees 128

Statistics 131

3 Bodies Competent to Receive Complaints and Effectiveness of Remedies 132

Overview 132

The Prison Council 132

The Supervising Prosecutor 133

The Court for the Execution of Sentences 133

Complaints Concerning Individual Detention Conditions 134

Complaints Concerning General Detention Conditions 136

Complaints and Appeals in Transfer Decisions 138

Disciplinary Sanctions and the Right of Appeal 140

Leave of Absence: Competent Authorities and Appeals 142

4 Organisation of Access to Legal Support 144
Obligation to Inform Detainees of Their Rights 144
Communication and Information Tools 146
Provision of Legal Support to Foreign Prisoners 147
Actors Providing Legal Information and Advice 149
5 Legal aid scheme 150
Scope of Legal Aid to Prison Litigation 150
History of Legal Aid Regime 152
Legal Framework and Funding of Legal Aid 152
Limits and Exceptions in the Provision of Legal Aid 153
Coverage and Scope of Compensation 154
Exemption of Costs 156
Eligibility 156
Application Procedure 157
Evaluation and Granting of Applications 159
Structural and Practical Shortcomings of the Legal Aid System 159

6 Involvement of Lawyers in Proceedings Concerning Detention Conditions 162

Prisoners as Self-Represented Litigants 162

Designation of Legal Aid Lawyers and Beneficiaries' Options 163

Contact and Visitation 164

Issues Identified in Practice 165

Organisation of Bars' and Lawyers' Action in Detention 166

Bar Associations and the Monitoring of Prison Conditions 166

Regulation of Bars' Involvement in Legal Support to Detainees 166

Organisation of Educational and Training Initiatives 167

Practical Arrangements for Carrying Out Legal Assistance Missions 168

7 Role of NGOs, Legal Clinics, and National Monitoring Bodies of Prison Conditions 168

Types of Support Provided 169

Key Organisations 169

The Ombudsman (National Preventive Mechanism) 170

Mandates and Access of NGOs, Legal Clinics, and Monitoring Bodies 171

Standing of NGOs 171

1 INTRODUCTION

ROADMAP OF NATIONAL CHAPTER

This national chapter examines the legal framework and practice concerning the rights of pre-trial detainees in Greece, with a particular focus on their access to justice to challenge conditions of detention and to enforce their rights while in custody. The analysis centres on how the law is applied in practice in prisons, and on the real impact of support mechanisms available to detainees. While the focus is on pre-trial detention, reference is occasionally made to the situation of convicted prisoners to highlight the contrast and further illuminate the position of remand detainees. The study is limited to penal institutions, with particular emphasis on remand prisons.

The chapter builds on both desk-based and field research to assess how the guarantees contained in Greek and European law translate into practice, and to what extent detainees are able to exercise the rights formally granted to them. It seeks to identify the systemic and practical obstacles that prevent pre-trial detainees from seeking remedies and to highlight the structural shortcomings that undermine effective access to justice.

The analysis begins by outlining the methodology used in the research before turning to the detention regime and the legal framework regulating pre-trial detention. It then reviews the bodies competent to receive complaints and assesses the effectiveness of available remedies, followed by an examination of the barriers detainees face when acting as litigants without legal representation. Subsequent sections address access to legal information, including the particular barriers posed by language and digital exclusion, and the scope and limitations of legal aid. The role of lawyers and bar associations is considered, with attention to practical challenges in providing legal assistance in places of detention. The chapter also explores the contribution of NGOs, legal clinics, and national monitoring bodies in supporting detainees and monitoring conditions.

METHODOLOGY

The research in Greece was carried out by the Centre for European Constitutional Law – Themistocles and Dimitris Tsatsos Foundation (CECL) through a combination of desk research and field research. The desk research was undertaken between November 2024 and January 2025, providing a detailed overview of the applicable legal framework, relevant jurisprudence, and existing secondary sources on detention and access to justice. The field research was subsequently conducted in May 2025, with the aim of complementing the desk-based findings and grounding them in the practical realities of detention.

For the field research, the CECL reached out to a wide range of stakeholders with first-hand knowledge of detention-related issues. These included lawyers with experience in providing legal support to detainees, representatives of state authorities and independent bodies, including the National Preventive Mechanism, and NGOs specialising in prison-related matters and the reintegration of convicted or formerly detained persons. To ensure broad participation and accommodate logistical constraints, all research activities were conducted online via the ZOOM platform.

Three main activities formed the basis of the field research. First, on 2 May 2025, a focus group discussion was held with four lawyers specialising in criminal and penitentiary law. This was followed, on 5 May 2025, by a second focus group involving six participants: two representatives from organisations supporting detainees and former detainees (EPANODOS and ONISIMOS), one representative of the Greek Ombudsperson (NPM), one representative of the National Commission for Human Rights, and two former detainees. Finally, an in-depth interview was conducted over two sessions on 13 and 14 May 2025 with a criminologist and field practitioner representing EPANODOS. In addition, feedback on the themes of the project was provided in a focus group discussion conducted in the framework of the EU-funded project LGBTIQ detainees (JUST-2023-JCOO 101138243), implemented by CECL under the coordination of the Ludwig Boltzmann institute of fundamental and human rights (AT). The FG brought together state and CSO stakeholders, including the Ministry for Citizen Protection – General Secretariat for Anti-crime Policy (overseeing Greek prisons), the NPM, the Greek NHRI, the Athens Bar Association, criminal law lawyers, and representatives of CSOs working within prisons.

Taken together, these activities provided a multi-perspective insight into the operation of the detention system in Greece. The views of practitioners and officials were complemented by the testimonies of former detainees, allowing the research to capture both institutional perspectives and lived experience. Overall, the findings of the desk research were largely validated by the fieldwork, which also enriched the analysis with practical examples of systemic shortcomings, barriers to rights enforcement, and the challenges faced by detainees in seeking access to justice.

2 OVERVIEW OF DETENTION REGIME FOR PRE-TRIAL DETAINEES

LEGAL FRAMEWORK SHAPING RIGHTS OF PRE-TRIAL DETAINEES

Pre-trial detention in Greece is legally defined as a measure of last resort. It may be imposed only after an individual assessment finds a strong probability of guilt for a felony, or exceptionally for mass manslaughter, and the court issues a reasoned decision that restrictive measures or house arrest are insufficient to secure the accused's presence. Persons under house arrest with electronic monitoring are also considered pre-trial detainees. Detention may additionally be ordered to prevent further crimes in cases such as serial offences, organised crime, or crimes with multiple victims, or if previously imposed restrictions are violated. A detention order requires a judicial warrant, which may be revoked if the grounds cease to exist. Time spent in custody before execution of the warrant is counted, and disagreements between judge and prosecutor are settled by the judicial council, which also hears appeals.

Remanded prisoners are held in separate facilities or designated sections within penitentiary establishments (e.g., women's, men's, or special prisons for sexual offences) and, at least in principle, are not meant to have contact with convicted prisoners. They may be transferred to another facility for procedural reasons, but must remain in a facility or section of the same category. Where this is not possible, they may be held in a specially designated area of the local detention facility or police station. Contact with other categories of detainees

is formally prohibited. Transferred remand prisoners retain the same rights and restrictions as in their original facility, including the right to communication and visits, even when special security measures are required during transfer.

Rights Framework

The rights of pre-trial detainees in Greece are regulated through a range of legal instruments spanning both the criminal and penitentiary frameworks. Chief among these are the Penitentiary Code, the Code of Criminal Procedure, the Statute for the Operation of Detention Facilities, [1] and relevant ministerial decrees. In addition, several laws transpose the EU Roadmap Directives on the procedural rights of suspects and accused persons—most notably Law 3226/2004 on legal aid for low-income citizens (as amended by Law 4689/2020 transposing Directive 2016/1919 on legal aid) and Law 4236/2014 transposing Directives 2010/64 and 2012/13 on the rights to interpretation, translation, and information. These provisions have also been incorporated into the Code of Criminal Procedure and, where appropriate, the Penitentiary Code and other prison-related regulations.

The legal framework stipulates that the living conditions of remanded prisoners should, as far as possible, approximate those of free life, with restrictions permitted only where strictly necessary for the investigation or the secure functioning of the facility. It sets out that these restrictions may not prevent detainees from exercising their legal and constitutional rights.

Within this framework, detainees are guaranteed a broad range of protections.[2] They are entitled to dignity, non-discrimination, medical care equivalent to that available to the general population, and accommodation of specific needs such as disability or health conditions. They have the right to legal protection and assistance, to communicate with public authorities and international bodies, to maintain family and consular contact, and to receive visits and correspondence, subject only to security limitations. Pre-trial detainees may also apply for leave, transfers, and participation in education or work programmes, and are protected by procedural safeguards in disciplinary proceedings, including the right to appeal. Additional

1 Ministerial Decision 58819/7.4.2003, OGG Issue B 463/2003.

2 Ministerial Decree 58819/7.4.2003 O.G.G. Issue B 463 2003, Art. 31-32.

provisions ensure access to information on rights, personal hygiene, recreation, and cultural and religious activities, while also allowing detainees to maintain personal accounts and possessions.

On paper, the legal framework recognises an extensive catalogue of rights for pre-trial detainees, largely mirroring those afforded to convicted prisoners, and places an emphasis on minimising the restrictive impact of detention. However, our research, alongside publicly available information including reports by the CPT,[3] paints an entirely different picture. In practice, the enjoyment of rights by detainees is severely undermined by structural and systemic obstacles. Limited funding prevents most facilities from offering recreational or other meaningful activities, while chronic understaffing makes it impossible to provide even basic services. A lack of awareness and interest in prison issues, including among the judiciary, often results in unfavourable decision-making and the routine rejection of applications related to the exercise of detainees' rights. Security considerations are consistently prioritised over rights, to the extent that the principle that only personal liberty is restricted in detention is rendered void. Overcrowding further aggravates conditions, undermining the separation of categories of detainees and the right to adequate accommodation.

Security and Disciplinary Regime

In addition to the systemic obstacles described above, their rights are further constrained by the security and disciplinary regime. Prison management retains the authority to restrict prisoners' rights for reasons of security and discipline. Each facility has a Disciplinary Board, chaired by the supervising prosecutor and including the prison director and senior social worker, which is empowered to impose sanctions under the Penitentiary Code. Disciplinary offences are divided into three categories of severity: Category A (e.g. violence, escape with force, drug offences, bribery, mobile phone possession), Category B (e.g. unauthorised possession of money, threats, organising prohibited games, self-harm to avoid obligations, insults or false complaints), and Category C (e.g. minor hygiene breaches, possession of lower-level prohibited items, encouraging others to offend).

3 See, for example, 2022 CPT report on the ad hoc visit to Greece on 8-11 November 2022, accessible at LINK, as well as previous reports available on the same link.

Sanctions vary according to the category but may include solitary confinement of one to ten days, transfer to another facility, loss of access to work or vocational training, and the imposition of penalty points. More than one penalty may be applied concurrently for the same offence. Penalty points are recorded in a detainee's personal file and weigh heavily on their future rights, influencing decisions on conditional release, leave permits, and beneficial sentence calculation. This has particular importance for pre-trial detainees, who may request extraordinary leave (such as for a family funeral) or, if later convicted, benefit from favourable sentence calculations. However, once a prisoner accrues more than 100 points, these rights can only be exercised following a specifically reasoned decision by the Disciplinary Board, significantly raising the threshold for accessing such benefits.

STATISTICS

According to the most recent statistics (1 January 2025), 2,925 prisoners were held on remand in Greek prisons, out of a total prison population of 11,484; by May 2025, this number had risen to 12,103. While disaggregated data on pre-trial detainees is unavailable, the overall prison population includes 609 women, more than half (5,973) foreign nationals, 80 minors, and 1,382 young adults (aged 18–25). However, there is no statistical information on other social characteristics of detainees, limiting a fuller understanding of the prison population. Greece's prison system is currently facing severe overcrowding, with numbers expected to increase further due to recent legislative changes that allow for the easier incarceration of minors and extend the use of pre-trial detention in cases of domestic violence, signalling a potential new "explosion" in the prison population.

During the field research, it was highlighted that one of the key drivers behind the high number of pre-trial detainees in Greece is the significant delay in criminal proceedings. Against the backdrop of growing penal populism, and the legislature's tendency to respond to media-driven public opinion by adopting harsher penal policies, the resort to pre-trial detention is steadily increasing. Another major factor is the disproportionate use of pre-trial detention against foreign nationals. At present, 64% of all pre-trial detainees are third-country nationals. Pre-trial detention is often imposed on

non-nationals under the pretext of them being a “flight risk,” due to their inability to establish permanent residence. Research participants noted that in many such cases, had the accused been a Greek national, detention would not have been imposed.

3 BODIES COMPETENT TO RECEIVE COMPLAINTS AND EFFECTIVENESS OF REMEDIES

In Greece, pre-trial detainees have access to a range of complaint mechanisms through both judicial and quasi-judicial bodies. A number of different authorities have competence to resolve complaints submitted by pre-trial detainees, depending on the grounds of their applications. Complaints may be filed in relation to individual as well as general detention conditions, and for restrictions or violations of detainees’ rights. The Prison Council, the supervising prosecutor, and the Court for the Execution of Sentences are the principal bodies competent to receive and adjudicate complaints, depending on their subject matter. These mechanisms cover issues such as detention conditions, disciplinary sanctions, transfers, and leave of absence. In addition, the Ombudsman, acting as the National Preventive Mechanism, may gather detainees’ testimonies during visits, though it does not have competence to handle formal complaints.

OVERVIEW

The Prison Council

The Prison Council is chaired by the prison director and includes as members the most senior social worker and the most senior expert professional in the facility (such as a lawyer, psychologist, agronomist, sociologist, or teacher). The supervising prosecutor and the concerned detainee may be invited to participate in its sessions, while the chief warden may also attend without voting rights, including during complaint proceedings.

Matters within its jurisdiction:
a complaints against unlawful acts or orders at first instance; and
b security measures imposed in disciplinary proceedings, such as handcuffing, solitary confinement, or other measures deemed necessary to maintain or restore order in the facility.

The Supervising Prosecutor

The supervising prosecutor acts as the competent member of the judiciary under the Penitentiary Code and the Statute on the Operation of Penitentiary Facilities. In this capacity, they oversee the legality of detention and exercise a range of supervisory, adjudicatory, and disciplinary functions.

Matters within its jurisdiction:
a cooperating with the prison director and unit heads, and making recommendations on the serving of sentences;
b exercising adjudicatory and disciplinary powers to ensure compliance with laws and regulations, including on individual detention conditions and enforcement of security measures;
c chairing the Disciplinary Board, which hears disciplinary offences and grants educational leave (and regular leave, though not applicable to pre-trial detainees);
d granting extraordinary leave of absence for urgent family, professional, or other unforeseen needs;
e participating in hearings of the Prison Council, either on invitation or on their own initiative;
f appealing decisions of the Prison Council before the Court for the Execution of Sentences at their discretion;
g ordering medical procedures where a prisoner cannot or will not consent to treatment deemed necessary by a doctor; and
h performing any other action provided for in special regulations and monitoring compliance with them.

The Court for the Execution of Sentences

The Court for the Execution of Sentences is a specialised division of the three-member misdemeanours court with jurisdiction in Athens, Thessaloniki, Piraeus, Patras, Larissa, and Heraklion, or the plenary of the court in smaller jurisdictions. It has authority to remedy, insofar as possible, the negative effects of unlawful acts affecting

prisoners. The Ministry of Citizen Protection, which is responsible for prison matters, must ensure that prison authorities comply immediately with the Court's decisions.

Matters within its jurisdiction include:

a appeals against decisions of the Prison Council concerning complaints related to individual detention conditions;
b complaints lodged by current or former detainees regarding general detention conditions, including the power to order remedial measures and award monetary compensation;
c appeals against disciplinary sanctions and against decisions rejecting requests for leave.

COMPLAINTS CONCERNING INDIVIDUAL DETENTION CONDITIONS

Detainees have the right to file complaints in cases of unlawful acts or orders against them, provided no other remedy is available under the Penitentiary Code. Such complaints must be submitted in writing by the detainees themselves to the Prison Council, and within a "reasonable time" from the incident in question. Appeals may then be lodged before the Court for the Execution of Sentences: either within fifteen days of notification of the rejection of the complaint, or within one month of its submission if the Prison Council has failed to issue a decision.

Alongside this process, detainees also have the right to submit complaints directly to the supervising prosecutor on any matter concerning their detention conditions or the exercise of their rights, in accordance with Article 567 of the Code of Criminal Procedure (formerly Article 572). Requests can be filed in writing and detainees may meet the prosecutor during their weekly visits to the facility. The European Court of Human Rights has examined this mechanism on several occasions, but mainly in cases challenging its effectiveness in addressing general detention conditions. Following the creation of a new, specific remedy for such cases, this case law is now of more limited relevance.

These provisions contain significant gaps and limitations that undermine their effectiveness. First, key concepts remain vague and open to interpretation, such as the notion of "reasonable time". Moreover,

the Prison Council is not bound by any deadline to issue a decision, which prolongs the period during which detainees may have to endure the unlawful act or order without effective protection. Second, the procedure does not guarantee legal assistance. This includes both representation before the Council and support in drafting the complaint itself. Many detainees lack the financial means to appoint a lawyer, may be unaware of their right to legal aid, or may not yet have had a legal aid lawyer assigned. In such cases, they must draft and submit the complaint independently, without formal support from prison staff. The situation is particularly problematic for detainees with limited education or those who cannot read or write in Greek, as translation and interpretation services are generally unavailable. In practice, fellow prisoners are often relied upon to fill this gap. This issue is especially acute in Greece, where non-nationals consistently make up around half of the prison population. Among pre-trial detainees, the proportion is even higher, since foreign nationals are more likely to be detained due to the absence of a fixed residence. As a result, the most vulnerable groups face a serious risk of being denied meaningful legal protection.

Further concerns arise from the presence of the chief warden during Prison Council proceedings. Although the warden has no voting rights, their attendance, especially where the complaint concerns actions of prison staff, creates a risk of intimidation and undermines the confidentiality of the process. Detainees may be reluctant to disclose information for fear of retaliation, which can negatively affect the outcome of their case.

These shortcomings also affect the appeal process. The Court for the Execution of Sentences does not have direct access to the facts and relies primarily on the record of the Prison Council's decision. In addition, legal representation is not mandatory at the appeal stage. The Court may either hear the detainee directly or through their lawyer. Where the detainee is to appear in person, the Court issues an order to the prison facility to transfer them, which must be carried out immediately and is exempt from the authority of the Central Committee of Transfers (see below). However, the Court may also consider the case file sufficient without further input from the detainee, particularly given the cost and time associated with transfers.

COMPLAINTS CONCERNING GENERAL DETENTION CONDITIONS

In 2022, Greece amended the Penitentiary Code to introduce, under Article 6A, a new complaint mechanism concerning general detention conditions. This reform was prompted by a series of judgments from the European Court of Human Rights to establish an effective remedy to this effect.[4]

The new provision applies to detention conditions that violate Article 3 of the European Convention on Human Rights, namely conditions that are inhuman, degrading, or amount to torture. Complaints must be submitted in writing either directly to the Court for the Execution of Sentences or, alternatively, to the prison director of the facility concerned. Where the detainee is held in a police department, the complaint may be lodged with the commander of the competent police directorate. In both of these latter cases, the authority receiving the complaint is required to forward it to the Court within seven days, accompanied by their written observations and any other relevant information. At the request of the detainee, and provided that specific reasons are set out in the complaint, the Court may order the detainee's transfer in order for them to appear in person and present their views. The Court must issue its decision within thirty days of the lodging of the complaint, and that decision is immediately enforceable.

If the complaint is upheld, the Court may order any appropriate measures to secure compliance with the required living standards. These measures may include transferring the detainee to a more suitable space within the same facility, or, where this is not possible due to the structure of the facility or lack of available accommodation, to the prison hospital, a public hospital, or another detention facility. In addition to, or instead of, such measures, the Court may also award monetary compensation for moral damage suffered, calculated at between five and thirty euros per day of violation depending on the seriousness of the breach. It may also grant a favourable calculation of detention time. Compensation is provided through a specific allocation in the state budget. Former detainees are also entitled to submit complaints relating to their detention conditions within four months of release. Decisions of the Court are

4 See P.S. v. Greece, no. 2500/22, 29 August 2023.

final, not subject to appeal, and must be enforced without delay. The Greek Ombudsman, in its role as National Preventive Mechanism, is notified of all decisions concerning the implementation of this remedy.

Civil society organisations expressed serious concerns about the effectiveness of the new remedy during the consultation phase of the draft amendments. They questioned its capacity to address complaints concerning general detention conditions, given the structural problems affecting Greek prisons, particularly severe overcrowding. CSOs warned that the provision appeared designed primarily to appease international pressure rather than to provide a genuinely effective mechanism, and predicted that it would be difficult to implement in practice.[5]

The first years following the adoption of the measure have largely confirmed these concerns. According to data provided by the Ombudsman during our research (November 2024), 226 complaints were submitted under this mechanism between 2022 and 2024. Of these, courts have assessed approximately half, with 115 decisions issued to date. This demonstrates significant delays, which have an immediate and negative impact on detainees. Moreover, only nine of these decisions were in favour of the detainee, resulting in measures such as transfers to different facilities or awards of monetary compensation, while the remaining complaints were rejected.

The shortcomings in implementation have been acknowledged at higher judicial levels. The Arios Pagos Prosecutor's Office (Supreme Civil and Criminal Court of Greece) has issued a Circular concerning the interpretation and application of the new remedy by the Courts for the Execution of Penalties.[6] The Circular emphasised that the rights of prisoners are increasingly regulated by international law, particularly the ECHR, and recalled that the purpose of the new provision was to address a long-standing gap in Greek law which had led to an excessive number of applications before the ECtHR and a large body of unfavourable judgments, many of which remain unexecuted. The Prosecutor's Office also stressed prosecutors' responsibility to safeguard the right to a fair trial by ensuring that their opinions are properly reasoned and aligned with the principles established in

5 See LINK.

6 Circular No 3/2023, available in Greek at LINK.

ECtHR case law under Article 3. To support a consistent, rights-based application of the remedy, the Circular annexed an abridged version of the relevant ECtHR jurisprudence.

Our field research confirms these shortcomings. Participants repeatedly stressed that the complaint mechanism introduced under Article 6A of the Penitentiary Code has produced no tangible results for detainees. According to the representative of the Greek National Commission for Human Rights (GNCHR), the remedy remains systematically underused, and when complaints are reviewed, courts often fail to engage with the substance of the issues raised. Instead, they tend to reproduce the statements of detention facility directors without offering further justification.

Procedural barriers further limit effectiveness. Requests by detainees to appear in person before the court are frequently denied, preventing them from directly presenting information in support of their petitions. In one case reported during a focus group, a complaint about unhygienic conditions was rejected for lack of evidence, despite the fact that the only way to obtain such proof would have been to photograph the cell—an act carrying the risk of a first-grade disciplinary offence. Participants also noted that, to their knowledge, legal aid has never been made available to support detainees in pursuing this remedy.

COMPLAINTS AND APPEALS IN TRANSFER DECISIONS

The Central Committee for the transfer of prisoners operates within the Ministry for Citizen Protection and is responsible for deciding on all matters relating to prisoner transfers, except those connected to criminal investigations or appearances before a court or other public authority. The Committee examines requests submitted both by prison authorities and by detainees. Priority may be given to applications based on serious family or health reasons, as well as to requests from prison authorities where transfers are required for the proper functioning of the facility, for the execution of European or other arrest warrants, or due to overcrowding. The Committee is also competent to review challenges brought by detainees against transfer-related decisions.

Detainees are restricted from reapplying for a transfer until three months have passed since the rejection of a previous request. If a transfer request is rejected twice consecutively, the detainee may lodge an appeal before the Court for the Execution of Penalties within ten days of receiving notification of the second rejection. Nevertheless, the Minister for Citizen Protection retains the power to override this process and order or prohibit a transfer on grounds of national security or public order. Similarly, the General Secretary for Anti-Crime Policy may take provisional decisions on transfers in urgent cases or where the security of a facility is at stake, with the matter then referred back to the Committee for confirmation.

These arrangements highlight the highly politicised nature of transfer decisions. Since the Ministry for Citizen Protection (effectively the Ministry for Police) assumed competence over prisons in 2019, most transfer requests have been decided centrally. There are documented instances where transfers were denied on political, ideological, or even personal grounds.[7] The vagueness of the legal provisions, which neither specify grounds for rejection nor limit the use of broad concepts such as "public order", creates ample scope for arbitrariness and abuse. Combined with the three-month restriction on resubmitting requests, as well as the absence of legal representation before the Committee, the system renders this remedy largely ineffective.

Moreover, the field research revealed that requests for transfer on health or family grounds are rarely approved. In practice, detainees with addiction issues often apply for access to therapeutic or rehabilitation programmes, but their applications are frequently delayed due to long waiting lists. As a result, many face trial before they have even begun treatment. Transfers between prisons also take place without prior notice to detainees or their legal representatives, typically justified on security grounds or for procedural reasons such as court appearances. Lawyers in our focus group reported that it is often

7 See, for example, the case of Dimitris Koufodinas, a former member of the terrorist organisation 17 November, convicted, among other offences, for the assassination of Pavlos Bakoyannis, brother-in-law of Prime Minister Kyriakos Mitsotakis. Koufodinas appealed against the decision of the then General Secretary for Anti-Crime Policy to transfer him from Korydallos Prison in Athens to the high-security facility in Domokos. He lodged two appeals, the second citing health reasons as he had by then undertaken a hunger strike. This claim was rejected on the basis that his health condition was self-induced. His petitions were never accepted, and he eventually abandoned the hunger strike and accepted the transfer. See: LINK.

left to them to alert the detention facility not to move their client, so that they can meet and prepare adequately before the detainee is transferred to another city for trial.

DISCIPLINARY SANCTIONS AND THE RIGHT OF APPEAL

Detainees may appeal against decisions of the Prison's Disciplinary Board. Appeals are lodged with the Court for the Execution of Penalties, which sits in council formation and must decide within five days of the disciplinary decision. The Court's decision is final.

As disciplinary sanctions share many similarities with criminal ones,[8] the procedure is more structured and contains a number of procedural guarantees for detainees. Prison staff must submit a written report on the alleged offence within ten days of its commission; reports submitted after this deadline are inadmissible. The Disciplinary Board is chaired by the supervising prosecutor, whose constitutional independence, along with the nature of the Board's functions, allows it to be considered a quasi-judicial body. The chair summons the staff member who filed the report and places them under oath, rendering them liable for perjury if false statements are made.

In addition, the detainee must be notified in writing of the alleged offence without undue delay and summoned to appear before the Board to present their defence. The law also provides for the presence of an interpreter if the detainee does not speak Greek. Decisions must be specifically reasoned and, where a sanction is imposed, recorded both in the prison register and in the detainee's personal file. The Board is also required to apply the principle of lenience when determining sanctions, taking into account the gravity and circumstances of the act, the prisoner's personality, the remaining sentence to be served, and any other relevant factors. The Board may also decide to refrain from imposing any sanction or to impose a lighter sanction than those provided by law.

Despite these safeguards, important gaps remain in the protection

8 See ECtHR's Engel criteria.

afforded to detainees. There is no provision for legal representation either before the Board or during the appeal stage, and the Court retains discretion over whether to summon and hear the detainee in person. Furthermore, the law allows for an expedited procedure whereby security measures such as handcuffing and solitary confinement may be imposed to "maintain and restore order within the penitentiary facility". These may be ordered either by the Prison Council or, in cases of violent acts creating risks to staff or other prisoners, by the prison director. In both cases, the most severe disciplinary measures may be applied without the oversight of a judicial authority, unless the prosecutor is invited or chooses to participate.

Appeals before the Court for the Execution of Sentences do not automatically suspend the disciplinary sanction. As a result, penalties such as solitary confinement may be enforced immediately and fully executed, often before the Court has ruled. Given that solitary confinement may last between one and ten days, and that the appeal deadline is only five days, detainees may in practice serve the entire sanction before their appeal is considered. This raises serious concerns about access to remedies and the right to legal assistance, particularly since solitary confinement itself limits opportunities for contact with a lawyer.

Moreover, our field research revealed that hearings tend to be brief, raising concerns about due process and whether prisoners are genuinely given the opportunity to be heard. Lawyers noted that in only one known instance was a disciplinary decision successfully appealed, and this was due to legal advice provided by an external individual the prisoner contacted.

LEAVE OF ABSENCE: COMPETENT AUTHORITIES AND APPEALS

Pre-trial detainees are excluded from regular leaves of absence, which are tied to time served and reserved for convicted prisoners. Instead, they may only apply for extraordinary and educational leaves of absence from the penitentiary facility.[9] The supervising prosecutor has competence to decide on the granting of extraordinary leave in cases involving family, professional, or other exceptional and unforeseeable needs where the conditions for granting regular leave are not met. Such leave may be granted to all detainees for a maximum duration of 24 hours, or, in exceptional circumstances, up to 48 hours by decision of the prosecutor. The prison director may also grant extraordinary leave in limited circumstances: (a) for the funeral of a spouse, civil partner, or relative up to the second degree; and (b) for visiting a spouse, civil partner, or relative up to the second degree in urgent and critical health situations. In these cases, the supervising prosecutor must be notified immediately.

Educational leave is decided by the Disciplinary Board. These leaves may be suspended as a result of disciplinary sanctions, and detainees may not submit a second application until two months have passed since the rejection of the previous one. Decisions rejecting applications for educational leave may be appealed before the Court for the Execution of Sentences, provided that two consecutive applications have been rejected. Appeals must be lodged within ten days of notification of the second rejection.

The law does not provide for an emergency appeal procedure against decisions concerning extraordinary leave. Instead, detainees must rely on the general complaint procedure, either before the Prison Council (with potential delays of up to 30 days) or before the supervising prosecutor, in accordance with the procedure for unlawful acts. Both avenues lack clarity, as there is no provision defining the

9 Pre-trial detainees are a priori excluded from regular leaves, which are tied to time served, and are reserved for convicted prisoners. This can be problematic in light of the potential duration of pre-trial detention – which is up to 1.5 years, and can be well over the temporal threshold established for convicted detainees. It should be noted that the granting of regular leaves can be subject to restrictive measures (such as appearing before a police station or being monitored with electronic means) that can apply to pre-trial detainees and mitigate the flight risk or the risk of committing additional crimes, which are among the conditions for granting the leave.

grounds for rejecting an appeal or imposing time limits for action, leaving a wide margin of discretion to the authorities.

While applications for extraordinary leave are generally viewed more favourably, there have been documented cases of rejection, particularly concerning non-nationals, who may require more than 24 hours to travel outside Greece to attend a funeral or visit a critically ill relative.[10] Educational leave has also been subject to politicisation, with detainees affiliated with anarchist groups frequently resorting to hunger strikes to secure permission to pursue their education.[11] Furthermore, as in other appeal procedures before the Court for the Execution of Sentences, detainees are not guaranteed legal representation, nor is the Court obliged to hear them in person.

Our field research revealed that access to leaves of absence for pre-trial detainees in Greece is extremely limited, far more so than for convicted prisoners. In practice, leave for pre-trial detainees is almost entirely excluded, except in rare emergency situations such as attending a funeral, and even then approval is uncommon. Lawyers participating in our focus groups further noted that for certain serious offences, including robbery, extortion, or participation in a terrorist organisation, prison leave is generally not granted for the first five years.

The decision to grant or deny leave rests with the detention authorities, who assess whether the detainee is considered "safe" by the facility and whether they have a reliable support network. According to all participants in our field research, educational leave is never provided to pre-trial detainees. Many detained university students are denied permission to attend classes, despite submitting repeated applications and complaints. Leaves for urgent reasons were reported in only two cases. In one of these, a detainee was informed by the authorities that they had decided the matter by "heads and tails" when considering his request to attend a funeral. This illustrates the unsystematic and superficial way in which prison leave applications can be handled, raising concerns about arbitrariness and fairness in decision-making.

10 See e.g., Case of G.T. v. Greece, no. 37830/16, 13 December 2022, which found a violation of Art. 13 in conjunction with Art. 8 ECHR due to the refusal of the prosecutor to grant the applicant leave to visit their mother in the hospital.

11 See, e.g., LINK, LINK.

4 ORGANISATION OF ACCESS TO LEGAL SUPPORT

OBLIGATION TO INFORM DETAINEES OF THEIR RIGHTS

The obligation to provide detainees with information on their rights is enshrined in both the Penitentiary Code and the Statute for the Operation of Detention Facilities. Under Article 24 of the Penitentiary Code, detainees must, no later than the working day following their admission, be escorted before the Director of the Penitentiary Facility, the doctor, and a social worker or another professional from the prison's social services. Each has a distinct responsibility to inform detainees about different aspects of their rights and prison life.

The medical doctor is responsible for examining the detainee and informing them of any health findings in line with good medical practice. The social worker conducts a private interview addressing personal, family, or professional issues arising from detention, informs the detainee of available support through social services, and provides assistance at the outset of confinement. A report is drafted following this interview but remains confidential and may only be presented to a court with the detainee's consent.

The Statute for the Operation of Detention Facilities complements these provisions with detailed rules on the right to information. Detainees must be informed about their rights, options, and everyday aspects of prison life. This includes matters of hygiene and disease prevention, freedom to decorate personal space, access to personal or facility-provided bedding and towels, participation in educational, training, cultural, and recreational activities, contact with religious representatives, the ability to engage in work, and access to correspondence and visits. Detainees are also informed of rights relating to travel subsidies for approved leave, transfers to other facilities, rehabilitation services, suspension or pardon of solitary confinement, and the possibility of being awarded for laudable acts while detained.

The framework has existed since 1999, influenced by the European Prison Rules. According to the explanatory report to the law, proper information of detainees in a language they understand is a prerequisite for the smooth operation of facilities, and the publication and distribution of a booklet outlining rights and obligations was intended to meet this goal. Special provisions also exist for non-nationals: while they may request consular assistance, their consent is required before their detention is disclosed to their national authorities.

Despite the clear legal framework, implementation has proved inconsistent and ineffective. According to former detainees and practitioners interviewed during the field research, any official procedures to inform detainees about their rights are either not implemented or followed performatively. There is no substantial or personalised communication that takes into account language needs or specific vulnerabilities of individual detainees. 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.

The old Prisoner’s Handbook (Alfavitari tou Kratoumenou), a simplified version of the Penitentiary Code, is outdated and currently unavailable across the board. Even in the past it was never systematically distributed, as one former detainee recalled: “Those of us who got the Prisoner’s Handbook, found it in a pile, by chance.” Some initiatives to promote information on rights and complaints mechanisms—such as leaflets from the Greek Ombudsperson or civil society organisations—exist in certain facilities, but these are not systematically provided to detainees upon arrival. Instead, the main source of information for most remains an informal mentoring system of older inmates. a method that can be unreliable, inconsistent, and even dangerous as it creates grounds for exploitation.

In general, several interviewees mentioned that prisoners “laugh” when asked about their rights in detention, highlighting deep distrust in the system. As reported by the practitioners and the former detainees who participated in the research, only those with power, economic capital or connections can actually exercise their rights in detention.

COMMUNICATION AND INFORMATION TOOLS

Greek law formally provides for certain legal information and communication tools for detainees, though their practical availability remains limited. Under the Penitentiary Code, the Ministry of Citizen Protection is required to produce and distribute an official information leaflet outlining prisoners' rights. In practice, no such leaflet is currently available in any language. A 50-page booklet produced in 2016 has become outdated and is no longer distributed, leaving detainees without access to a standardised, up-to-date legal guide.

Prison libraries generally contain some legal literature, but collections are frequently outdated and incomplete. While detainees may request legal books from outside sources, subject to the facility's internal rules, there is no systematic effort to provide comprehensive or current legal texts.

Access to digital resources is even more restricted. Detainees do not have access to online legal databases or portals, as unsupervised internet use is prohibited across all prisons. Internet access is permitted only in narrowly defined contexts, such as during educational or vocational training programmes, and never for legal research. The use of mobile phones is strictly prohibited, further limiting the possibility of accessing legal information electronically.

As a result, while the law envisages the provision of legal guides and access to information, the absence of updated written material combined with the prohibition on digital access means that detainees lack meaningful access to legal information tools.

Our field research confirmed these shortcomings and revealed further barriers to communication and access to information. In Greek detention facilities, mobile phone use is prohibited and classified as a first-degree disciplinary offence. Prisoners must therefore rely on prepaid phone cards, which are costly: a €10 card allows only about 1 to 1.5 hours of talk time to landlines, and just 10 to 15 minutes to mobile phones. This makes phone cards one of the most significant expenses for detainees. In addition, infrastructure deficiencies often restrict communication. In Korydallos prison, for

example, many of the public telephones were reported to be broken or out of service, leaving prisoners with few alternatives other than resorting to prohibited mobile phones.

Controlled internet access is permitted only for inmates enrolled in university programmes. During the COVID-19 pandemic, virtual visitation through Skype was introduced nationwide to compensate for the suspension of family visits. According to the Ministry of Citizen Protection's 2022 response to the Committee for the Prevention of Torture (CPT),[12] this system was intended to help maintain family ties. Dedicated spaces were equipped with the necessary technological infrastructure across all prisons. However, our field research indicated uncertainty about the continued availability of this service. One focus group participant reported that foreign detainees in particular face significant obstacles in accessing electronic visitation, primarily due to identification requirements. These challenges become even more pronounced when trying to connect with family members or contacts located abroad.

PROVISION OF LEGAL SUPPORT TO FOREIGN PRISONERS

The provision of legal support to non-native speakers in Greek prisons is a deeply problematic area, a concern made all the more acute by the extremely high proportion of foreign nationals in the prison population. Although the law formally provides for the use of interpreters and for detainees to be informed of their rights in a language they understand, in practice this is very rarely the case.

The official information leaflet on detainees' rights is not available in Greek or in any other language, and prison staff generally provide only very limited information to newly admitted detainees, often because they feel unequipped and fear liability for errors. When communication is deemed essential, it is usually attempted in English, provided that both staff and the detainee have at least a

12 Ministry of Citizen Protection, General Secretariat for Anti-Crime Policy, Response to the observations of the Report of the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 14 June 2022, available in Greek, accessible at LINK.

basic understanding, or otherwise carried out informally by fellow inmates who speak the same language. Such practices raise serious concerns about accuracy, confidentiality, and consistency.

Permission may be granted for an interpreter to enter the penitentiary facility, for example, to assist communication between a detainee and their lawyer, but this depends on security clearance and must be arranged and funded by the detainee. More broadly, neither the Penitentiary Code nor the Statute for the Operation of Detention Facilities contains provisions ensuring the systematic translation or interpretation of rights for those who do not speak Greek. The Statute refers to interpretation only in the limited context of disciplinary proceedings, without specifying the procedure for appointment. Similarly, although the Code of Criminal Procedure establishes the right to interpretation and translation, this applies exclusively to specific stages of pre-trial proceedings before the courts and does not extend to the prison context.

As a result, many detainees report receiving little or no information on their rights and obligations in a language they can understand. As one focus group participant pointed out, "if there is no one in the ward or cell who speaks their language... I don't know how these people can even understand that their court is coming."

The lack of a structured framework for language support in prisons leaves foreign prisoners reliant on ad hoc solutions, such as other detainees or staff with basic language skills. "Some can speak some Greek but cannot write and this is the case not only for foreigners but also for Roma detainees.... As I am educated, they were constantly coming to me to write letters and applications on their behalf..." mentioned one former detainee. This situation of dependency to fellow inmates can however lead to "exploitation, dependence, and information distortion."

This gap effectively excludes non-native speakers from meaningful access to legal information and undermines their ability to exercise their rights while in detention.

ACTORS PROVIDING LEGAL INFORMATION AND ADVICE

Under the Penitentiary Code and the Statute for the Operation of Detention Facilities, the prison director is responsible for informing detainees of their rights and obligations, as well as of the internal regulations of the facility. In practice, however, this role is carried out by the warden or the penitentiary staff admitting the detainee. This first encounter is often the only official opportunity for detainees to receive information on their rights, as they do not otherwise have access to up-to-date legal resources.

There is currently no structured framework for the provision of legal information by the prison authorities. The Prison Social Services may provide some relevant guidance, and in facilities where criminologists are employed, detainees may be able to access more accurate legal information. As showed by the field research however, chronic understaffing. is a significant obstacle to the effective implementation of the obligation to inform detainees about their rights. Some facilities lack even a single social worker, making it impossible to provide meaningful support. As one NGO representative explained, professionals working in detention facilities often make significant efforts, but the overwhelming number of detainees leaves them unable to meet demand and frequently results in burnout. Beyond understaffing, prison staff report feeling ill-equipped to provide detainees with adequate information and receive no guidance from the Ministry of Citizen Protection. Although the Penitentiary Code requires the provision of an information leaflet issued by the Ministry, no such leaflet is currently available in Greek or any other language. A 50-page booklet produced in 2016 by a previous government has not been updated or distributed.[13]

In principle, detainees may also consult the supervising prosecutor and request information on their rights, although this tends to occur in the context of a complaint procedure, rather than on a preventive basis. Information is often incomplete, fragmented, or not provided at all.

13 Available in Greek at LINK.

The absence of a dedicated service, such as the proposed but unrealised "prison counsel" scheme, leaves detainees without an institutional source of legal guidance within facilities. As a result, access to legal information and legal supports depends heavily on detainees' ability to engage external lawyers, which may disadvantage those without financial means or established legal representation. Lawyers, bound by confidentiality under their professional code of conduct, play here a critical role in ensuring that detainees can access reliable and accurate information and assistance on matters concerning them.

5 LEGAL AID SCHEME

SCOPE OF LEGAL AID TO PRISON LITIGATION

Although the Greek legal framework provides for legal aid in criminal, civil, and administrative proceedings under Law 3226/2004 (as amended), its application to prison litigation remains extremely limited. The law formally allows detainees to request legal aid at all stages of criminal proceedings, including during pre-trial detention and until an irrevocable decision of the Court of Cassation. In principle, this coverage could extend to detention-related matters in pre-trial detention, yet in practice legal aid does not apply in any meaningful way to complaints or proceedings concerning detention conditions, disciplinary sanctions, or unlawful acts by prison staff. Indeed, this was confirmed during the field research, where both lawyers and former detainees reported that they had never encountered a single case in which legal aid was granted specifically for the exercise of rights related to detention conditions- , such as the right to submit a report in the Prosecutor or the director of the detention facility or to apply for the remedy foreseen in article 6A of the Greek Penitentiary Code regarding the general conditions of detention.

As pointed out by a lawyer during the field research, detainees cannot apply for legal aid if they don't have a specific summon to appear before the judicial authorities or the court. That means that they do not have legal support to exercise their rights while in detention, and additionally, due to lack of sufficient information about the right to apply for legal aid, they lose the ability to exercise rights that

are applicable in the pre-trial stage, with significant impact on the court procedures (e.g., loss of appeal rights, lack of understanding of the charges). Crucially, their right to have their lawyer participate in certain investigative acts.

In relation to the complaint procedure under Article 6A of the Penitentiary Code, which allows detainees to bring complaints before the Court for the Execution of Sentences or directly to the prison director, legal representation is not mandatory, and the framework contains no explicit provision granting prisoners access to legal aid. As a result, detainees must usually pursue such complaints on their own, with little or no professional legal support. The situation is similar in disciplinary proceedings, where prisoners must conduct their own defence, and appeals to the Court for the Execution of Sentences can be lodged without the assistance of a lawyer. The legal aid scheme does not provide coverage for these proceedings, leaving a significant gap between formal guarantees and practical protection.

Complaints to the supervising prosecutor or prison administration present similar obstacles. While prisoners are entitled to address requests and complaints to these authorities, there is no legal basis ensuring that they receive legal aid in drafting or submitting them. Requests and statements are typically submitted in writing to the prison director, who records and forwards them to the competent authority. For legal purposes, they are considered lodged from the moment they are submitted to the prison authorities. Yet the absence of legal support or translation services means that detainees, particularly foreign nationals, struggle to frame their claims in a legally effective manner.

Field research confirmed these legislative and practical gaps. Participants across focus groups, including lawyers and former detainees, reported that legal aid has never been applied in practice to complaints relating to prison conditions or disciplinary measures. Several interviewees highlighted that detainees cannot access legal aid unless they are summoned to appear before judicial authorities, which excludes most detention-related claims. The combination of these factors creates a structural vacuum. Legal aid in Greece was designed primarily with criminal trial proceedings in mind and has not been adapted to the specific needs of prison litigation. Representation by a lawyer is not guaranteed, expenses for legal support are not covered, and detainees are left to conduct proceedings themselves.

HISTORY OF LEGAL AID REGIME

Legal aid in criminal proceedings was first introduced in 1999, in order to bring Greek law into compliance with the obligations stemming from Article 6(3)(c) ECHR. The current framework was established in 2004 with the adoption of Law 3226/2004, enacted specifically to address Greece's obligations under the ECHR and following the case of Biba v. Greece (2000).[14] In that case, the ECtHR found a violation of Article 6 §1 in conjunction with Article 6 §3(c) due to the absence of free legal aid for a foreign national which made it impossible for him to lodge an appeal to the Court of Cassation. The Court stressed that the seriousness of the charges, the severity of the sentence, and the complexity of proceedings required the provision of legal assistance in the interests of justice, particularly given the applicant's lack of means and inability to speak Greek. Prior to this, provisions on legal aid had appeared in the 2003 Statute for the Operation of Detention Facilities, though these were limited in scope.

Legal aid in Greece is formally regulated under Law 3226/2004, as amended by Law 4689/2020, and applies across civil, criminal, and administrative proceedings. Pre-trial detainees may request legal aid directly through their penitentiary facility, with applications forwarded to the competent judicial authority.

LEGAL FRAMEWORK AND FUNDING OF LEGAL AID

Legal aid in Greece is primarily regulated by Law 3226/2004 on legal aid for citizens with low income.[15] The scheme extends to all categories of proceedings – civil, criminal, and administrative – but in criminal matters the applicable conditions differ in line with the specificities of criminal law and procedure. For serious offences that may result in pre-trial detention, the investigating judge may appoint a lawyer ex officio. Eligibility for the scheme covers low-income EU citizens as well as third-country nationals lawfully residing

14 Biba v. Greece, no. 33170/96, 26 September 2000.

15 Official Government Gazette Issue No A' 24/04-02-2004.

in Greek territory. Law 4689/2020,[16] which transposed Directive (EU) 2016/1919 on legal aid, introduced certain amendments to strengthen the framework initially established under Law 3226/2004. Provisions concerning the scope of legal aid in criminal proceedings, the procedural requirements for applying, and related guarantees are also set out in the Code of Criminal Procedure, the Penitentiary Code, and the Statute for the Operation of Detention Facilities.

The scheme is financed through a dedicated entry in the State Budget under the Judicial Buildings Fund. This Fund is responsible for covering the compensation of lawyers and other justice professionals engaged in the provision of legal aid. In addition, 20% of all legal costs awarded to, or exempted and collected by, the State in judicial proceedings are diverted to the Fund. These resources are then used, in part, to sustain the operation of the legal aid system and ensure the reimbursement of services rendered under it.

LIMITS AND EXCEPTIONS IN THE PROVISION OF LEGAL AID

Legal aid may be requested at any stage of the criminal process, including during the pre-trial phase, and it extends to the entirety of the trial until a final (“irrevocable”) decision is delivered by the Court of Cassation. In cases involving European Arrest Warrants, legal aid is available until the full conclusion of the criminal proceedings, including extradition or enforcement proceedings. This includes any issues that may occur in relation to pre-trial detention and the rights of the detained accused. Legal aid may also be requested and appointed within the penitentiary facility.

16 Greece, Law 4689/2020 “Transposition into Greek Legislation of Directives (EU) 2016/800, 2017/1371, 2017 / 541,2016 / 1919, 2014/57 / EU, ratification of the Memorandum for Administrative Cooperation between the Ministry of Justice of the Hellenic Republic and the Ministry of Justice and Public Order of the Republic of Cyprus, amendments to Law 3663/2008 (A’99) for the implementation of Regulation (EU) 2018/1727 and other provisions (Ενσωμάτωση στην ελληνική νομοθεσία των Οδηγιών (ΕΕ) 2016/800, 2017/1371, 2017/541,2016/1919, 2014/57/ΕΕ, κύρωση του Μνημονίου Διοικητικής Συνεργασίας μεταξύ του Υπουργείου Δικαιοσύνης της Ελληνικής Δημοκρατίας και του Υπουργείου Δικαιοσύνης και Δημόσιας Τάξεως της Κυπριακής Δημοκρατίας, τροποποιήσεις του ν. 3663/2008 (Α’99) προς εφαρμογή του Κανονισμού (ΕΕ) 2018/1727 και άλλες διατάξεις), (O.G. A’ 103/27.5.2020).

Each lawyer may be appointed for only one case. A matter will be treated as a single case if several proceedings involve the same person or multiple persons tried together, either because they appear before the same court, are parties to the same case, or because the proceedings are otherwise connected. In civil and commercial matters, separate applications for legal aid must be filed for each stage of the proceedings. Exceptionally, however, a lawyer who has previously handled the same case under the legal aid scheme may be re-appointed upon request.

However, in criminal proceedings, the appointment of a legal aid lawyer covers all stages of the proceedings until an "irrevocable" (final) decision is issued by the Court of Cassation (Arios Pagos), or until the deadlines for the submission of the relevant appeals and remedies have expired. In the case of European Arrest Warrants, it covers the entire proceedings related to the issue or the execution of the EAW. An exception is made in cases of arrest and temporary detention for in flagrante offences, where the person concerned is not able to procure the necessary evidence that renders them eligible for legal aid. In this case a legal aid lawyer is assigned to them for the duration of the in flagrante procedure, unless they submit, in the meantime, the documents necessary to prove their financial situation.

COVERAGE AND SCOPE OF COMPENSATION

Legal aid covers lawyers' fees, the cost of copies of the case file, and travel expenses incurred by the lawyer. These expenses are borne by the state and reimbursed after the conclusion of the trial.

The compensation of legal aid lawyers is calculated based on their participation in proceedings, evidenced through a special legal fees collection note submitted for each court appearance. Fees are capped at €15,000 per year, with no reimbursement for amounts exceeding this ceiling. Lawyers involved in lengthy criminal trials are entitled to additional compensation, and social security and tax obligations are included in the remuneration, which is withheld and transferred to the relevant authorities. The Minister of Justice may,

by decree, modify the compensation rates for legal aid professionals, including lawyers, notaries, and judicial officers.

There is no disaggregated data available on the remuneration of legal aid lawyers providing services specifically in prison-related cases. According to the most recent figures from the Judicial Buildings Fund, [17] a total of €11,056,656.68 has been paid to legal aid lawyers out of a total budget of €22,416,134.14 for 2024. It remains unclear, however, whether this amount covers services rendered exclusively during 2024 or also includes compensation for work carried out in previous fiscal years. In practice, legal aid lawyers consistently report significant delays in payment, with reimbursements often taking two to three years from the time their compensation applications are submitted.

Our field research found that legal aid covers lawyers' fees, the cost of obtaining copies of the case file, and any travel expenses incurred by the lawyer. However, reimbursement is only provided after the trial and is often subject to significant delays, in some cases exceeding a year after the legal act has taken place.

Lawyers are generally prohibited from providing legal services free of charge (pro bono).[18] Exceptions apply in cases involving close family members or other lawyers, and only in relation to personal matters. Lawyers who act in a manner deemed to undermine professional dignity may face disciplinary consequences. However, our field research did uncover that despite this, certain law firms do provide pro bono legal services in selected areas, such as the promotion of fundamental rights, environmental protection, or support for vulnerable social groups.

17 Available in Greek at LINK.

18 Article 82 of Law 4194/2013 (Code of Legal Practice).

EXEMPTION OF COSTS

Copies of the essential parts of the case file, interpretation and translation are covered by the courts ex officio, when they are related to the criminal proceedings (either at the pre-trial stage, when so specified, or before the courts). Certain expert fees may also be covered, for example when the court orders an expert consultation following a petition by the defendant. Legal aid may cover some additional costs on a case-by-case basis, but, overall, these expenses are not included in the scheme as there is already a legal obligation to provide them free of charge in the context of the criminal proceedings.

ELIGIBILITY

Eligibility for legal aid in Greece extends to low-income Greek and EU citizens, as well as third-country nationals or stateless persons lawfully residing in Greek territory, provided that their legal case is not inadmissible or manifestly unfounded. Certain categories are granted automatic eligibility regardless of financial status: children and victims of specific crimes such as human trafficking, kidnapping, child abuse and molestation, child pornography, and sexual exploitation, in line with Directive 2011/93/EU.

Applicants must submit a legal aid request that includes details on the subject matter of the case and evidence of financial status. The application procedure is free of charge and may be initiated directly by the applicant; a lawyer is not required to file it, though this remains possible. Unfavourable decisions must be reasoned, and a new application may be submitted if circumstances change. The judge may also revoke or limit legal aid if eligibility conditions cease to apply or are found never to have existed.

In criminal proceedings, specific income and case-related thresholds apply:

a Income criteria: Over the past three years, the average annual income must not exceed €6,000 for a single person (plus €1,000 for each dependent child, up to four), or €8,000 for a married/cohabiting couple (also plus €1,000 per dependent child, up to four).

b Case criteria: Legal aid is available where (a) the offence carries a maximum custodial penalty of at least two years, and the accused is required to give explanations or statements, or is subject to investigative acts (such as identification parades, cross-examination, or crime-scene re-enactments); (b) the main trial at first instance concerns an offence punishable by a maximum custodial sentence of more than two years; (c) appeals or legal remedies concern an offence with a maximum custodial sentence of more than two years, or where the applicant has already received a custodial sentence of at least six months.

An additional safeguard applies for the long-term unemployed: if an applicant has been unemployed for more than 12 months at the time of the application, they remain entitled to legal aid even if their income slightly exceeds the statutory limit (up to one-third above). Welfare and social benefit payments are excluded from income calculations, but bank deposits in Greece or abroad are taken into account alongside taxable income.

APPLICATION PROCEDURE

The procedure for applying for legal aid differs between criminal, civil, and commercial proceedings. The following outlines the rules applicable to criminal proceedings.

According to the law on legal aid,[19] the person concerned must submit an application, together with the necessary supporting documents, to the competent judge. The applicable deadlines vary depending on the stage of the proceedings: (a) at the pre-trial stage, the application must be submitted within forty-eight hours of being informed of the right to legal aid; (b) during court proceedings, it must be submitted one month before the case is heard, or, in cases of shortened deadlines, at least seven working days before the hearing; and (c) in the case of legal remedies, within a reasonable timeframe that allows for their effective exercise. The decision on the application must then be communicated to the applicant, with due regard to their potential vulnerabilities.

19 Law 3226/2004, Article 7.

However, our field work uncovered that there is no specific legal aid form available to detainees. Instead, detainees may submit a general application addressed to the director of the detention facility, explaining their need for legal aid. The director is then responsible for forwarding the application to the competent judicial authority at the court where the detainee's case is pending.

A rejection of an application may be appealed before the President of the Court of First Instance conducting the investigation or before the court hearing the case. This must be done within forty-eight hours of notification of the decision, or within the time limit required for the effective exercise of an appeal or other legal remedy.

In proceedings relating to the execution of a European Arrest Warrant (EAW), the requested person deprived of liberty following arrest may apply for legal aid immediately upon being informed of the right to do so, before the competent Prosecutor of the Court of Appeal. Where it is objectively impossible to provide supporting documents, legal aid may be granted on the basis of the applicant's statement alone, provided they declare that they meet the financial eligibility criteria.

The Statute for the Operation of Detention Facilities also contains provisions regarding legal aid.[20] If a detainee declares financial inability to exercise their rights of defence, the scientific staff of the detention facility must invite them to submit an application along with supporting evidence of their financial state (e.g. tax declarations, welfare allowance certificates, unemployment benefit certificates, records from judicial authorities, or other documents indicating previous lack of legal representation). The application is addressed to the supervising prosecutor of the detention facility and must be accompanied by reports from the prison's social and financial services confirming the applicant's financial hardship or vulnerability.

The supervising prosecutor, with the assistance of the facility's specialised staff, then examines the application. They may request additional documentation (e.g. affidavits, bank account statements), or, if the evidence provided is deemed sufficient, forward the application to the competent judicial authority. "Every effort" must be made to ensure the application is submitted at least fifteen days before

20 Ministerial decree 58819/7.4.2003, Article 33.

the investigative measure or judicial act for which legal aid is sought. Detainees must be informed of the outcome at least five days before the relevant act. In cases of rejection, the detainee has the right to appeal within three days before the immediate superior of the judge who issued the initial decision.

Moreover, the law establishes a general procedure that does not supersede the specific provisions on criminal legal aid. An exception is made for persons with a disability of over 67%, who are exempted from the financial eligibility criteria described above.

EVALUATION AND GRANTING OF APPLICATIONS

In criminal cases, the competent authority for examining applications for legal aid is a designated district judge of the court conducting the investigation at the pre-trial stage, or the judge or president of the chamber adjudicating the case at the trial stage. For details on the procedural requirements, see section 3.8.

Decisions rejecting legal aid applications must be specifically reasoned. The applicant may lodge an appeal against such a decision before the President of the Court of First Instance responsible for the investigation, or before the court hearing the case. This must be done within forty-eight hours of notification of the decision, or within the timeframe necessary for the effective exercise of an appeal or other legal remedy. The decision on appeal is final and cannot be further challenged.

STRUCTURAL AND PRACTICAL SHORTCOMINGS OF THE LEGAL AID SYSTEM

Overall, interviewees in our field research emphasised that the legal aid scheme is severely undermined by systemic flaws. As one former prisoner observed, “legal aid is a joke; most lawyers have neither the skills nor the time to defend their clients.” The most obvious gap, as noted above, is the absence of any explicit provision

ensuring that legal aid applies to detention-related complaints. This creates a legal vacuum, leaving prisoners to pursue such proceedings, such as complaints about detention conditions, disciplinary appeals, or petitions under Article 6A of the Penitentiary Code, without legal assistance.

A further shortfall lies in the lack of awareness among detainees regarding their right to apply for legal aid. This results in serious consequences, including missed appeal deadlines, and the absence of lawyers during critical investigative acts. As there is no established framework for informing detainees of their legal aid rights within detention facilities, foreign detainees are primarily made aware of these rights through fellow prisoners who are more familiar with the Greek language. These challenges are compounded by the absence of a standardised legal aid application form. In practice, detainees must submit a general request to the prison director, who is then responsible for forwarding it to the competent judicial authority. This indirect and informal process creates uncertainty and inconsistency, leaving detainees dependent on the diligence of prison staff.

There are also significant eligibility barriers. The strict income thresholds (for example, €6,000 annually for a single person) exclude many detainees who, while technically above the threshold, still lack the resources to pay for a lawyer. Moreover, detainees may only apply for legal aid if they have received a formal summons to court. This excludes situations in which support is most urgently needed during detention, such as when filing complaints, challenging disciplinary sanctions, or pursuing remedies for unlawful detention conditions. Added to this are procedural hurdles: applications often require supporting documentation that detainees cannot easily obtain from inside prison, and strict deadlines, such as the requirement to apply within forty-eight hours at the pre-trial stage, are unrealistic in practice.

Problems also arise in relation to compensation and funding. Lawyers' fees are reimbursed only after the conclusion of the trial, with delays frequently extending up to two or three years. In addition, annual compensation is capped at €15,000, which discourages lawyers from taking on lengthy or complex cases.

The prohibition of pro bono work further limits access. Lawyers are generally barred from offering legal services free of charge, with only narrow exceptions for family members or colleagues. While some law

firms voluntarily provide pro bono support in areas such as human rights or refugee protection, this remains rare and does not address systemic needs in the prison context.

Finally, there is a serious lack of monitoring and accountability. No systematic mechanism exists to evaluate the quality of services provided under the legal aid scheme. Bar associations play only a limited role in supervision or training, and incentives for lawyers to participate are weak. As a result, the quality of representation remains inconsistent, with detainees often perceiving legal aid services as inadequate or ineffective.

A focus group discussion with legal aid lawyers generated several recommendations to strengthen the provision of legal aid for detainees. Participants proposed the establishment of a “Prison Advocate” in each detention facility— a lawyer regularly present to inform detainees of their rights in detention, in court proceedings, and in relation to disciplinary offences and procedures. They also emphasised that beneficiaries of legal aid should be given the opportunity to choose their lawyer, as this is a fundamental element of effective representation, with the state bearing the associated costs and fees. To ensure the quality of services, participants suggested that local bar associations should operate a monitoring system to supervise the delivery of legal aid, while safeguarding the independence of lawyers. Finally, bar associations were seen as having a key role in providing training for legal aid lawyers and creating incentives to encourage greater participation in the scheme.

6 INVOLVEMENT OF LAWYERS IN PROCEEDINGS CONCERNING DETENTION CONDITIONS

PRISONERS AS SELF-REPRESENTED LITIGANTS

Legal representation is not mandatory in proceedings concerning detention conditions or the exercise of associated rights. As noted in both desk and field research, this omission leaves a legal vacuum: there is no established right to have a lawyer present in complaints proceedings under the Greek penitentiary framework.

In practice, without legal representation detainees are left to navigate complex procedures largely on their own. Complaints regarding detention conditions, disciplinary sanctions, or unlawful acts by prison staff are almost always pursued without professional support. Even where detainees are entitled to bring claims, such as under Article 6A of the Penitentiary Code before the Court for the Execution of Sentences, representation by a lawyer is not required and, in most cases, is therefore not provided. Similarly, disciplinary proceedings must be conducted by prisoners themselves, with appeals to the Court for the Execution of Sentences handled without the assistance of counsel.

The absence of guaranteed legal assistance creates a significant gap between the formal right to lodge complaints and detainees' ability to pursue them effectively. Research participants, including lawyers and former prisoners, consistently reported that lawyers rarely assist in detention-related cases, and where they do, involvement is minimal. This gap disproportionately affects prisoners with psychosocial disabilities, as well as the large proportion of foreign nationals, who face additional barriers in the absence of legal assistance, including the lack of interpretation services. Interpreters are not provided in detention facilities unless the detainee is able to cover the cost themselves.

This important gap is all the more detrimental, than even when prisoners are aware of the possibility to complain on their own, significant barriers remain. Former detainees emphasised the climate of

fear: "Being a prisoner, being deprived of your freedom is in itself a huge vulnerability. So even if there is the possibility... fear prevails. You can't go against a thing that can swallow you up. I have never heard of anyone submitting a complaint in the detention facility." Another noted that "it is structured in such a way that it does not serve the interests of prisoners to claim their rights by submitting complaints." Prison staff often advise detainees to speak with their lawyers for any problem, while the supervising prosecutor, though formally responsible, is not regarded as approachable or impartial. Prisoners also fear retaliation or stigma if they raise complaints, and reported learning from older inmates that "difficult" detainees risk being transferred to facilities with poor reputations, such as Corfu prison.

Finally, even when a complaint is successful, the outcome may be contrary to the prisoner's wishes. The Ombudsperson observed that prisoners requesting better conditions risk being transferred to another prison, which may result in separation from their families. This reality further deters detainees from seeking to assert their rights through the complaint system.

In this general context of both an absence of mandatory legal representation in proceedings concerning detention conditions and fear of reprisals by detainees engaging in complaints on their own, the research confirms the essential role to be played by lawyers.

DESIGNATION OF LEGAL AID LAWYERS AND BENEFICIARIES' OPTIONS

Legal aid lawyers are appointed from lists issued by the Bar Association of the competent court of jurisdiction. Separate lists are maintained for criminal cases and for civil and commercial cases. In criminal matters, eligibility for registration on the legal aid list requires that lawyers have appeared at least five times as defence counsel or as representatives of third parties in criminal proceedings. For cases before the Court of Cassation (Areios Pagos), lawyers must also hold the right of audience before that Court.

Beneficiaries of legal aid may refuse representation by the lawyer initially appointed, provided they submit a reasoned statement. In such cases, the appointing authority revokes the appointment and

designates another lawyer from the list. This right of refusal can only be exercised once. If the beneficiary also declines the second appointment, there is no further obligation to provide a legal aid lawyer. In exceptional circumstances, however, the beneficiary may request the reappointment of a lawyer who has already handled their case at an earlier stage of the proceedings.

A beneficiary of legal aid may refuse, once, to be represented by the lawyer initially appointed to their case. This must be done through a reasoned statement. In such circumstances, the appointing authority is required to revoke the appointment decision and designate a new legal aid lawyer. If the beneficiary also refuses representation by the newly appointed lawyer, no further obligation exists for the authority to assign another lawyer under the legal aid scheme. Moreover, in exceptional cases, beneficiaries may request that the lawyer who represented them at an earlier stage of the proceedings be reappointed to their case.

During the field research, participants repeatedly identified the inability of defendants to choose their legal aid lawyer as a significant disadvantage, further noting that although the law allows beneficiaries to request a change of the assigned lawyer, this is permitted only once and does not provide sufficient alternatives.

CONTACT AND VISITATION

According to Article 47 of the Greek Penitentiary Code (PC), detainees have the right to receive visits from their lawyers without limitation as to number or duration. The frequency and format of such visits, as well as visitor security checks, are determined by the internal regulations of each detention facility. An important qualification exists: internal prison regulations ultimately set limits on the number and length of visits, the mode of communication, and the security checks applied. If visitation rights are denied or restricted, detainees may appeal to the Prosecutor supervising the facility.

Representatives of civil society organisations, scientific associations, and cultural or religious groups may also be granted access, subject to prior approval from the Prison Council and notification of the Ministry of Citizen Protection.

The secrecy of lawyer–client consultations is formally guaranteed by Article 52 PC, which stipulates that visits must take place in appropriate spaces, with only visual supervision by guards. In practice, however, facilities rarely provide suitable conditions for confidentiality. Visits are often conducted simultaneously for multiple detainees in shared spaces, making it difficult to ensure the privacy of exchanges.

Under Article 48 PC, pre-trial detainees additionally enjoy the right to unlimited telephone communication with their lawyer. Letters, phone calls, and other forms of telecommunication are not subject to monitoring. While detainees are normally required to cover the costs of communication themselves, social services within the facility may assume the cost in cases of indigence, as reported by participants in our field research.

ISSUES IDENTIFIED IN PRACTICE

Field research revealed several recurring challenges. Although legislation sets minimum conditions for lawyers to register on the legal aid list, these requirements do not guarantee sufficient expertise in criminal or penitentiary law. Both former detainees and practitioners consistently described the overall quality of legal aid services as low, with only a few positive examples of strong representation cited, which were considered exceptions rather than the rule. Detainees frequently perceived legal aid lawyers as less competent than privately retained counsel, referring to them dismissively as "lawyers of the list".

Another recurrent issue, primarily observed in criminal trials but carrying broader implications, concerns the timing of appointments and the lack of adequate preparation. Appointments are frequently made only shortly before the hearing, in some cases even on the day, at which point lawyers may receive the case file for the first time. Even when appointments are made in advance, participants noted that legal aid lawyers rarely visit their clients in prison prior to trial, leaving detainees with little to no opportunity to establish proper communication with their counsel or to prepare their case effectively.

ORGANISATION OF BARS' AND LAWYERS' ACTION IN DETENTION

In Greece, the organisation of bars and lawyers' action in detention is limited and fragmented. Although Bar Associations formally hold the authority to monitor prison conditions, this role is not exercised in practice, with no reported visits, statements, or legal actions concerning detention conditions or prisoners' rights. Their main involvement relates to the administration of the legal aid scheme, based on a 2020 Athens Bar Association regulation now applied nationally, which governs the updating and maintenance of lists of eligible lawyers. Separate lists exist for criminal and civil cases, with minimum experience requirements in criminal matters, but there are no statutory qualifications in penitentiary law and no mandatory training, with occasional seminars organised infrequently and poorly attended.

BAR ASSOCIATIONS AND THE MONITORING OF PRISON CONDITIONS

Bar Associations in Greece, including the Athens Bar Association, formally hold the authority to monitor prison conditions. During our field research, however, none of the interviewees were aware of any visits by Bar representatives to detention facilities. Lawyers participating in our focus group likewise could not recall any instance where a Bar Association had issued a statement or initiated legal action regarding detention conditions or the rights of prisoners.

REGULATION OF BARS' INVOLVEMENT IN LEGAL SUPPORT TO DETAINEES

The Bar Associations are responsible for issuing and maintaining the lists of lawyers available to provide services within the legal aid scheme. In 2020, the Athens Bar Association adopted

a Regulation on the Functioning of the Legal Aid Scheme,[21] aimed at modernising the procedures related to the selection and appointment of legal aid lawyers. This Regulation is in practice followed by Bars across the country.

According to the Regulation, the legal aid lists are updated during the first ten days of September each year and are accessible through the online portal of the Plenary of Greek Bar Associations. Lawyers must update their enrolment during this period, but the lists remain open to new admissions throughout the year.

There are separate lists for criminal cases and for civil and commercial cases. In criminal cases, lawyers must have appeared at least five times as defence counsel or as representatives of third parties in criminal proceedings in order to be eligible for registration. For cases before the Court of Cassation (Areios Pagos), lawyers must also meet the requirement of having the right to appear before that Court.

There are no statutory qualifications for lawyers specialising in penitentiary law specifically, in terms of the organisation of the legal aid scheme.

ORGANISATION OF EDUCATIONAL AND TRAINING INITIATIVES

When it comes to educational and training initiatives for legal aid lawyers, our field research revealed that although the Athens Bar Association occasionally organises seminars, these are infrequent and attendance is generally low.

21 Available in Greek at LINK.

PRACTICAL ARRANGEMENTS FOR CARRYING OUT LEGAL ASSISTANCE MISSIONS

There are no specific practical arrangements established by law or internal regulations regarding legal assistance missions in prisons. General provisions allow civil society organisations to visit detainees, subject to authorisation by the Prison Council. Lawyers do not have unrestricted access to detention facilities; they may only meet their clients in specially designated areas.

Lawyers are entitled to receive information concerning their clients' case files and the personal data contained therein. However, they do not have access to classified documents related to the execution of the sentence or to the broader status of the detention.

7 ROLE OF NGOS, LEGAL CLINICS, AND NATIONAL MONITORING BODIES OF PRISON CONDITIONS

In Greece, the role of NGOs, legal clinics, and monitoring bodies in supporting prisoners remains fragmented and inconsistent, with no overarching national framework governing their engagement with detention facilities. The correctional system remains highly fragmented. Each detention facility operates in isolation, and rules for cooperation with external actors differ depending on the prison administration. This results in inconsistent access to services for detainees and a lack of transparency. There is currently no national framework or protocol governing NGO engagement with prisons. Several stakeholders have called for the creation of a national protocol and a certified registry of NGOs authorised to provide services, to allow for more structured involvement and improved quality of support.

Access to prisons by NGOs or legal clinics requires prior authorisation from the Prison Council, and practices vary considerably between facilities. In practice, their presence is limited, irregular, and often focused

on psychosocial or material support rather than sustained legal assistance. Legal clinics do not operate within prisons, and legal support is provided almost exclusively by NGOs, whose capacity depends heavily on their resources and location. The National Preventive Mechanism, operating within the Ombudsman's Office, conducts monitoring visits and issues recommendations on detention conditions, but its mandate is preventive and does not extend to providing legal advice or representing detainees in individual cases.

TYPES OF SUPPORT PROVIDED

Most NGOs focus on psychosocial activities, such as counselling or small-scale material initiatives (e.g. holiday gift-making workshops). Some organisations occasionally assist with legal matters, particularly in urban prisons like Korydallos and Thebes, where NGO activity is more visible and includes meaningful time-use programmes. Legal clinics do not exist within the prison system; legal support in detention facilities is provided solely by NGOs.

Our field research uncovered that NGOs and the Greek Ombudsperson also disseminate some information materials in detention facilities, such as leaflets on rights and complaints mechanisms. However, since these initiatives are neither systematic nor consistent.

KEY ORGANISATIONS

EPANODOS: A state body operating under private law under the supervision of the Ministry of Citizen Protection, and the only official body in Greece dedicated to reintegration of former detainees. EPANODOS collaborates with social services in detention facilities to provide counselling and legal assistance, helps inmates and their families with legal and social issues, and informs them about labour rights, benefits, and employability programmes. It has reintegration liaisons in each detention facility, enabling direct support. EPANODOS has tried to build cooperation with bar associations and legal professionals, but these remain ad hoc and largely dependent on individual initiative. It organises annual online meetings with reintegration liaisons and representatives of all correctional facilities to exchange updates and good practices.

Prisoners' Support Association "Onisimos": Founded in 1982 to provide material and moral support to impoverished prisoners. It offers free legal representation and covers court expenses for indigent detainees, supports the welfare funds of prison social services, and contributes to establishing and enriching prison libraries across Greece.

Rehabilitation services used to be provided by NGOs (KETHEA, OKANA). However, these services have now been undertaken by a newly established public body, EOPAE, supervised by the ministry of health.

Other NGOs: Several organisations provide support for specific groups of prisoners, such as foreign detainees, who are considered especially vulnerable. A CSO representative underlined the importance of collaborating with experienced NGOs in this field and highlighted that formal partnerships between NGOs and the public sector, under appropriate supervision, would enhance effectiveness. Drawing on European models, such cooperation could be developed at the local level between municipalities and bar associations to strengthen coordination and resource-sharing.

THE OMBUDSMAN (NATIONAL PREVENTIVE MECHANISM)

The Greek Ombudsman functions as the National Preventive Mechanism (NPM) under the Optional Protocol to the UN Convention against Torture (OPCAT). In this capacity, the Ombudsman conducts monitoring visits to penitentiary facilities, during which staff members may interview detainees and incorporate their testimonies into reports on detention conditions and the functioning of prison facilities.

The NPM's mandate is essentially preventive: it does not extend to adjudicating individual legal cases or providing legal advice to detainees. While the Ombudsman may receive complaints in its broader institutional capacity, in its role as NPM it is not authorised to act as a formal complaints mechanism nor does it systematically transmit grievances disclosed during its monitoring visits to judicial or administrative bodies. Nevertheless, the Ombudsman's Office does receive a number of individual and collective complaints concerning detention conditions. According to representatives interviewed, these often reflect the immediate

priorities of the prison population. Rather than primarily demanding improvements to material conditions, detainees more frequently seek assistance with issues such as obtaining conditional release, avoiding pre-trial detention, or securing transfers to rural prisons. As one Ombudsman representative observed: “They are not primarily asking for better living conditions, they just want to get out of detention.”

MANDATES AND ACCESS OF NGOS, LEGAL CLINICS, AND MONITORING BODIES

The Greek National Preventive Mechanism (NPM), operating within the Ombudsman’s Office, has the authority to visit prisons without prior authorisation, though its mandate does not extend to providing individual legal advice.

Other organisations, including NGOs and legal clinics, must request permission from the Prison Council to visit detainees. Once authorised, members may provide legal advice if formally appointed by the detainee. By law, detainees are entitled to confidential communication and correspondence with both national and international organisations. NGOs and legal clinics may distribute written materials such as guides, brochures, and legal information, but these documents are subject to screening by prison staff upon entry.

STANDING OF NGOS

Greek jurisprudence has so far recognised NGO standing primarily in environmental cases. Abstract or impersonal legal norms, such as legislation, cannot be challenged through NGO action. Nonetheless, many NGOs maintain legal aid departments staffed with lawyers, through which they provide legal assistance to vulnerable groups, including detainees.

Chapter 5

Access to Justice for Pre-Trial Detainees in PORTUGAL: Law and Practices

Authors:
Diana Silva Pereira
Marta Bulhosa
Forum Penal
Inês Horta Pinto
University of Coimbra Institute for Legal Research

Editor:
Viktoria Kasongo Akerø
European Prison Litigation Network

TABLE OF CONTENTS

1 Introduction 176

Roadmap of National Chapter 176

Methodology 177

2 Overview of the Detention Regime for Pre-Trial Detainees 178

Legal Framework Shaping Rights of Pre-Trial Detainees 178

Statistics 179

3 Bodies Competent to Receive Complaints and Effectiveness of Remedies 182

Overview 182

Internal Administrative Complaints 182

External Administrative and Monitoring Bodies 183

Judicial Remedies 183

Compensatory Remedies 185

Court Fees and Complaint Filing Costs 186

Effectiveness of Remedies 187

4 Organisation of Access to Justice in Pre-trial Detention 189

Vulnerability of Pre-trial Detainees and Necessity of Legal Information and Advice 189

Access to Legal Information 189

Obligation to Inform Detainees of Their Rights 190

Actors Providing Legal Information 193

Communication and Information Tools 193

Provision of Legal Information to Foreign Prisoners 195

Reported Shortcomings in the Quality, Accessibility, and Dissemination of Legal Information 195

Provision of Legal Advice 198

Advice Deserts of Prisons: A Structural Gap Acknowledged by the Portuguese Government 198

General Profile of Lawyers Active in Prison Litigation 201

Legal Access in a Controlled Environment: Practical Modalities and Limitations 202

Legal Assistance for Third-Country Nationals 205

Prisoner-Led Legal Assistance in the Absence of Formal Structures 206

5 Legal Aid Scheme 207

Scope of Legal Aid to Pre-Trial Detainees' Enforcement of Rights in Detention 208

Legal Framework and Funding of Legal Aid Scheme 210

Coverage and Scope of Compensation 212

Mechanisms of Appointment and Remuneration 214

Extent of Legal Aid Coverage for Interpretation and Expert Evidence 215

Eligibility 216

Application Procedure 216

Evaluation and Granting of Applications 217

Financial Implications for Legal Aid Recipients Following an Unsuccessful Case 218

Quality of Legal Aid Lawyers 219

Practical Obstacles to Accessing Legal Aid 220

6 Organisation of Bars' and Lawyers' Action in Detention 223

Relationship between the Bar Association and Prison Administration 224

Bar Associations and the Monitoring of Prison Conditions 224

Provision of Information by Bar Association 225

Regulation of Bars' Involvement in Legal Support to Detainees 225

Organisation of Educational and Training Initiatives on Prison Litigation 226

7 Role of NGOs, Legal Clinics, and National Monitoring Bodies of Prison Conditions 228

Capacity of Organisations to Intervene in Penitentiary Institutions and Provide Legal Advice 228

Standing of NGOs 229

Dedicated Networks of NGOs on Prison Litigation (or Lack Thereof) 230

1 INTRODUCTION

ROADMAP OF NATIONAL CHAPTER

This national chapter examines the legal framework and practical realities governing the rights of pre-trial detainees in Portugal, with particular attention to their access to justice for enforcing rights and challenging detention conditions. The analysis focuses on how the law operates in practice within prisons and the extent to which procedural and institutional safeguards effectively protect the rights of remand prisoners.

The chapter draws on both desk-based and field research conducted between 2024 and 2025. After completing this research, which encompassed both desk analysis of the national legal framework and interviews with relevant stakeholders, the researchers concluded that existing legal assistance for persons deprived of liberty remains insufficient—both at the regulatory level and in practice. There is a clear absence of specialised support for prison litigation, and the limited understanding of the system among many interviewees appears itself symptomatic of its weaknesses. Any gaps that remain in this report therefore mirror the gaps within the system, as well as the lack of institutional awareness regarding the specificities and challenges of providing legal assistance in places of detention.

The analysis begins by outlining the methodology used in the research, followed by an overview of the detention regime applicable to pre-trial detainees, including the legal basis for pre-trial measures, the conditions of detention, and the main characteristics of the prison population. It then examines the complaint and remedy mechanisms available to detainees, evaluating both their procedural structure and their effectiveness in practice.

Subsequent sections assess prisoners' access to legal information, identifying key gaps in dissemination, language accessibility, and standardisation, particularly for vulnerable groups such as foreign nationals. The chapter then turns to the scope and practical implementation of legal aid in prison litigation, analysing barriers to eligibility and continuity of assistance. Then, the role of the lawyer is addressed, examining both the formal legal framework governing prisoners' right to legal assistance and the practical barriers that limit its exercise in

detention. This is followed by an examination of barriers prisoners face in acting as litigants on their own, the informal mechanisms of support among inmates, and the structural challenges that hinder access to effective remedies. The final sections address the role the Bar Association, NGOs and national monitoring bodies.

Overall, the chapter seeks to identify the systemic and practical obstacles that pre-trial detainees face in exercising their rights and to assess the degree to which existing legal and institutional frameworks provide real, rather than merely theoretical, access to justice in detention.

METHODOLOGY

The research in Portugal was carried out by Forum Penal (Diana Silva Pereira and Marta Bulhosa) and Inês Horta Pinto (University of Coimbra, Institute for Legal Research) through a combination of desk research and field research. The desk research was undertaken between November 2024 and January 2025, providing an overview of the applicable legal framework, relevant case law, and existing secondary sources on detention and access to justice. Field research was conducted in March 2025 with the aim of complementing the desk-based findings and grounding them in the practical realities of detention.

The fieldwork involved eight semi-structured interviews with key stakeholders. These included one inmate currently detained in Lisbon Central Prison; two lawyers practising in the field of criminal and penitentiary law; a representative of a non-governmental organisation providing social support to detainees and formerly incarcerated persons; two representatives of the National Preventive Mechanism; a representative from the National Bar Association; a representative of Social Security, the national authority responsible for deciding legal aid requests; and a representative from the Prison Service. The selection of participants was designed to ensure that perspectives from inside prison, from the legal profession, from civil society, and from the independent monitoring framework were all represented.

The interviews were guided by a common template covering themes such as access to legal information, the organisation and

effectiveness of legal aid, the role of NGOs, the existence of informal prisoner support networks, and the availability of remedies inside prison facilities. While the questions provided structure, the interviews also allowed space for open discussion to capture the lived experience of detainees and the insights of practitioners.

Taken together, the desk and field research provided a multi-perspective view of access to justice in Portuguese prisons. The legal framework identified through the desk review was largely validated by the fieldwork, while the interviews highlighted significant challenges in practice, including bureaucratic delays, shortcomings in dissemination of legal information, and the reliance on informal prisoner networks. The contribution of each stakeholder group was crucial in exposing the gap between formal guarantees and actual implementation.

2 OVERVIEW OF THE DETENTION REGIME FOR PRE-TRIAL DETAINEES

LEGAL FRAMEWORK SHAPING RIGHTS OF PRE-TRIAL DETAINEES

Pre-trial detention in Portugal is regulated by the Code of Criminal Procedure and is conceived as a measure of last resort. It may only be imposed where there is strong evidence of a serious offence and if the judge considers that no other coercive measure is sufficient. The law requires one of three grounds to be demonstrated: risk of escape, risk of interference with the investigation, or risk of continued criminal activity or disturbance of public order.[1] Pre-trial detention is limited to offences punishable by a maximum sentence of more than five years, or more than three years in cases of violent crime, terrorism, or organised crime. The decision to impose detention is taken by a judge, must be reasoned, and is subject to mandatory review every three months.

1 Criminal Procedure Code of Portugal, Article 204.

The implementation of pre-trial detention is governed by the Code on the Enforcement of Sentences and Measures involving Deprivation of Liberty (2009) and the General Prison Regulation (2011). The Code requires that pre-trial detainees be accommodated separately from sentenced prisoners,[2] and sets out specific guarantees reflecting the principle of the presumption of innocence.[3] Accordingly, detention may not involve restrictions beyond those strictly necessary to secure the purposes of the measure and to maintain order, security, and discipline in the establishment.

Pre-trial detainees may, if they so wish, participate in educational programmes, vocational training, work, and other prison activities. They are required to maintain their accommodation and participate in general upkeep of the prison facilities. The regime allows for frequent family contact: visits should be granted whenever possible on a daily basis, and detainees may, subject to health and security considerations, receive food from outside the prison.

Unlike sentenced prisoners, pre-trial detainees are excluded from most sentence adjustment mechanisms, such as open regime or standard prison leave. They may, however, be granted special leave on grounds of particular human significance or urgent personal need, as well as escorted exits for activities, attendance at court proceedings, or access to health care. In addition, pre-trial detainees may, in certain cases, be placed under a high-security regime.

STATISTICS

Spaces of Pre-Trial Detention

The Code governing the enforcement of sentences and measures involving deprivation of liberty (2009) stipulates that pre-trial detainees must be held in separate accommodation from convicted prisoners.[4] Portugal's penitentiary system is composed of 49 prison establishments, none of which are exclusively designated as pre-trial detention centres. Instead, pre-trial detainees are generally held in the same establishments as convicted prisoners, though

2 Ibid, Article 9 §2.

3 Ibid, Article 123.

4 Ibid, Article 9§2.

as a rule they are housed in separate wings or pavilions. Some establishments are primarily used for detainees awaiting trial or serving short sentences, while others are reserved for convicted prisoners serving longer terms. Nevertheless, the overall picture is one of mixed-use facilities rather than dedicated pre-trial institutions.

Main Social Characteristics of the Prison Population

As of 31 December 2024, Portugal's prison population stood at 12,207 persons. Of these, 9,468 (77.6%) were serving a sentence and 2,739 (22.4%) were in pre-trial detention, either awaiting trial (2,165 persons) or convicted but awaiting a decision on appeal (574 persons). The vast majority of prisoners were men (93%), with women accounting for just 7% of the population, and 17.4% were foreign nationals. No official statistics are collected on ethnic background. (20)

More detailed data from 2023 provide additional insight into the demographic profile of the pre-trial population. Of the 2,655 pre-trial detainees recorded at that time, 2,422 were men and 233 women. Portuguese nationals formed the majority, but foreign nationals were also well represented, with 720 men and 83 women. Age distribution reveals that detention particularly affects prisoners in their twenties and thirties: more than 4,700 pre-trial detainees fell between the ages of 21 and 39. A smaller number were below the age of 21, and nearly 1,000 were aged 60 or above, indicating that while prison primarily affects younger adults, older detainees remain a significant minority.

Educational levels varied considerably. While a small proportion of pre-trial detainees held a university degree (380 persons), and many had completed basic or secondary schooling, a significant number had little or no education: 362 were illiterate and a further 447 could read and write but had never received formal education. This profile highlights a prison population marked by social and educational disadvantage, with a small but notable group of highly educated prisoners.[5]

Foreign nationals remain overrepresented in pre-trial detention. On 31 December 2022, more than half of foreign women (50.7%) and over one-third of foreign men (37%) were held on a pre-trial basis,

5 Available on the website of the DGRSP (Pre-trial detainees by sex/nationality, 2023: LINK.

compared with 19.6% of Portuguese women and 16.4% of Portuguese men.[6] This disparity suggests that nationality plays a significant role in shaping detention outcomes, with foreign nationals more likely to be held in custody pending trial or appeal than Portuguese nationals.

Trends Across the Past Decade

The Portuguese prison population has generally followed a downward trend over the past decade, although fluctuations reflect changes in legal and policy frameworks. Numbers declined from 13,779 in 2016 to 12,793 in 2019, before dropping sharply to 11,412 in 2020 following the adoption of exceptional measures to prevent the spread of COVID-19 in prisons.[7] A modest increase followed in 2021 and 2022, with the population reaching 12,198, before stabilising at 12,193 in 2023. These fluctuations illustrate both the long-term trend towards a gradual reduction in the prison population and the short-term impact of legislative reforms, such as the 2017 expansion of home detention[8] and the 2020 pandemic measures.

Throughout this period, the proportion of pre-trial detainees has consistently remained below 20%, a stability largely attributed to the 2007 revision of the Code of Criminal Procedure. The most recent figures from 2024, however, show a higher percentage (22.4%), indicating a possible reversal of the trend and suggesting renewed pressure on the pre-trial detention regime.

6 Ishiy, Karla Tayumi (2023), Relatório sobre a população reclusa em Portugal de 2022, Revista Portuguesa de Ciência Criminal 33, p. 373.

7 Law No. 9/2020, of 10 April.

8 Law No. 94/2017, of 23 August.

3 BODIES COMPETENT TO RECEIVE COMPLAINTS AND EFFECTIVENESS OF REMEDIES

OVERVIEW

Internal Administrative Complaints

Both pre-trial detainees and sentenced prisoners are entitled to submit complaints, petitions, grievances, and requests concerning the execution of custodial measures in defence of their rights. These may be addressed to the prison governor, who may attempt mediation, decide on the matter within thirty days, or forward the complaint to the competent authority. Complaints may also be submitted directly to the Director-General of Prison Services (DGRSP) or the Audit and Inspection Service of the Prison Authorities (SAI), without specific formalities or deadlines.

In 2021, the Prison Service adopted Circular No. 9/2021 (Regulation on Complaints and Requests for the Prison Population), which established a more standardised procedure for handling complaints across all prison establishments.[9] The Regulation applies to all areas of prison life and requires monthly reporting to the SAI to ensure centralised oversight. The SAI is further tasked with conducting inspections to verify compliance and may issue recommendations for improvement. Importantly, the Circular does not prevent prisoners from submitting complaints directly to the Director-General, the SAI, or external authorities.

However, the text of Circular No. 9/2021 is not publicly available on the DGRSP website or through other official channels, preventing an assessment of whether it can be regarded as a sufficient remedy. Public access to all rules governing prison establishments is a prerequisite for the effective exercise of prisoners' rights, as it enables lawyers, NGOs, and relatives to understand and invoke the applicable framework. To date, there is no available evaluation of

9 Report of the NPM in respect of 2021: LINK.

the Regulation's effectiveness in preventing violations of Article 3 ECHR concerning conditions of detention.

In practice, the effectiveness of complaints to prison directors or to the Director-General of Prison Services remain largely theoretical.[10] Although inmates may formally raise grievances through these channels, this mechanism does not constitute a regular or effective means of obtaining a timely or meaningful response capable of halting ongoing violations of the prohibition of inhuman or degrading treatment.

External Administrative and Monitoring Bodies

Prisoners have the right to correspond, without restriction, with diplomatic and consular entities, the Bar Association, the Ombudsperson (who also functions as the National Preventive Mechanism under OPCAT), the Inspectorate-General of Justice Services, and other relevant bodies (Article 68 §4). They may also address petitions and complaints to external authorities, namely the Inspectorate-General of Justice Services, the Ombudsperson, the Bar Association as well as regional and international human rights bodies.

Complaints made by prisoners and addressed to the prison administration are not communicated to courts. However, where complaints reveal facts amounting to criminal offences, and certain conditions are met, the prison administration must communicate it to the public prosecution service.

Judicial Remedies

There are no judicial remedies specifically available to challenge material conditions of detention in Portugal. The courts for the execution of sentences (tribunais de execução das penas) have no explicit competence in this area and lack the power to order improvements, renovations, or other measures addressing

10 European Prison Litigation Network and Forum Penal, Communication in accordance with Rule 9.2 of the Rules of the Committee of Ministers: Case Petrescu v Portugal (No 23190/17, June 2023) (EPLN, 2023): LINK.

inadequate detention conditions. The Code contains no clear or detailed provisions granting these courts oversight over the physical state of prison facilities.

While prisoners may appeal certain administrative decisions, the right of appeal applies only to those acts expressly listed in the law and does not extend to complaints regarding conditions of detention.[11] Similarly, there is no right to appeal against a decision refusing a transfer to another cell or prison establishment. In this respect, no judicial or even theoretical remedy exists, let alone a practical and effective one.

In general, judicial supervision of sentence implementation and pre-trial detention is exercised by the courts for the execution of sentences (Article 138). Prisoners may submit requests or complaints to the court either by mail or through the prison registry office, which provides a receipt and forwards the submission to the court together with any relevant documentation.

These courts have two main areas of competence: first, they decide on matters concerning the adjustment of sentences—such as temporary leave, conditional release, or modifications to the regime of execution; and second, they provide judicial review of specific administrative decisions taken by the prison authorities. Under Article 200, prisoners may challenge (impugnar) only the two most severe disciplinary sanctions (compulsory stay in accommodation and confinement in a disciplinary cell), as well as administrative refusals of visits, restrictions on telephone communications, or denials of interviews with the media.

The procedure for such challenges, regulated by Articles 200–211 of the Code, is designed to be straightforward and accessible. Prisoners must file their challenge within eight days of notification, or within five days in the case of disciplinary sanctions. No particular formalities are required: the application must indicate the factual or legal grounds, any supporting evidence, and a concise statement of the claim. Legal representation is not mandatory unless questions of law arise.

Once the request is received, the judge has five days to reject it if it is inadmissible or manifestly unfounded, or to admit it and proceed.

11 Article 200 of Law 115/2009.

If the application is unclear or incomplete, the prisoner may be invited to amend it. When admitted, the prison administration and the Public Prosecutor's Office are notified and have five days to respond. The judge may order evidentiary measures as needed. For disciplinary matters, a decision must be delivered within five days. The court's ruling may result in the amendment or annulment of the contested administrative decision.

Compensatory Remedies

As regards compensatory remedies—namely, the common non-contractual liability lawsuit concerning State action—prisoners may bring a civil liability action before the administrative courts under the legal framework governing State liability for damages arising from the exercise of legislative, jurisdictional, and administrative functions. This framework, set out in Law No. 67/2007 of 31 December,[12] provides that compensation may be awarded where there has been an "abnormal functioning of the service".[13]

At least one ruling of the administrative courts[14] has ordered the State to pay compensation for the detention conditions endured by an applicant in Caxias Prison, finding violations of Article 3 of the European Convention on Human Rights and Articles 1 and 25 of the Portuguese Constitution, which enshrine the dignity of the human person and the prohibition of cruel, inhuman or degrading treatment. This judgment, issued by the Administrative Court of Sintra, declared the State responsible for the applicant's detention in degrading prison facilities and ordered compensation accordingly. The case is referenced in the 2021 Report of the National Preventive Mechanism,[15] although the ruling itself has not been published and therefore remains largely unknown to the public.

However, this cannot be regarded as an effective remedy. First, there is no specific legal framework governing compensation claims for prison conditions. Second, as noted earlier, widespread shortcomings

12 As amended by Law No. 31/2008 of 17 July.

13 Articles 7 §4 and 9 §2.

14 Ruling of the Tribunal Administrativo e Fiscal de Sintra, of 20 March 2021, case no. 1173/17.9BELSB.

15 available at LINK.

in prisoners' access to legal information and legal assistance mean that most inmates are unaware of the existence of such a remedy and therefore unable to exercise it effectively. Third, proceedings before the Portuguese administrative courts are notoriously lengthy, often taking several years, and in some cases more than a decade, to reach a final judgment. Finally, a single domestic judgment is insufficient to demonstrate the existence of a consistent and effective judicial practice.

COURT FEES AND COMPLAINT FILING COSTS

For prisoners, the act of filing a complaint within the prison administration does not involve any cost. These complaints remain internal unless they disclose conduct amounting to a crime, in which case the administration must forward them to the public prosecution service.

In criminal proceedings, no fee is required to initiate a case. The only exception concerns so-called "particular crimes," where prosecution depends on a private complaint. In such cases the victim must constitute themselves as an **assistente** (private prosecutor) and appoint a lawyer, which entails the payment of a fixed fee established by law. Victims may also choose to become an **assistente** in semi-public or public crimes in order to gain intervention rights, also subject to the same fixed fee, provided the request is made at least five days before trial.

There is no fee for lodging an appeal. However, at the conclusion of proceedings the losing party, whether the defendant or the **assistente**, must pay a court fee. This fee is variable within statutory limits and is determined by the judge on the basis of the case's complexity.

EFFECTIVENESS OF REMEDIES

The European Court of Human Rights has repeatedly found that the remedies available in Portugal cannot be regarded as effective for the purposes of Article 13 of the European Convention on Human Rights in cases concerning material conditions of detention. In Petrescu v. Portugal (December 2019),[16] the first in a line of rulings, the Court found a violation of Article 3 due to inhuman and degrading treatment and rejected the Government's argument that the applicant had failed to exhaust domestic remedies. The Court held that the remedies were insufficient on several grounds.

With regard to the right to petition and complain to the prison administration, the Court emphasised that the authorities in question do not have the independence required for this purpose, adding that CPT reports indicate a lack of confidence among prisoners in the internal complaints system of prisons.[17] As for complaints to the Ombudsperson, who also acts as the National Preventive Mechanism, the Court underlined that this body cannot adopt binding decisions or issue injunctions to the executive, but may only make recommendations.[18] With regard to recourse to the courts for the execution of sentences or to the administrative courts, it noted that the Portuguese Government had failed to demonstrate their effectiveness as a means of responding to poor detention conditions; furthermore, since the problem was structural, even a favourable court ruling would face significant practical obstacles in enforcement.[19] As for compensatory remedies, the Court noted the absence of examples showing that actions for State liability had provided effective redress.[20]

Petrescu v. Portugal is regarded as a quasi-pilot judgment, and its execution has since been under the supervision of the Council of Europe's Department for the Execution of Judgments. The Court reiterated its findings in Bădulescu v. Portugal[21] and in subsequent cases, consistently emphasising that Portugal lacks accessible and

16 Petrescu v. Portugal, no. 23190/17, 3 December 2019.

17 Ibid, § 81.

18 Ibid, § 83.

19 Ibid, § 82.

20 Ibid, § 86.

21 Bădulescu v. Portugal, no. 33729/18, 20 October 2020.

effective remedies, both preventive and compensatory. Between 2020 and 2024, ten further judgments concerning Portuguese prison conditions found violations of Article 3 of the Convention, with several also finding violations of Article 13 due to the absence of domestic remedies to challenge inadequate detention conditions.

In a joint Rule 9.2 submission of July 2024, Forum Penal and the European Prison Litigation Network argued that internal complaint procedures cannot be considered effective, that prisoners face major barriers in accessing legal information and legal aid, and that legal aid is excluded from key areas such as penitentiary and disciplinary law in non-judicial phases.[22] They highlighted that many prisoners, including those with low literacy, special needs, or foreign nationals, are effectively unable to exercise their rights. The Portuguese Bar Association publicly reinforced these criticisms in June 2024, stressing the absence of meaningful access to legal advice and urging the creation of a dedicated system of remote legal assistance for prisoners.

With respect to compensatory remedies, NGOs noted that civil liability actions are not effective in practice: there is no specific framework for detention conditions, prisoners often lack the knowledge or legal support to bring claims, and proceedings in the administrative courts can take many years, sometimes over a decade. They therefore called for legislative reform to establish effective compensatory remedies.

In its action plans before the Committee of Ministers, Portugal has acknowledged the deficiencies and committed to creating preventive remedies. It explained that the early dissolution of recent legislatures had delayed the legislative process, though preliminary drafting work and consultations with magistrates from execution courts had taken place.[23] On compensatory remedies, the Government pointed to new cases pending before administrative courts concerning detention conditions, healthcare, and safety, and argued that these reflected a growing judicial willingness to apply the civil liability regime to prison conditions.[24]

22 Rule 9, cited above.

23 Communication from Portugal concerning the group of cases Petrescu v. Portugal (Application No. 23190/17), 25 June 2025: LINK.

24 Communication from Portugal concerning the group of cases Petrescu v. Portugal (Application No. 23190/17), 25 June 2025: LINK.

4 ORGANISATION OF ACCESS TO JUSTICE IN PRE-TRIAL DETENTION

VULNERABILITY OF PRE-TRIAL DETAINEES AND NECESSITY OF LEGAL INFORMATION AND ADVICE

From the point of view of the access to justice and to court, the prison population accumulates social, cultural and economical disadvantages. Such disadvantages justify enhanced state efforts to ensure the provision of legal information and legal advice.

Nevertheless the research shows that access to relevant and comprehensible legal information as well as to legal advice from legal professionals remains uneven, inadequate, and particularly deficient for vulnerable groups such as foreign nationals, those with low literacy skills, and prisoners without private legal assistance.

As stressed by interviewees from NGO and the National Preventive Mechanism, many prisoners rely primarily on informal information being passed on by more experienced or literate inmates to others. In the absence of reliable systems of legal information and legal advise, this is a crucial source of legal information for prisoners, particularly those who do not speak Portuguese.

ACCESS TO LEGAL INFORMATION

Overall, while the Portuguese legal framework formally guarantees prisoners' access to legal information, field research shows that implementation remains inconsistent and fragmented. The information available within prisons is often confined to practical aspects of daily life rather than legal rights or remedies. Dissemination is irregular and predominantly in Portuguese, creating substantial barriers for foreign nationals and prisoners with low literacy. Social workers and in-house legal practitioners play a role in conveying rights-related information, yet there is no standardised

approach, and access largely depends on the initiative and capacity of individual staff members. As a result, many prisoners rely on more experienced or literate fellow inmates for translation, assistance with administrative forms, and basic legal understanding.

In practice, this means that persons deprived of their liberty in Portugal are often not fully aware of their rights and face considerable obstacles in exercising them. The absence of consistent, accessible information contributes to a sense of helplessness and frustration among prisoners and may, in concrete terms, impair their ability to make effective use of legal rights guaranteed by law.

A broader structural issue also affects access to legal information in Portugal. With reference to the publication of court decisions, since judgments of the first instance courts are not published, and not all judgments of the higher courts are published and there are no clear criteria for the selection of those that are indeed published.[25] This lack of systematic publication limits public and professional access to legal reasoning and jurisprudence, thereby constraining the right to judicial review and, more broadly, the right to an effective remedy.

Obligation to Inform Detainees of Their Rights

The obligation to inform detainees of their rights is rooted in the Portuguese constitutional framework. Since the adoption of the 1976 Constitution, Article 20 has stipulated that everyone has access to the courts to defend their rights, with the express safeguard that justice cannot be denied on account of insufficient financial means. Following the 1982 constitutional amendment, this provision was broadened to include the right to legal information, establishing that "everyone has the right to information and legal protection, as laid down by the law."

In the specific context of deprivation of liberty, the Constitution further provides that "every person deprived of liberty shall be informed promptly and in an understandable manner of the reasons for their arrest or detention and of their rights" (Article 27 §4). This imposes a direct duty on the authorities to ensure that detained persons are

25 See www.dgsi.pt and more recently on https://jurisprudencia.csm.org.pt.

immediately made aware, in clear terms, of both the grounds for their detention and the rights available to them. The 'Law on Access to Law' concretises these constitutional safeguards, and regulates regulates access to legal information, legal representation, and the courts.

Prior to the democratic transition of 1974 and the 1976 Constitution, legislation had recognised the need for legal aid for those without sufficient means, as reflected in Law No. 7/70 of 9 June 1970. After the adoption of the Constitution, Decree-Law No. 387-B/87 of 29 December 1987 was enacted to implement the constitutional mandate. This law was designed to cover the full spectrum of access to justice: legal information, legal advice, and legal aid, extending beyond criminal matters to all legal issues.

Decree-Law No. 387-B/87 affirmed key principles: that the system of access to law and the courts must ensure that no one is prevented, by reason of social or cultural status or insufficient means, from knowing, exercising, or defending their rights;[26] that access to justice is a shared responsibility of the State and the legal professions, to be realised through cooperation mechanisms;[27] and that the State must guarantee appropriate remuneration for legal professionals working within the system.[28] With respect to legal information, the law established a proactive responsibility on the Government to carry out permanent and structured initiatives aimed at raising legal awareness, including through publications and other forms of communication, with the aim of progressively establishing reception services in courts and judicial services.[29] The law also provided that individuals unable to pay legal fees or bear litigation costs were entitled to legal protection, which took two forms: legal advice and legal aid. Legal aid included total or partial exemption from court costs, as well as the payment of lawyer or solicitor services.[30]

The current legislative framework is set out in Law No. 34/2004 of 29 July 2004, last amended in 2023. This law continues to regulate access to legal information and legal protection.

26 Article 1.

27 Article 2.

28 Article 3.

29 Articles 4 and 5.

30 Article 7.

In addition to the general framework on access to law, the right of persons deprived of liberty to be informed of their rights is specifically safeguarded in legislation governing detention and the enforcement of prison sentences. This dual recognition, in both general law and prison-specific law, underscores the centrality of the obligation to inform detainees of their rights within the Portuguese legal system.

The implementation of pre-trial detention and prison sentences is governed by the Code on the Enforcement of Sentences and Measures Involving Deprivation of Liberty (2009) and the General Regulation of Prisons (2011). The Code expressly guarantees the right "to information, consultation and legal advice from a lawyer",[31] together with other rights closely linked to access to legal information, petition, complaint, and judicial review. These include the right to be informed upon entry into prison, and whenever necessary thereafter, of one's rights, duties, and applicable rules; the right to access the individual file and be kept informed about the procedural situation and the progress of the sentence or measure; and the right to be heard, to submit requests and complaints, and to challenge prison service decisions before the courts for the execution of sentences.[32] Prisoners also have the right to be assisted by a lawyer in disciplinary proceedings.[33]

Prisoners must be informed of their rights and duties in a manner they can understand, with translation provided where necessary.[34] Each prisoner must receive a leaflet containing information on their rights, duties, and rules in force, as well as practical details about services, activities, and access to relevant legislation. These leaflets should be available in Portuguese and in the most common foreign languages spoken by the prison population. Prisons are also required to provide access to written legal information, including penal and penitentiary legislation, the General Regulation of Prisons, and relevant international conventions, while prison libraries must contain copies of the Code and the applicable regulations and orders.

31 Article 7(n).

32 Articles 7(j), (l), and (m).

33 Article 110(2).

34 Article 117 of the Code, together with Articles 9 and 94 of the General Regulation of Prisons.

Actors Providing Legal Information

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 prison staff, such as reintegration officers or prison guards, and through the provision of leaflets and legislation.

Before the courts for the execution of sentences, when lawyers are appointed to cases, they play a central role in informing prisoners of their rights and ensuring compliance with deadlines.

Communication and Information Tools

The legal framework establishes a duty on prison facilities to provide inmates with access to legal information through specific tools. Article 117 of the Code and Articles 9 and 94 of the General Regulation of Prisons require that each prisoner be supplied with a leaflet, printed in Portuguese and in the foreign languages most commonly spoken by the foreign prison population. This leaflet must set out prisoners' rights and duties, the rules applicable to the execution of the sentence or measure, and practical information necessary for integration into prison life, including the services and activities available, their opening hours, and the locations where relevant legislation and regulations may be consulted.

In addition, the Code and the Regulation provide that relevant legislation and prison rules must be available in all prison libraries. This includes the Code, the General Regulation of Prisons, and a compilation of the regulations and orders issued by the Director-General of Prison Services and by the prison governor.

More recently, steps have been taken to introduce digital means of access. In March 2024 the Prison Service launched a new digital platform for inmates, piloted at Tires Female Prison and now being extended to other establishments. The platform provides secure access to a restricted range of authorised websites, including online newspapers, government services, official journals, the Ombudsperson, the Bar Association, the Prison Service and NGOs. It also enables prisoners to consult their individual files, access information and news about the prison system, and submit requests or complaints

electronically, which are then directed to the competent department without the intermediation of prison guards.

According to the published tender specifications, the list of authorised websites is approved by the Director-General and covers the official journals of the Republic and the Autonomous Regions, as well as the websites of key public institutions such as Parliament, the Ministry of Justice and the Public Prosecution Service. To facilitate use, computers connected to the portal are installed in common areas of prisons, including libraries and other suitable rooms.

Field research suggests, however, that the introduction of digital legal tools remains at an early stage. Lawyers interviewed indicated that no specific digital tools currently exist for prisoners or for defence counsel in the field of prison litigation. The National Preventive Mechanism confirmed awareness of the pilot platform but could not provide further details on its scope or implementation.

With regard to communication in judicial proceedings, one lawyer explained that digital communication generally takes place via Webex, which is used both for video calls between prisoners and their lawyers (subject to authorisation) and for hearings where prisoners or witnesses participate remotely. Although confidentiality cannot be fully guaranteed, prisoners are formally assured of privacy during these communications. In practice, to expedite hearings, some judges have authorised the temporary introduction of smartphones into prisons to allow video calls through applications such as WhatsApp.

Significant limitations remain. According to the NPM, lawyers seeking to access inmates' personal files or disciplinary records must still travel to the relevant prison and consult the documentation in physical form. Digital tools are primarily used for remote communication, both with legal representatives and family members, rather than for broader legal research or case management.

Provision of Legal Information to Foreign Prisoners

Article 4 of the Code establishes a set of “special guiding principles” for the execution of custodial sentences and measures imposed on foreign prisoners and on those belonging to ethnic or linguistic minorities. These provisions emphasise the need to respect cultural values, address difficulties in social integration, and overcome language barriers. In practice, this includes facilitating contact with consular or diplomatic authorities and non-governmental organisations supporting migrants, providing access to Portuguese language courses, ensuring the translation of documents, and enabling the intervention of interpreters when required.

The Code further stipulates that foreign prisoners must receive information, in a language they understand, regarding the possibility of serving their Portuguese criminal sentence abroad, the transfer of the sentence to another jurisdiction, and the execution of any ancillary expulsion order.[35] Complementing this, the General Regulation of Prisons requires that the leaflet on prisoners' rights and duties, prison rules, and integration-related information be made available not only in Portuguese but also in the foreign languages most commonly spoken by the prison population.[36]

In addition, foreign prisoners are entitled to receive visits from foreign lawyers, provided that these lawyers comply with the requirements of the Bar Association Statute for practising law in Portugal.[37]

Reported Shortcomings in the Quality, Accessibility, and Dissemination of Legal Information

Field research revealed significant shortcomings in the quality, accessibility, and dissemination of legal information available to prisoners in Portugal. While some information is provided within prison establishments, it is limited in scope, primarily available only in Portuguese, and focused more on practical day-to-day

35 Article 117.

36 Article 9.

37 Articles 104 and 233 of the General Regulation.

matters than on legal rights and remedies. As such, access to relevant and comprehensible legal information remains uneven, inadequate, and particularly deficient for vulnerable groups such as foreign nationals, those with low literacy skills, and prisoners without private legal assistance.

Quality and Relevance of Information

According to inmates, the information available in prisons is typically posted on large wall placards, but it does not cover substantive legal rights. Instead, it concerns routine matters such as visiting schedules, daily timetables, or the quantity of food and clothing that may be provided by relatives. The National Preventive Mechanism (NPM) confirmed that legal rights and procedures are not systematically or uniformly communicated. They reported that information is often passed on inconsistently and almost exclusively in Portuguese, creating barriers for foreign inmates. Although the Agency for Integration, Migration and Asylum provides a phone line that can assist with translation, this service is rarely known or used in practice. The NPM has therefore recommended the creation of a single, standardised leaflet to be distributed across all prisons upon intake, in order to ensure that rights and relevant procedures are conveyed in a consistent and accessible manner.

Sources of Information

In practice, inmates reported that no staff member proactively explains the available information. Social workers were identified by both NGOs and the NPM as the primary staff resource for conveying rights-related information. The NPM also highlighted the importance of in-house legal practitioners, particularly in the context of disciplinary proceedings where defence rights are at stake. Nevertheless, the delivery of information remains ad hoc and heavily dependent on the availability and initiative of individual staff.

Information During Intake

The provision of legal information at the point of intake is highly inconsistent. While information may be visible on placards, inmates reported that it is not formally explained or systematically introduced during onboarding. The NPM confirmed that whether information is provided depends on variable factors such as the staff

member conducting the intake, staff availability at the time, and the language spoken by the inmate. Crucially, there is no standardised intake procedure across prison establishments to ensure uniform delivery of essential legal information.

Role of External Actors

The NPM underlined the essential role of lawyers in informing prisoners of their rights and obligations and in detecting and acting upon violations. To address the current gaps, they advocated for the introduction of State-appointed duty lawyers, ideally available in all prisons on a rota basis, or at least in the largest establishments. Currently, external organisations such as NGOs or human rights groups play a limited role in the systematic circulation of legal information, though their involvement could provide an important supplement to state provision.

Language and Literacy Barriers

Language barriers pose a major obstacle. Information is predominantly available only in Portuguese, leaving non-Portuguese speakers dependent on informal translations by fellow prisoners, often in English. While the Agency for Integration, Migration and Asylum phone line exists for translation support, it remains little known and seldom used. In addition, all legal aid request forms and forms for access to a lawyer during disciplinary proceedings are written solely in Portuguese. This severely disadvantages foreign prisoners and those with limited literacy, raising concerns about both accessibility and fairness.

Access to Forms and Written Materials

Although prisoners can theoretically access printed forms to file motions or requests, in practice these are controlled by the Wing Chief ("Chefe de Ala"), who maintains pre-prepared templates divided by topic (e.g. requests to see a doctor, applications for prison leave, or complaints). Completed forms must then be deposited in the designated boxes. While a complaint box is available for confidential grievances, inmates expressed reluctance to use it. Since the process requires requesting a form from the Wing Chief and visibly depositing it in the box, prisoners fear that staff will identify the complainant and reprisals may follow. The NPM confirmed that while a dedicated complaints box exists for confidential use, trust in the confidentiality of the mechanism is weak.

PROVISION OF LEGAL ADVICE

Advice Deserts of Prisons: A Structural Gap Acknowledged by the Portuguese Government

Prisoners are entitled to legal assistance in a range of proceedings, although the requirement for representation varies. In disciplinary proceedings within prison, the law expressly provides for the right to be assisted by a lawyer.[38] Legal representation is also permitted in hearings concerning early release and prison leave, however, the presence of a lawyer in these hearings is not mandatory by law.

Under Article 147 of the Code, representation by a lawyer is always permitted in proceedings before the courts for the execution of prison sentences, though it becomes mandatory only in certain circumstances. Specifically, legal assistance is required when questions of law arise, such as in judicial review of decisions taken by the prison administration. Legal representation is also compulsory in cases involving prisoners declared criminally irresponsible on grounds of mental illness and placed under internment measures in forensic units.

While prisoners may privately instruct a lawyer, those unable to do so may receive legal aid counsel appointed **ex officio** by the Bar Association from a list of volunteers registered for specific areas of law. In criminal proceedings, once a person is granted legal aid, the lawyer remains appointed until the judgment becomes final. After this point, assistance automatically ends, and prisoners who wish to have legal representation during the execution of their sentence must reapply for legal aid. This requires completing a Social Security application form again, a process that many prisoners are either unaware of or lack the knowledge to navigate effectively, creating a significant barrier to accessing legal assistance during the enforcement phase of their sentence.

At present, however, access to legal advice for those unable to afford private representation, particularly after final conviction, is

38 Article 110(2).

neither practically nor effectively guaranteed. Inmates in Portugal face considerable limitations in obtaining legal advice. Some of these constraints stem directly from the inherent restrictions of imprisonment itself, such as limited freedom of movement and communication. Others are linked to the structural vulnerabilities of the prison population, which includes a high proportion of individuals experiencing economic hardship, low literacy, addiction, undocumented status, or displacement from their home regions. These factors combine to make the practical exercise of the right to legal assistance significantly constrained in practice, despite its formal recognition in law.

As the Bar Association has acknowledged, the lack of accessible legal advice in prisons remains a major structural gap. In a public statement issued on 22 June 2024, the Portuguese Bar Association declared that "one of the most obvious gaps in the Portuguese prison system is the lack of legal advice. Many inmates in Portugal do not have access to legal advice worthy of that name, and therefore do not make use of the legal mechanisms that are at their disposal during the execution of their sentences, which clearly conflicts with the defence of their rights, freedoms and guarantees." The Bar further reiterated its longstanding call for the creation of a specific system to provide remote legal advice to prisoners, integrated into the national system of access to law and the courts. Such a mechanism, it argued, should not require prior validation by Social Security and should be capable of ensuring rapid and effective access to legal assistance for inmates, given their particularly vulnerable situation.

From here, it is clear that to make the rights of persons deprived of liberty truly effective, access to lawyers within prison establishments must be facilitated through the establishment of a dedicated legal information and orientation scheme. Such a scheme could be provided by lawyers registered with the Portuguese Bar Association, who would attend prisons regularly to offer in-person legal guidance. This would allow detainees to understand their rights, make informed complaints, and exercise their legal entitlements effectively.

Between 27 September and 7 October 2016, the European Committee for the Prevention of Torture (CPT) carried out a visit to Portugal. Its report, adopted on 13 November 2020, and the subsequent

response by the Portuguese Government on 27 February 2018, provide important insight into this issue.[39] In its reply, the Ministry of Justice stated:

> " It has already been agreed between the Directorate-General for Reintegration and Prison Services and the Bar Association to set up legal counselling offices in prisons where lawyers may provide free information and legal advice to inmates on various issues concerning their lives—particularly how to make a complaint about less appropriate treatment, as well as to challenge decisions that are not favourable to them. Talks are currently taking place to solve logistical problems, and we believe that such offices will become a reality in the very near future. "

This statement is significant for several reasons. First, the Portuguese Government formally recognised that providing legal advice to inmates through Bar-registered lawyers constitutes an essential safeguard against ill-treatment in prisons. Alongside other preventive measures outlined in its response, free access to legal assistance was framed as a key instrument for humanising prison conditions and empowering prisoners both personally and socially. Second, the Government explicitly committed to establishing legal counselling offices within prisons, in cooperation with the Bar Association, to offer legal support in matters such as filing complaints and challenging unfavourable administrative decisions related to sentence execution.

The agreement between the Directorate-General for Reintegration and Prison Services (DGRSP) and the Bar Association, referred to as the "Protocol", was negotiated between 2017 and 2019. Forum Penal actively participated in this process, drawing on comparative experiences, particularly from Spain's long-standing Servicio de Orientación y Asistencia Jurídica Penitenciaria (SJOAP), which provides regular legal orientation and assistance within prisons.

The draft Protocol envisioned the regular presence of lawyers in prison establishments to assist inmates. Their support would include: Referrals to the System of Access to Law and Courts (legal

39 Document CPT/Inf (2018) 7.

aid), including information about procedures and assistance in completing and submitting applications; Provision of legal information and advice on matters not requiring representation before a court, such as complaints to prison governors or the DGRSP, parole and transfer requests, disciplinary procedures and appeals, and issues relating to civil, family, labour, or administrative rights; Assistance with drafting letters and requests for the renewal of personal documents, as well as information on social and administrative matters relevant to reintegration.

However, the Protocol was never finalised or signed. Consequently, as of today, the proposed "legal counselling offices in Portuguese prisons where lawyers may provide free information and legal advice to inmates" do not exist.

General Profile of Lawyers Active in Prison Litigation

The research suggests that there is no clearly defined profile of lawyers working in prison litigation in Portugal, and that this field remains marginal and fragmented. According to one lawyer, any lawyer, without restriction, may report violations to the Bar Association, in particular through the Human Rights Commission. Nevertheless, the Bar itself reported having no record of complaints, reports or requests relating to difficulties faced by lawyers in supporting beneficiaries in prison, including problems of access or representation within the legal aid system. While the Bar receives a large volume of requests and communications from lawyers generally, it does not segregate penitentiary law from criminal law, and therefore has no data on which professionals work in this field. Information concerning the education and average age of lawyers registered for criminal legal aid does exist but has not been processed, and could not be made available to researchers during the study.

As regards the professional background of lawyers involved in prison litigation, field research indicates that they are very few in number and usually practise independently or within small firms. The National Preventive Mechanism noted that a significant number of applications currently pending before the European Court of Human Rights concerning prison conditions have been submitted by a single lawyer, himself a former inmate, who is widely

recommended within the prison population. One of the lawyers interviewed reported that around 90% of their professional time is spent on litigation, although not exclusively on prison-related matters.

Links between lawyers active in prison litigation and NGOs, human rights organisations, or universities could not be identified through the interviews conducted. The Bar Association stated that some lawyers registered within the legal aid system also hold positions within Bar structures, but provided no information about potential connections to NGOs or other organisations. The lack of NGOs dedicated specifically to prisoners' rights, combined with the large number of lawyers enrolled under the broad category of criminal law in the legal aid system, suggests that there are no strong institutional or activist networks linking lawyers involved in prison litigation. Furthermore, university legal clinics are not permitted to practise law in Portugal, limiting the role of academic institutions in this field.

Legal Access in a Controlled Environment: Practical Modalities and Limitations

The practical arrangements for providing legal information and assistance in custody are primarily regulated by Article 61 of the Code and Articles 102–106 of the General Regulation of Prisons. Prisoners have the right to communicate with a lawyer personally and in private, in premises that ensure confidentiality and allow only visual surveillance. Such communication does not require prior authorisation.

Premises and Confidentiality

All prisons must provide spaces for lawyer–prisoner consultations that guarantee privacy. In newer establishments, these are purpose-built rooms with separate entrances for lawyers and prisoners, lockable doors, and soundproofing. In older facilities, meetings often take place in small rooms, sometimes converted cells, which may be located within a wing or ward. These rooms are not always fully closed, but lawyers generally report that confidentiality is not undermined in practice, as guards do not usually remain directly outside. Regardless of the physical set-up, the law requires that exchanges of documentation necessary for legal representation take place freely, without monitoring, and that

phone calls with lawyers are also confidential. Lawyers may not, however, access accommodation wings or other internal parts of the prison beyond designated meeting rooms.

Regularity and Scheduling

Consultations with lawyers usually occur on working days and during regular office hours, with schedules defined in coordination with the Bar Association. However, Article 103 of the General Regulation and Article 61 of the Code provide that meetings may also take place outside these hours, including on non-working days, if the lawyer briefly justifies the urgency and the prejudice that postponement would cause. In such cases, the prison director may only refuse access on grounds of security or service needs, and must provide written justification and an alternative time as soon as possible. The frequency of visits is not regulated, leaving it to each lawyer's professional judgment and the needs of the case.

Access to Files

Lawyers are also entitled to consult their client's penitentiary file on prison premises, excluding classified documents or third-party nominative information. Such consultation must occur in the registry office and under the supervision of a clerk.

Reported Barriers

Field research shows that lawyers' access to prisoners in Portugal is shaped by a combination of deontological restrictions, practical limitations, and uneven institutional practices across prisons. The reliance on personal networks and discretionary practices leads to unequal access to legal assistance, with privately retained counsel enjoying more consistent contact and influence than legal aid lawyers.

While the legal framework guarantees unrestricted visits and confidentiality, practical constraints affect implementation. The reimbursement system for travel costs under Ordinance 10/2008 limits compensation to a small number of prison visits, meaning legal aid lawyers may not recover the expenses of frequent travel. In practice, this discourages some appointed lawyers from visiting regularly, and many inmates report that they receive few or no visits from their legal aid representatives during detention.

With respect to initial contact, lawyers cannot advertise their services and therefore access to potential clients depends largely on family or friends on the outside or on word of mouth within prisons. The National Preventive Mechanism (NPM) highlighted the example of a former inmate, now a lawyer, who is widely recommended among prisoners and has submitted the majority of applications to the European Court of Human Rights concerning prison conditions.

Lawyers' attendance at detention facilities is not organised through a central system. Visits are in principle permitted during public opening hours without prior notice. However, practices differ from prison to prison. For example, Coimbra prison has introduced a requirement for prior booking of lawyer visits in order to monitor access and prevent clientele acquisition. Videoconferencing facilities are available for lawyer–client meetings, but the NPM noted that smaller prisons are generally more capable of making these accessible than larger ones. The Bar Association confirmed that lawyers' access is uneven, describing it as dependent on the particular prison, its organisation, and external factors.

Material obstacles also affect access. Legal aid only covers three prison visits, with travel costs reimbursed only at the end of proceedings, which often last for years. As a result, prisoners relying on appointed legal aid lawyers are likely to receive fewer visits than those who can privately retain counsel.

Administrative challenges further limit access. Many prisoners are unaware that they can instruct a lawyer to accompany them throughout the execution of their sentence. For those without outside support, the involvement of social workers or in-prison legal practitioners is often decisive in determining whether they receive this information. The NPM reported that in-prison legal practitioners play a key role, for example by suspending deadlines in disciplinary proceedings where prisoners choose to be represented by a lawyer, but this practice is not standardised across prisons. The NPM and NGO representatives also noted that restrictions are sometimes justified by concerns that lawyers have previously breached rules or brought prohibited items into prisons.

As regards in-prison conditions, researchers did not identify systemic barriers to access, with the exception of one prison where a prolonged

strike by prison guards severely limited lawyer visits. Confidential spaces for meetings are generally available, although contacts with medical staff and social workers can be difficult to obtain and vary widely across prisons. Prisoners escorted outside to attend court hearings are particularly likely to face restrictions on private communication with their lawyers.

Problems were also reported in relation to access to prisoners' files. The NPM cited several cases in which lawyers were denied access to documentation concerning disciplinary proceedings. At the same time, one of the researchers, a practising lawyer, recounted personal experience of successfully obtaining such files and CCTV footage, while stressing that the speed and reliability of disclosure differs greatly between prisons.

The initiation of cases follows multiple channels. Inmates can submit confidential complaints through a designated "box," which also accepts everyday requests. However, staff do not systematically inform prisoners about its use, and many prisoners distrust its confidentiality, fearing guards will know who submitted a complaint. Staff are also required to register and forward each complaint to the General Directorate of Prisons, a burdensome obligation that may discourage dissemination of the tool. As a result, the mechanism appears underused and lacks clear procedures for follow-up. By contrast, complaints submitted through lawyers are perceived as more effective, as they are typically fast-tracked and receive greater attention.

Legal Assistance for Third-Country Nationals

Article 4 of the Code establishes a set of special guiding principles aimed at protecting the rights of foreign prisoners and those belonging to ethnic or linguistic minorities. These principles require that the execution of custodial sentences and measures should, as far as possible, enable such prisoners to express their cultural values, overcome integration challenges, and address language barriers. To this end, prisoners must have access to consular or diplomatic bodies, non-governmental organisations providing support to migrants, Portuguese language courses, translated documents, and interpreter assistance.

Under Article 117 of the Code, foreign prisoners must also receive information, in a language they understand, about the options available for serving their sentence abroad, transferring it to another jurisdiction, and the conditions for the execution of expulsion orders.

In addition, Article 9 of the General Regulation stipulates that the leaflet informing prisoners of their rights and duties, the applicable prison rules, and the essential information for integration into the prison environment must be provided not only in Portuguese but also in the foreign languages most commonly spoken within the prison population.

Finally, foreign prisoners retain the right to be visited by a lawyer from abroad, provided that the requirements set out in the Portuguese Bar Association Statute for the practice of law are fulfilled.[40]

Prisoner-Led Legal Assistance in the Absence of Formal Structures

Research found no evidence of detainee committees within Portuguese prisons. According to an inmate interviewed, such bodies do not exist, and neither the National Preventive Mechanism nor the NGO consulted were aware of them. The National Preventive Mechanism did, however, mention that petitions are occasionally circulated among prisoners, though these are ad hoc initiatives rather than formalised structures.

By contrast, the presence of “jail-house lawyers” – prisoners who assist others with legal or administrative matters – was consistently highlighted. According to an inmate, certain prisoners, particularly those who speak English, often help foreign inmates to understand their rights or complete paperwork. Both the NGO and the National Preventive Mechanism confirmed that it is common to see more experienced or literate prisoners providing support to others. This informal assistance is especially important for inmates who do not speak Portuguese, given that written information about rights and procedures posted inside prisons is only available in Portuguese. In such cases, “jail-house lawyers” may draft complaints, complete forms and convey basic legal information on behalf of others.

40 Articles 104 and 233 of the General Regulation.

While this peer-to-peer support provides essential access to practical information for many prisoners, it is not without drawbacks. The reliance on fellow inmates means that legal information is often transmitted informally and without oversight, and in some cases inaccurate advice is given. As noted in interviews, this can misdirect prisoners who cannot afford legal representation, leaving them vulnerable to mistakes in pursuing remedies or defending their rights.

5 LEGAL AID SCHEME

Overall, the Portuguese legal aid system is marked by a series of structural and practical shortcomings which significantly constrain prisoners' access to effective legal protection. At a structural level, the scope of legal aid is narrow: it does not cover internal complaints or administrative proceedings within prisons and is formally limited to court litigation. While the Code governing sentence execution provides that prisoners may be assisted by a lawyer in disciplinary proceedings, the law on legal aid restricts coverage to court-based litigation, creating an ambiguity that results in inconsistent interpretations by the Social Security services. Beyond disciplinary hearings and proceedings where questions of law are raised, there is no right to continuous representation during the execution of the sentence. Appointments end once a conviction becomes final, forcing prisoners to reapply for legal aid for each subsequent issue, such as early release, sentence modification or prison leave. This re-application process is cumbersome, particularly given the obstacles faced by prisoners in accessing the necessary documents and completing the formalities with Social Security.

Practical limitations compound these structural barriers. Legal aid lawyers are appointed on a per-act basis in the execution phase and compensated only for discrete interventions, rather than for the overall management of a prisoner's legal situation. The framework for reimbursement is highly restrictive, covering only a small number of prison visits and a narrow range of expenses, with lawyers expected to advance their own resources until proceedings are final. Although recent reforms have improved the timeliness of payments, the practice of end-loaded remuneration places an undue financial burden on lawyers and discourages sustained engagement in prison-related cases.

The lack of specialisation further undermines effectiveness. Lawyers are appointed through a centralised system based on broad categories such as criminal law, without regard to expertise in prison litigation. This means that prisoners may be represented by lawyers with little or no experience in this area. Field research also highlighted disparities in the quality of legal aid representation, with some lawyers showing strong commitment despite financial disincentives, but many others providing only minimal assistance. Privately retained lawyers, by contrast, are generally able to devote more time and resources to cases, reinforcing inequalities of access to justice between prisoners with financial means and those dependent on legal aid.

Taken together, these shortcomings indicate that while Portugal's legal aid system is formally broad in scope and rooted in constitutional guarantees of access to justice, in practice it leaves prison litigation at the margins. The combination of limited coverage, financial disincentives, procedural barriers to re-application, and lack of specialisation means that prisoners face significant hurdles in securing effective legal assistance for the protection of their rights during sentence execution.

SCOPE OF LEGAL AID TO PRE-TRIAL DETAINEES' ENFORCEMENT OF RIGHTS IN DETENTION

The scope of legal aid in prison litigation in Portugal is limited. It does not apply to internal complaints or administrative procedures within the prison system. Legal aid is available before the court for the execution of sentences, but legal representation is only reserved for cases where questions of law are raised. Prisoners are formally entitled to legal representation in disciplinary proceedings, although the legal framework is ambiguous: while the Code governing sentence execution recognises the right to be assisted by a lawyer, the law on legal aid restricts coverage to court litigation, leaving the issue to the interpretation of Social Security services.

Legal aid is primarily rooted in criminal proceedings, where an appointed lawyer remains assigned to the case until the judgment becomes final. This appointment does not extend into the

execution phase of the sentence. Once the conviction is final, prisoners must submit a fresh application for legal aid if they require assistance with matters relating to sentence implementation, early release, prison leave, or other post-conviction proceedings. This re-application process involves filling in forms through the Social Security services, a task that many prisoners are unaware of, or lack the capacity and resources to complete, creating significant practical barriers to access.

Prisoners are entitled to legal assistance in disciplinary proceedings, as well as in hearings concerning early release and prison leave. Representation is always permitted, but it is mandatory only when questions of law are raised, for example in judicial review of prison service decisions, or in proceedings involving individuals declared criminally irresponsible due to mental illness and placed in forensic units (Article 147 of the Code). Beyond these situations, there is no general right to continuous legal representation during the execution of the sentence. In practice, this means that legal aid lawyers are appointed on a per-act basis, with compensation tied to the specific action undertaken, such as a modification request or early release application. Prisoners cannot rely on a legal aid lawyer for the overall management of their sentence.

The scope of legal aid is also legally ambiguous when it comes to disciplinary procedures. While the law on legal aid restricts coverage to litigation before courts of law, the Code governing sentence execution provides that prisoners may be assisted by a lawyer in disciplinary proceedings. This lack of clarity has led to inconsistencies, with the decision to grant legal aid for disciplinary cases depending on the interpretation of the Social Security services handling the request.

Legal aid does not cover administrative procedures, including those directed by the prison administration. Violations of fundamental rights in prison may therefore only be litigated if they fall within the competence of criminal or civil courts, in which case legal aid can be requested on general terms. Complaints and requests made within the prison administration, however, do not fall within the perimeter of legal aid.

There is no specialisation within the legal aid system for prison litigation. Lawyers register for legal aid in broad categories such as criminal, civil, labour, or family law, and appointments are made through a centralised, blind allocation system. Any lawyer registered

in criminal law can be appointed to represent prisoners, regardless of whether they have expertise in prison law. As a lawyer interviewed explained, “there is no specialisation” in this field. The Bar Association confirmed that the only differentiation lies in the initial choice of broad legal area when enrolling in the system. Prisoners also frequently use legal aid to resolve non-prison issues, particularly family and children matters, which are handled under separate categories of legal aid.

Taken together, the current framework leaves prison litigation at the margins of the legal aid system. There is no right to continuous representation through the execution of the sentence, access depends on repeated applications to Social Security, and the absence of specialisation or systematic guidance means that the quality and availability of legal assistance in prison matters is highly variable.

LEGAL FRAMEWORK AND FUNDING OF LEGAL AID SCHEME

History of Legal Aid Scheme

The system of legal aid emerged with the new constitutional regime enshrined by the Constitution of 1976, as set out above. Throughout the various reforms of the penal and prison law in the course of the 20th and 21st centuries, one trend that has become evident is the ‘jurisdictionalisation’ of the implementation, i.e. not only a more detailed regulation by legal instruments, but also a greater intervention by the courts in the control and monitoring of execution and the protection of the rights of persons deprived of their liberty. Thus, the range of decisions that have to be taken by a court has progressively increased (e.g. early release, modifications of the form of implementation, confirmation of certain decisions taken by the prison services) and the range of decisions by the administration that the prisoner can challenge before the courts of execution of sentences has also increased.

This evolution is in line with the evolution of constitutional law. The Constitution guarantees the right to ‘effective judicial protection’, i.e. the right of citizens to access the courts when their rights are affected. The Constitution also guarantees the right of access

to the courts, which cannot be impeded by economic insufficiency. Therefore, it follows from this framework that the general rules on the right to legal assistance and legal aid apply to proceedings in the phase of the implementation of the sentence that require the intervention of a judge.

Current Legal Aid Framework

Law no. 34/2004, of 29 July[41] governs access to the law and to the courts, as noted above. The system is designed to ensure that no one is prevented, due to social or cultural condition or insufficient financial means, from knowing, exercising or defending their rights. This responsibility lies with the State, in cooperation with institutions representing the legal professions.

Importantly, there are limitations on access to legal aid that result from the Law itself, as noted above. Namely, the System of Access to Law and Courts is limited to specific issues or causes,[42] that do not include cases of penitentiary and disciplinary law in the non-judicial phases.

Under the legal framework, access to the law encompasses two dimensions: (i) legal information, which is provided by the Ministry of Justice in collaboration with relevant organisations, and may be ensured through protocols established for this purpose;[43] and (ii) legal protection, which includes both legal advice and legal aid.[44]

Legal advice consists of the technical clarification of applicable law in relation to specific issues or cases where legitimate personal interests or rights have been harmed or are under threat.[45] In practice, access to legal advice may be limited for prisoners, since regulations envisage this service being provided either in legal advice offices or in the offices of lawyers participating in the legal aid system. Where such offices are not established within prisons, detainees face considerable obstacles in accessing this form of protection.

41 Available in Portuguese at: LINK.

42 Law no. 34/2004, 29 July 2004, in particular, Article 6.

43 Article 4 of Law no. 34/2004. It is the responsibility of the State to carry out, in a permanent and planned manner, actions aimed at making the law and the legal system known, through publication and other forms of communication, with a view to providing a better exercise of rights and the fulfilment of legally established duties.

44 Article 6.

45 Article 14.

According to Article 16 of Law no. 34/2004, legal aid may take several forms: waiver of court fees and other procedural costs; appointment and payment of a legal representative **(patrono)**; payment of a legal aid lawyer **(defensor oficioso)**; payment of court fees and other costs in instalments; appointment of a legal representative with phased payment of fees; phased payment of a legal aid lawyer's compensation; and the appointment of an enforcement agent **(agente de execução)**.

The financing of legal aid relies on both the Bar Association budget, drawn from membership fees, and the State Budget, specifically through the Ministry of Justice and the Ministry of Labour, Solidarity and Social Security. Payments are managed by the Institute for Financial Management and Justice Equipment (IGFEJ), which operates under the Ministry of Justice.

COVERAGE AND SCOPE OF COMPENSATION

Ordinance no. 1386/2004, of 10 November, of the Ministries of Justice and Finance[46] approves the scheme of compensation for attorneys providing services under the legal aid system. This framework was updated by Ordinance no. 26/2025/1, of 3 February,[47] which revised the amounts payable by the State to attorneys for legal aid work, reflecting both inflation and changes introduced in procedural and administrative law.

Under the updated regime, compensation for legal aid lawyers in criminal proceedings is defined as a flat fee for the entire case, regardless of the number or complexity of actions undertaken. By contrast, compensation for legal aid lawyers in the phase of sentence implementation operates differently. In this context, no lawyer is appointed for the overall management of the execution phase; instead, appointments are made on a per-act basis, with remuneration tied to each specific action performed.

As noted above, Order no. 1386/2004 approved the remuneration scheme for lawyers and trainee lawyers providing services under

46 Available at LINK.

47 Available at LINK.

the legal aid system. This regime was recently updated by Ordinance no. 26/2025/1, of 3 February 2025, which raised the reference unit (RU) from 25.5 euros to 28 euros.[48] The fee table for legal protection, set out in the new Ordinance, is divided by areas of law, though it remains relatively general and not highly detailed.

With regard to remuneration in prison litigation during the execution phase, Ordinance no. 26/2025/1 provides that occasional interventions in isolated acts or proceedings are remunerated at 4 RUs (€112). Assistance to a defendant in custody or at police stations is remunerated at 5 RUs (€140). For each prison visit undertaken by a legal aid lawyer to confer with a defendant in custody or detention, up to a maximum of three visits, the remuneration is 4 RUs (€112).[49]

By comparison, civil proceedings are compensated at higher levels. Declaratory actions before a central civil court are remunerated at 58 RUs (€1,624), while before a local civil court ordinary proceedings are set at 22 RUs (€616) and special proceedings at 18 RUs (€504). For administrative proceedings, remuneration is fixed at 30 RUs (€840) for ordinary actions, 32 RUs (€896) for urgent actions, and 26 RUs (€728) for enforcement actions.

From the field research, several points became clear regarding how legal aid for prison litigation is financed and administered in practice. The amount of remuneration paid to legal aid lawyers varies depending on the type of case, the stage reached, and the number and length of hearings. Both lawyers interviewed confirmed that the amounts are governed by a fixed table approved by law. The Bar Association explained that the current framework introduces new variables, with fees now also adjusted according to the time spent on each session.

The scope of reimbursable costs is limited. According to one lawyer, additional fees are available for up to three trips to a prison establishment, currently set at €76.50 per trip, while other expenses such as books, office supplies or technical consultants are excluded. The Bar clarified that travel expenses to prisons are covered on a per-kilometre basis at €0.40, with proof of attendance required, and that flights may be reimbursed when travel from the islands (Azores and Madeira)

48 Reference Unit = ¼ account unit (1 account unit is equivalent to 102 euros).

49 Ibid.

is necessary. Parking and tolls are only reimbursed in connection with court attendance, not with visits to prisons. Overall, costs that can be claimed are narrowly circumscribed.

Payments are made by the State directly to the lawyer, never to the applicant or their family, and only once a case is final and no longer subject to appeal. According to the lawyers interviewed, this creates delays, with reimbursements often taking weeks or months. The Bar Association acknowledged the existence of delays in the past but stressed that the situation has improved considerably. Payments are now processed on a near-monthly basis, with requests generally resolved within a maximum of two months.

In practice, this system means that legal aid lawyers must often advance their own resources to cover the costs of representing prisoners, particularly in longer proceedings, and cannot rely on interim payments. Although reimbursements have become more regular, the financial structure continues to place the burden of expenses on individual lawyers during the course of litigation.

MECHANISMS OF APPOINTMENT AND REMUNERATION

The Portuguese legal aid system is based primarily on the appointment of a lawyer by the Bar Association. Beneficiaries cannot select their own lawyer and simultaneously request that the State cover the costs of that representation. Instead, legal aid lawyers must be enrolled for this purpose with the Bar, which appoints one upon request. This applies both where a candidate applies to Social Security and is granted legal aid, and where a person appears before a judge without a private lawyer, in which case a legal aid lawyer is immediately assigned.

According to lawyers interviewed, the predominant model is the direct appointment of a lawyer to a case. The Bar Association confirmed this understanding, clarifying that the system involves both the appointment of a lawyer and, in due course, the payment of a sum of money by the State. Remuneration is not provided directly by the client but by the State at the conclusion of the proceedings. As a result, lawyers may wait several years for payment in longer cases, often covering

costs from their own resources in the interim. The Bar Association acknowledged that this delay has raised concerns, and that some have suggested introducing the possibility of interim payments in protracted proceedings.

In practice, this means that legal aid in Portugal does not allow prisoners to privately appoint a lawyer and have the State cover the costs. All representation under legal aid follows from the centralised system of appointment administered by the Bar Association, with payment made only after the case has concluded.

EXTENT OF LEGAL AID COVERAGE FOR INTERPRETATION AND EXPERT EVIDENCE

Portuguese law establishes the right to interpretation and translation in Article 92 of the Code of Criminal Procedure. The general rule is that when a person who does not know or is not fluent in Portuguese participates in proceedings, a suitable interpreter must be appointed at no cost to that person (Article 92(1) of the Code of Criminal Procedure). In addition, the defendant may choose, again free of charge, an interpreter to translate conversations with their defence attorney (Article 92(7)). The law also provides that a defendant who does not know or is not fluent in Portuguese is entitled to receive written translations of the documents listed in Article 113(10), as well as any others deemed essential for the exercise of defence rights (Article 92(3)).

Outside these provisions, however, translation and interpretation costs are borne by the legal aid beneficiary and are not covered by legal aid. Similarly, legal aid does not extend to expert fees, such as technical or medical opinions, nor to the costs of obtaining copies of case files.

ELIGIBILITY

According to Article 7 of Law no. 34/2004, of 29 July, legal aid may be granted to any Portuguese national or EU national, as well as to foreign nationals without a valid residence permit in a member state of the European Union, provided that reciprocal treatment is assured under the laws of their country of origin. In all cases, applicants must provide sufficient evidence that they lack the necessary economic resources to cover the expected costs of the procedure.[50]

Importantly, eligibility for legal aid is not conditioned on the merits of the applicant's complaint, but solely on their financial situation.

APPLICATION PROCEDURE

The form to apply for legal protection is available on the website of Social Security.[51] In order to obtain legal aid, applicants must submit a legal aid application form together with supporting documentation. This includes a photocopy of their identification document (or residence permit in the case of foreign nationals); their most recent income tax return and settlement note, or, if unavailable, a certificate from the tax authorities confirming the absence of income; and pay slips from the last six months if they are employed. Self-employed applicants must provide VAT returns for the previous two months, proof of payment, and receipts issued over the last six months. Applicants must also provide proof of any benefits or pensions received, an updated property registration certificate or property matrix together with documents relating to real estate ownership, proof of shares or holdings in companies (including their value as of the day prior to the application or proof of acquisition), and, if applicable, logbooks and ownership records for any vehicles.

Applications are submitted electronically via the Social Security online platform (**Segurança Social Directa**), which generates proof of submission. In exceptional cases, applications may also be submitted in person at a social security office or by e-mail.

50 The assessment of economic insufficiency follows the rules established in Article 8-A and 8-B of Law no. 34/2004, of 29 July.

51 See LINK.

The requirements for legal aid are broadly the same across different types of judicial proceedings, whether criminal, civil, administrative, competition, or tax. The applicant must correctly identify the case number and the court where the case is pending. The only distinction lies in the deadlines. According to Article 18(2) of Law no. 34/2004, of 29 July, legal aid must be requested before the applicant's first procedural intervention, unless financial hardship arises later, in which case it must be requested before the first procedural step following the onset of hardship. For criminal proceedings, however, legal aid can be requested at any time until the deadline for appealing the first-instance decision.[52]

The law does not provide for any specific accommodations or extended deadlines for detainees.

EVALUATION AND GRANTING OF APPLICATIONS

The decision to grant legal aid is made by the highest official of the social security services in the applicant's area of residence.[53] This authority may require the applicant to submit additional evidence. The decision must be issued within 30 days. Before the final determination, the applicant must be notified of the intended outcome, giving them the opportunity to present arguments or provide further documents, particularly where the preliminary outcome is expected to be unfavourable.

If no decision is issued within the 30-day deadline, legal aid is automatically considered granted.

Decisions on applications for legal aid are not subject to complaint, nor to hierarchical or tutelary appeal. They may, however, be challenged before the courts under Articles 27 and 28 of Law no. 34/2004. Such challenges must be filed within 15 days of service of the decision. The court's ruling on the matter is final.

52 Article 44(1).

53 Article 20 of Law no. 34/2004, of 29 July.

FINANCIAL IMPLICATIONS FOR LEGAL AID RECIPIENTS FOLLOWING AN UNSUCCESSFUL CASE

The Code of Criminal Procedure sets out the circumstances in which parties are required to pay procedural costs. For defendants, liability for court fees arises only if there is a conviction at first instance and any appeal is entirely dismissed.[54] Assistants (victims who have chosen to participate in proceedings) are required to pay court fees in a number of situations, including: if the defendant is acquitted of all or part of the charges; if an appeal they have lodged or opposed is dismissed, in whole or in part; if proceedings are terminated due to their withdrawal or unjustified abstention; or if charges brought by them are rejected, in whole or in part. By contrast, no court fees are payable when proceedings are dismissed or suspended under Articles 280 and 281.[55]

The financial consequences for legal aid beneficiaries depend largely on the scope of the legal aid granted. Where legal aid covers both procedural costs and legal representation, the beneficiary bears no financial burden even if unsuccessful. However, if legal aid was limited to the cost of legal representation, all other fees and procedural costs remain payable by the losing party.

The bill of costs is prepared by the clerk of the first instance court within 10 days of the final decision becoming res judicata.[56] Where the amount due is equal to or greater than three UC, the debtor may request payment in instalments, provided that justification is given.[57]

If payment is not made within the prescribed period, the court may exercise a right of retention. Article 34(1) of the Regulation of Procedural Costs provides that once the deadline for voluntary payment has expired, and no complaint has been lodged or is still pending, the court may retain any property in its possession or any funds deposited with it. In addition, unpaid costs may be recovered through tax

54 Article 513(1) of the Code of Criminal Procedure.

55 Article 516.

56 Article 29(1) of the Regulation of Procedural Costs, Decree-Law no. 34/2008 of 26 February.

57 Article 33(1).

enforcement and coercive collection. Under Article 35(1) of the Regulation, the tax administration is responsible for enforcing recovery of costs, non-criminal fines and other monetary penalties established in legal proceedings. The court clerk's office must transmit the settlement certificate electronically to the tax authorities together with the final decision, which constitutes an enforceable title for the amounts specified.[58]

QUALITY OF LEGAL AID LAWYERS

Field research revealed diverging views on the quality of representation provided under the legal aid system compared with privately paid counsel. One lawyer observed that, while many honourable and competent lawyers work within legal aid, differences in quality are often significant and largely linked to the lack of resources available in this system. Another lawyer emphasised that privately retained counsel generally receive higher remuneration, which enables them to devote more time to each case, invest in training, and acquire materials that improve the quality of service. In their view, although there are examples of poor practice in the private sector and of high-quality work within legal aid, the overall standard of legal aid representation tends to be lower, with many lawyers putting limited effort into these cases and prioritising economic or pragmatic concerns over client interests.

The Bar Association adopted a more neutral position. Its representative stressed that quality depends primarily on the individual professional rather than on whether the lawyer is privately appointed or engaged through legal aid. They acknowledged that some legal aid lawyers go beyond what is expected, while others do only the minimum or less, but insisted that the decisive factor lies in the commitment and competence of the professional, not the funding source.

58 Article 35(2).

PRACTICAL OBSTACLES TO ACCESSING LEGAL AID

The process of filing and processing legal aid applications is marked by significant structural and practical barriers. While the formal framework provides for access to legal aid, field research shows that in practice prisoners face delays of weeks before they can even initiate an application, and appeals of refusals remain largely inaccessible despite their formal simplicity. The system depends heavily on intermediaries inside prisons, such as educators and social workers, whose availability and awareness vary considerably, creating unequal access to information and support. As a result, although reforms in recent years have improved processing times once applications reach the Social Security services, the overall organisation of legal aid continues to discourage prisoners from pursuing remedies in court, particularly in the field of prison litigation.

Reliance on Social Workers and External Assistance for Filing Legal Aid Claims

Applications for legal aid must be initiated within prisons by submitting standardised forms, usually with the assistance of an "educator" – the officer responsible for supporting prisoners throughout the implementation of their sentence. According to one prisoner interviewed, inmates must request a meeting with their assigned educator, who assists in filling out the forms and ensures they are forwarded to the competent authority. However, the limited number of educators creates significant bottlenecks. For example, in Lisbon Central Prison there are reportedly only around 20 educators for 3,000 prisoners, each responsible for approximately 150 inmates, meaning that a prisoner may wait at least 15 days for a meeting.

When disciplinary proceedings are initiated, prisoners are provided with a form informing them of their right to be assisted by a lawyer. Yet, this safeguard is undermined in practice. It is often assumed that only privately instructed lawyers can provide such assistance, reflecting a widespread belief that Social Security does not extend legal aid to disciplinary matters. Moreover, concerns were raised by the National Preventive Mechanism that in some prisons these forms are pre-filled with a waiver of legal assistance, or signed

without any choice being marked, raising doubts as to whether the right to legal representation is properly communicated.

For general legal aid requests, prisoners who cannot rely on family members or outside contacts typically receive assistance from their social worker in obtaining and completing forms. Both the National Preventive Mechanism and the NGO interviewed, however, stressed that not all social workers are equally informed about the scope of legal aid available to prisoners, creating disparities in the quality of support. As a result, even before a request is submitted, the ability of prisoners to access legal aid may depend heavily on the knowledge and commitment of individual staff members.

The quality of the forms themselves is not considered problematic: they are relatively short and simple, and the time needed to fill them depends primarily on whether the inmate has ready access to personal financial information. The more significant barrier is therefore procedural access to those who can provide or transmit the forms, rather than the complexity of the forms themselves.

Role of Prison Administration

Once completed, forms are forwarded by educators to the competent Social Security authority. According to the prisoner interviewed, this step generally functions as intended, and the prison administration was described as neutral in this respect. At the same time, both the NGO and the National Preventive Mechanism emphasised that the degree of support varies depending on the awareness of social workers, and this variability may determine whether an application progresses smoothly or stalls.

Appeal Proceedings on Refusals

Where legal aid applications are refused, prisoners may challenge the decision. Lawyers interviewed noted that while appeal proceedings are not legally complex, relying mostly on documentary evidence, they can be difficult to pursue without legal knowledge or support. The Bar Association explained that most applicants prefer to submit an administrative complaint to the Social Security services, since this can be done without a lawyer. As their representative explained, “if one does not have the money to pay a lawyer and their legal aid application has been rejected, they will hardly

have the money to challenge that decision in court." Article 27 of the Law on Access to Law confirms that appeals may be submitted directly by the applicant within 15 days of notification, without the need for legal representation. If this administrative challenge is unsuccessful, a further appeal may be lodged with the courts, but this step is rarely pursued by prisoners.

Organisation of Financial Aid

At the institutional level, the General Council of the Bar Association manages the centralised system of appointments, maintaining the registry of lawyers enrolled in legal aid and making blind appointments upon request from Social Security or the courts. Regional Councils are responsible for handling recusals, substitutions, and other procedural matters arising after the initial appointment.

The Bar Association emphasised that once Social Security approves an application, legal aid is automatically granted regardless of the subject matter. The Bar does not assess the substance of requests: its role is limited to ensuring the appointment of a lawyer once an application has been deferred. Where applications are refused, the only recourse is to challenge the decision administratively before Social Security or through the courts, as described above.

Processing Times

The processing time for legal aid applications varies considerably. The prisoner interviewed reported waiting around two months for a decision. By contrast, one lawyer noted that in cases of automatic appointments made by courts (e.g. during pre-trial stages), the procedure is much quicker, as Social Security approval is not required in advance. According to the Bar Association, however, the system has improved markedly in recent years. While delays were common in the past, reforms and integrated systems between Social Security, the justice system and tax authorities have streamlined the process. Decisions are now typically issued within the statutory 30-day period, and often in less time.

6 ORGANISATION OF BARS' AND LAWYERS' ACTION IN DETENTION

The Bar Association is responsible for appointing legal aid lawyers. Only attorneys (members of the Bar Association) are entitled to provide legal advice.

From our interview with a representative of the National Bar Association, it emerged that the Bar does not maintain a concrete policy specifically directed at legal counsel for prisoners. While the Bar centralises the organisation and implementation of the national legal aid system, it ultimately defers to the individual lawyers appointed to represent detained persons, whether in pre-trial detention or serving a sentence, the manner in which legal representation is to be carried out.

In practice, the representative explained, the system is "not organised." Lawyers are appointed, but it is left entirely to them to decide whether, and how, to engage with the prisoner, for example whether to visit them in prison at all. Once the appointment is made, the responsibility for directing the process rests solely with the appointed lawyer.

There are no guidelines, dedicated training, or specialised resources addressing the particular challenges of providing legal aid to persons in custody. Instead, requests for legal assistance from prisoners are treated in the same way as any other legal aid request. When asked whether the Bar Association intentionally structures its activities with a view to safeguarding the rights of prisoners in court, the representative responded clearly: "No, it doesn't. What it has is Legal Aid and lawyers who are appointed and who accompany the beneficiaries, whether they are prisoners or not."

RELATIONSHIP BETWEEN THE BAR ASSOCIATION AND PRISON ADMINISTRATION

The Bar Association described its relationship with the national penitentiary administration as “cooperative,” noting that this cooperation takes place primarily through the Bar’s Human Rights Commission. Following recent elections, the new Commission had not yet been established at the time of research, but it was explained that this body is the main channel through which the Bar engages with prisons, particularly with prison governors, and carries out visits.

When asked whether issues concerning the provision and sufficiency of legal aid to prisoners are addressed during these visits, the Bar indicated that they are not. According to the representative, the Commission monitors and follows up on prison conditions and the general situation of prisoners, but this does not extend to matters related to legal aid.

BAR ASSOCIATIONS AND THE MONITORING OF PRISON CONDITIONS

The Code grants the Head of the Bar Association and their team the right to visit penitentiary establishments (Article 66 §1 (a) and (d)). The provisions employ broad terminology that suggests their access is not subject to restrictions concerning scope or regularity.

Nevertheless, the General Regulation of Prisons introduces an additional procedural requirement: while such visits do not require prior authorisation, they must, as a general rule, be communicated in advance to the Director-General of Prison Services. Exceptions apply where a specific legal norm or convention provides otherwise (Article 125).

PROVISION OF INFORMATION BY BAR ASSOCIATION

Interviews with lawyers revealed that they were not aware of any booklets, digital tools, or other materials produced by the Bar Association specifically addressing penitentiary law, access to legal counsel in custody, or the practical challenges faced by lawyers providing legal aid in prisons. Both lawyers acknowledged that such resources could be valuable for practitioners working in this area.

This was confirmed by the representative of the Bar Association, who explained that the institution does not publish dedicated materials of this kind. The only information made available consists of documents or outputs resulting from conferences, such as those on forensic practice in prison law, which are subsequently placed online. Beyond this, the Bar Association does not provide or promote specific tools aimed at supporting lawyers engaged in prison-related work.

REGULATION OF BARS' INVOLVEMENT IN LEGAL SUPPORT TO DETAINEES

The organisation of legal consultations in detention is not mandatory for the Bar Association. Neither the Bar Association Statute nor the Law on Access to Law explicitly imposes an obligation or otherwise on the Bar to establish or organise such consultations within prisons. However, the Bar Association Statute[59] identifies securing access to law as one of the core functions of the Bar Association on a national level.

Although the legislation does not require the Bar Association to organise legal consultations in detention, the legal framework allows for them. The broad aims of the Law on Access to Law,[60] together with the constitutional duty of the Bar to secure access to law, mean that legal consultations for detainees fall within the

59 Article 3 §1(b).

60 Articles 1, 6, and 7.

scope of legal aid. In practice, such consultations may take place either when an inmate requests them through an application for legal aid, or when a legal aid lawyer is compulsorily appointed in cases where representation is mandatory.

ORGANISATION OF EDUCATIONAL AND TRAINING INITIATIVES ON PRISON LITIGATION

There are no special statutory qualifications required for lawyers working in detention or penitentiary law, nor is there mandatory continuous training in this field or others. The Bar Association is responsible for the design and delivery of initial training to trainee lawyers, and it also administers the examinations through which candidates are selected and admitted to the profession.[61] Penitentiary law is not included as a distinct subject in the training course offered to trainee lawyers, nor is it part of the final assessment at the end of their internship.

In practice, most lawyers working with inmates, whether privately appointed or acting under the legal aid scheme, acquire their knowledge "on the job".

Prison law is not taught as an autonomous subject in Portuguese law degrees, nor are there specialised master's programmes in the area. According to the General Directorate of Higher Education (Ministry of Education), there are currently 76 courses in law offered across seven public and six private universities, at undergraduate, master's, and doctoral levels. However, none include prison law as a central subject. Some exceptions exist in related fields. The Master's in Forensic Law offered by Católica University (a private institution) includes a module on "Execution of Sanctions" (Sanctionatory Law), which covers the Portuguese penal system with particular focus on enforcement of sentences, the purposes and principles of penalties, alternative sanctions, parole regimes, and the rights and duties of prisoners in light of national and international law, including the jurisprudence of the European Court of Human Rights. Similarly, Lusófona University offers a Master's in Criminal Sciences that

61 Article 3 §1(g) and Article 195 of the Bar Association Statute.

includes a module entitled “Punitive System,” though no detailed course description is available.

Training opportunities specifically dedicated to penitentiary law are rare and isolated. In February 2025, the Lisbon department of the Bar Association organised a non-compulsory afternoon session for lawyers and trainee lawyers on forensic practice in penitentiary law. The programme included discussion on litigation before the European Court of Human Rights in matters concerning enforcement of sentences, the right to legal assistance in prison matters, and practical resources available to lawyers in this area.

In parallel, the Centre for Judicial Studies (Centro de Estudos Judiciários – CEJ), which provides initial and lifelong training for judges and prosecutors, has in recent years increased its focus on penitentiary law. For example, in May 2025, the CEJ offered an “Intensive Course on the Execution of Sentences.” While these courses primarily target judges and prosecutors, they are also open to other legal professionals engaged in the enforcement of sentences.

Field research revealed mixed perspectives on the extent to which the Portuguese Bar Association provides training and capacity building on prison law and related procedural issues.

According to one of the lawyers interviewed, while the Bar has organised conferences on the subject, these remain insufficient in addressing practical procedural matters. In particular, the lawyer noted a lack of training and discussion forums dealing with disciplinary and judicial procedures from a practical perspective.

Another lawyer reported that such initiatives are organised only sporadically, at least in Lisbon. This lawyer indicated that they had recently been invited to deliver a training course at a local delegation of the Bar, focused on applications to the European Court of Human Rights concerning detention conditions, and that they had also been invited to provide a similar course at another local delegation.

The representative of the National Bar Association expressed uncertainty as to whether the Bar specifically organises seminars or training courses on penitentiary law. While acknowledging that the Bar runs a large number of training courses, some of which may relate to criminal or prison law, the representative could not identify any

dedicated or systematic provision. They further highlighted that courses on legal aid as a broad topic are among those with the lowest attendance within the Bar's training programme.

7 ROLE OF NGOS, LEGAL CLINICS, AND NATIONAL MONITORING BODIES OF PRISON CONDITIONS

CAPACITY OF ORGANISATIONS TO INTERVENE IN PENITENTIARY INSTITUTIONS AND PROVIDE LEGAL ADVICE

Access by non-governmental organisations (NGOs) to prisons for the purpose of promoting human rights is subject to prior authorisation by either the Minister of Justice or the Director-General of Prison Services.[62] By contrast, certain entities are entitled to visit prisons without prior authorisation, including representatives of international organisations responsible for the promotion and protection of prisoners' rights (as provided by international conventions binding on Portugal), the Ombudsperson, and the President of the Portuguese Bar Association.[63]

The participation of NGOs in the execution of sentences is regulated by Article 55 of the Code and Article 99 of the General Regulation of Prisons. Under these provisions, prison services are required to encourage the involvement of NGOs and voluntary organisations in a range of activities, including: (a) cultural and leisure activities; (b) social and economic support for prisoners and their families; and (c) programmes relevant to social reintegration, such as employment and housing support. NGOs may also contribute to activities designed to help foreign prisoners maintain ties with their culture of origin.

62 Article 66 §3 of the Code.

63 Article 66 §1(a) and (c) of the Code.

Such participation is subject to a written agreement with the Directorate-General for Prison Services, which must specify the objectives of the intervention, the actions to be carried out, the conditions of access for prisoners, and the mechanisms for coordination, evaluation, and termination. Prisons are responsible for providing initial training, supervision, and technical support to NGOs, as well as for monitoring and evaluating their activities. For reasons of order or security, the prison director may suspend or propose the termination of an NGO's collaboration in whole or in part.

There are no specific legal provisions granting human rights NGOs, university legal clinics, or national monitoring bodies the right to provide legal advice to prisoners. Instead, their involvement is governed by general rules on correspondence, visits, and delivery of documents, which may apply in practice. The terms and conditions for human rights NGOs visiting prisons are determined by the Director-General of Prison Services, and such visits are subject to the same identification, registration, and control requirements that apply to ordinary visits, as well as the corresponding security measures.[64]

It should also be noted that legal clinics are not a common feature of Portuguese law schools, which further limits the presence of such actors within the prison context.

STANDING OF NGOS

Portuguese law does not contain any express provision granting human rights organisations, or organisations specifically defending the rights of persons deprived of liberty, legal standing in proceedings before the courts for the execution of sentences or in other judicial proceedings of this kind.

By contrast, in the administrative courts there is a broader system of legal standing designed to protect constitutionally enshrined values. Under Article 9 §2 of the Code of Procedure in the Administrative Courts, NGOs, associations and foundations defending relevant interests, local authorities, and the Public Prosecutor's Office all have standing to bring or intervene in both main and precautionary proceedings aimed at safeguarding constitutional values such

64 Article 125 §4 of the General Regulation.

as public health, the environment, quality of life, cultural heritage, or urban planning. This provision allows claims to be raised before the administrative courts regardless of whether the claimant has a direct personal interest in the case. Accordingly, it would be possible, for example, for an NGO to act in representation of prisoners in cases concerning degrading prison conditions or insufficient access to legal aid, since both issues touch upon fundamental rights guaranteed by the Portuguese Constitution.

No similar rule exists in relation to proceedings before the courts for the execution of prison sentences (tribunais de execução das penas), where extended standing is not foreseen. In all cases, legal representation of parties before the courts must be undertaken by practising lawyers.

DEDICATED NETWORKS OF NGOS ON PRISON LITIGATION (OR LACK THEREOF)

Field research indicates that there are no NGOs in Portugal specifically dedicated to providing legal assistance or initiating litigation on behalf of incarcerated persons. While some NGOs are active within prisons, their role is primarily centred on social support rather than legal advocacy.

In terms of social support, one of the most active organisations in this field, founded in 2015 as a non-profit private charity, works with people in detention and recently released former inmates. Its mission is to promote the dignified reintegration of individuals who have been deprived of their liberty. The organisation does not provide legal aid, though it has established a partnership with a private law firm that offers pro bono assistance to recently released individuals. Its activities focus on two main areas: first, advocacy and public policy aimed at raising awareness and influencing lawmakers; and second, direct social support to prisoners and former prisoners through a range of programmes. Inside prisons, the NGO implements group interventions to promote social and labour market skills, while outside prison it runs a social business initiative, “Ceramics,” designed to provide employment opportunities and thereby support reintegration into the labour market.

As far as this research could determine, NGO workers acting inside prisons make themselves known to detainees both informally, through word of mouth, and formally, by preparing and posting informative placards about their activities in areas where they work. However, such materials are not necessarily placed in prison wards, which means that prisoners who do not regularly pass through spaces such as schools or social workers' offices may remain unaware of the services available.

In general, the lack of NGOs specialising in prison litigation, coupled with the absence of university legal clinics with the authority to practise law, highlights a structural weakness in the ecosystem of prisoner rights protection in Portugal.

Chapter 5

Access to Justice for Pre-Trial Detainees in UKRAINE: Law and Practices

Authors:
Viktoriia Kharchenko
Maryna Demura
Tetiana Pechonchyk
Human Rights Centre ZMINA

Reviewed by:
Dmytro Yagunov

TABLE OF CONTENTS

1 Introduction/Overview 235

Roadmap of National Chapter 235

Methodology 236

Overview of the Detention Regime for Pre-Trial Detainees 237

Rights and Conditions 238

Detention Under Martial Law 238

Key principles and issues established by the ECHR against Ukraine 242

Issues in the spotlight of the EU Commission 245

2 Bodies competent to receive complaints and effectiveness of remedies 247

Internal Administrative Complaints 247

External Administrative and Monitoring Bodies and Institutions 248

Criminal investigation bodies and Judicial Remedies 251

Compensatory Remedies 254

Effectiveness of Remedies 255

Assessment by the European Court of Human Rights 255

Committee of Ministers 257

3 Access to Legal Information 259

Obligation to Inform Detainees of Their Rights 259

Access to Legal Materials and Information 260

Access to Legal Information Through Advice 263

Provision of Legal Information to Foreign Prisoners 266

Court Fees, Complaint Filing Costs, and Legal Representation Requirements 267

4 Legal aid 272

Scope of Legal Aid beyond criminal proceedings 272

Overview: Funding Structures for Prison-Related Legal Work 273

Legal Framework and Funding of Legal Aid Scheme 273

History of the Legal Aid Scheme 274

Remuneration 275

Reimbursable expenses 276

Eligibility 277

Application Procedure 278

Evaluation and Granting of Applications 279

Choice of lawyer 280

Replacement of a free legal aid lawyer 280

Non-Ukrainian speakers 281

Bar association and prison litigation 282

5 Obstacles in using remedies by the detainees 283

Obstacles related to the dispatch of complaints 283

Legal Aid and Prison Litigation under Martial Law 287

6 Civil Society and Academic Actors: Key Providers and Monitors of Legal Aid and Prisoners' Rights 290

1 INTRODUCTION/OVERVIEW

ROADMAP OF NATIONAL CHAPTER

This national chapter examines how the legal and institutional systems in Ukraine protect the rights of people held in pre-trial detention and how these rights are exercised in practice. It focuses on access to justice, the availability of legal aid, and the ways in which detainees can challenge the conditions of their detention.

The analysis takes place against a complex background. Ukraine's justice system is undergoing reform while also operating under the pressures of a full-scale war. These extraordinary circumstances have exposed the weaknesses of the detention system and the gap that often exists between legal guarantees and their implementation. The aim of the chapter is to understand how the system functions under these conditions and whether the rights of detainees exist not only in law but also in daily reality.

The chapter draws on both the formal legal framework and the experiences of those who work within it. It begins with an overview of the laws regulating pre-trial detention, including the procedures for arrest, judicial oversight of detention, and the role of investigating judges. It then analyses the complaint and remedy mechanisms available to detainees, paying particular attention to recent reforms such as the creation of special commissions to review detention complaints under the Law on Restoring the Rights of Convicted and Remanded Persons in Connection with Inadequate Conditions of Detention.

Further sections explore access to legal information and the organisation of legal aid, including the work of the state system of free legal assistance, private lawyers, the Bar Association, and other actors involved in protecting the rights of detainees. The chapter also looks at the role of non-governmental organisations, university legal clinics, and national monitoring bodies, as well as the informal networks among detainees that often fill the gaps left by official structures.

Special attention is given to the impact of martial law and the ongoing war. These conditions have affected the work of courts, restricted the access of lawyers to detention facilities, and placed additional strain on already limited resources. Although important legal reforms have been introduced in recent years and progress has been made in aligning national law with European standards, the situation on the ground remains uneven. Many institutions are understaffed, and enforcement of rights is inconsistent.

Overall, the chapter seeks to show not only how the law is written but how it operates in practice. It asks to what extent Ukraine's justice system can provide real access to justice for people deprived of liberty in a time of conflict and change.

METHODOLOGY

The research for this chapter was carried out by ZMINA (Viktoriia Kharchenko, Maryna Demura, and Tetiana Pechonchyk) with peer review by Dmytro Yagunov. It followed the research approach developed within the European Prison Litigation Network and combined two complementary parts: a desk-based study and field research.

The first part, conducted between November 2024 and January 2025, focused on desk-based research. It analysed the national legislation, case law, and policy documents that define the system of pre-trial detention and access to justice. It also reviewed reports from the European Court of Human Rights, the Council of Europe, and Ukrainian human rights organisations. This stage provided an overview of the formal framework and identified the most recent legal changes, including new mechanisms for complaints and remedies.

The second part, completed between January and March 2025, focused on fieldwork. The research team sent formal information requests to the Ministry of Justice, the State Criminal Executive Service, the State Judicial Administration, and the National Bar Association. Nineteen semi-structured interviews were conducted with key participants, including lawyers working both within and outside the system of free legal aid, representatives of detention facility administrations, staff of civil society organisations and monitoring bodies, and one person formerly detained.

This approach made it possible to compare legal norms with daily practice. The interviews showed persistent difficulties: limited confidentiality between lawyers and clients, delays in legal assistance, insufficient access to legal information, and continued dependence on informal networks of support inside detention facilities. The war has made these problems worse by reducing staff numbers, disrupting communication, and restricting travel and safety.

Together, the desk-based and field research provide a detailed and balanced picture of access to justice in Ukraine's pre-trial detention system. They reveal both progress and fragility, with new laws and institutional reforms on the one hand and serious challenges in implementation on the other. The findings also highlight the role of individuals such as lawyers, human rights defenders, and detainees themselves, who continue to work for justice in extremely difficult conditions.

OVERVIEW OF THE DETENTION REGIME FOR PRE-TRIAL DETAINEES

Pre-trial detention in Ukraine is regulated by the Criminal Procedure Code of Ukraine (CPC) and the Law of Ukraine "On Pre-Trial Detention". It is considered an exceptional preventive measure applied only when other, less restrictive measures cannot prevent specific risks, such as the risk of absconding, destruction of evidence, unlawful influence on witnesses or victims, obstruction of justice, or the commission of new offences.[1]

Persons subject to this measure are placed in pre-trial detention centres (SIZO) or, in some cases, in penitentiary institutions that perform SIZO functions, as well as in the military prison of the Military Law Enforcement Service of the Armed Forces of Ukraine.[2]

Article 8 of the Law "On Pre-Trial Detention" requires that detainees be separated according to specific categories: men from women, minors from adults, persons previously convicted from first-time offenders, and those accused of serious or national security offences from other detainees. Law enforcement officers, judges, prosecutors,

1 Criminal Procedure Code of Ukraine, Article 177.

2 Law of Ukraine "On Pre-Trial Detention," Article 4.

and officials from other state institutions are also held separately. Foreign citizens and stateless persons are usually detained apart from Ukrainian nationals, and persons extradited from abroad are also kept separately.[3]

Rights and Conditions

Pre-trial detainees retain the presumption of innocence and may not be subjected to restrictions beyond those necessary to secure the purpose of detention and maintain order and safety in the facility. They have the right to legal assistance, family contact, and freedom of religion.[4]

Meetings with defence counsel are not limited in number or duration and must take place under conditions that ensure confidentiality. Detainees are entitled to visits from relatives or other persons at least three times a month for up to four hours each, under administrative supervision, and may receive food or personal items from outside the facility subject to health and security rules.[5]

Detainees also have the right to meet with clergy to satisfy religious needs, take part in education, vocational training, or work if they wish to do so, and they are required to keep their accommodation clean.

Detention Under Martial Law

Following the introduction of martial law in February 2022, amendments to the Criminal Procedure Code and the Law "On Pre-Trial Detention" allowed prosecutors, in exceptional cases, to authorise detention when an investigating judge is unable to perform their duties. This is permitted for serious or especially serious crimes, provided that delay could lead to the loss of evidence or escape of the suspect.[6]

3 Ibid, Article 8.

4 Ibid, Articles 12–13.

5 Ibid, Article 12.

6 Law of Ukraine "On Amendments to the Criminal Procedure Code of Ukraine" and the Law "On Pre-Trial Detention" regarding additional regulation of law enforcement under martial law, 2022.

These amendments also introduced the temporary automatic extension of detention when it was impossible to hold a hearing. However, the Constitutional Court of Ukraine, by its judgment of 18 July 2024, declared this provision (Article 615, part 6 of the Criminal Procedure Code) unconstitutional, and it ceased to be valid on 18 October 2024.[7]

Spaces of Pre-Trial Detention

The penitentiary system of Ukraine is subordinated to the Ministry of Justice through the State Criminal Executive Service (SCES). According to SCES data presented in 2024, the penitentiary network consisted of 177 functioning institutions, including 115 correctional colonies, 23 correctional centres, 19 pre-trial detention centres (SIZOs), 15 penitentiary institutions performing SIZO functions, and five educational colonies for juveniles.[8]

As of 1 January 2025, a total of 37,119 persons were held in these institutions. Of them, 15,505 persons were in pre-trial detention, 21,097 persons were serving sentences in correctional colonies, 308 were in educational colonies, and 209 were held in correctional centres.[9] This figure shows a decline of about 11,000 persons compared with 2022, when the total population reached 48,038, and continues the long-term downward trend from previous years.

The largest number of persons in custody are concentrated in Dnipro, Kyiv, Odesa, and Kharkiv regions, where several large SIZOs and correctional colonies operate. By contrast, many western regions have smaller facilities with lower occupancy rates.

The full-scale Russian invasion in 2022 significantly disrupted the territorial organisation of the penitentiary system. According to SCES, 44 penitentiary institutions remain in territories temporarily beyond the control of the Government of Ukraine. These include 19 institutions in Donetsk region, 16 in Luhansk region, three in Zaporizhzhia, one in Kherson, and five in the Autonomous Republic of Crimea.[10]

7 Constitutional Court of Ukraine, Judgment No. 8-r(II)/2024 of 18 July 2024. LINK

8 Ministry of Justice of Ukraine, State Criminal Executive Service, Statistical Report on the Penitentiary System of Ukraine, 2024.

9 Ministry of Justice of Ukraine, Statistical Bulletin on Convicted and Detained Persons, January 2025.

10 State Criminal Executive Service of Ukraine, Regional Breakdown of Penitentiary Institutions, 2025.

Facilities close to the front line or in regions affected by hostilities face continuing challenges with security, supply chains, and medical access. Transfers of detainees from these areas to central and western Ukraine have led to overcrowding in several SIZOs, notably in Kyiv, Odesa, Dnipro, Lviv, and Khmelnytskyi. The relocation of staff and the partial evacuation of institutions have further complicated operations and contributed to uneven workloads across the system.

Main Social Characteristics of the Prison Population

As of early 2025, the total prison population in Ukraine amounts to 37,119 detainees, including 36,333 Ukrainian citizens and 786 foreign nationals. Among them are 34,593 men, 2,393 women, and 133 minors, five of whom are girls.[11]

The state does not compile statistics on the age of prisoners, and no detailed data on their educational level were provided in response to official information requests.

With regard to persons with disabilities and those suffering from mental disorders, as of early 2025, institutions under the Health Care Centre of the State Criminal-Executive Service (SCES) held 5,004 persons registered with mental and behavioural disorders and 1,213 persons with disabilities. Of these, 37 have a Group I disability, 315 a Group II disability, and 861 a Group III disability.[12]

Before the full-scale invasion, 6,582 individuals with mental and behavioural disorders and 1,081 persons with disabilities were registered, including 38 in Group I (most severe), 329 in Group II (moderately severe), and 714 in Group III (least severe).[13] Despite the temporary occupation of certain territories and the lack of updated reporting from those regions, the number of persons with disabilities within the penitentiary system has increased since 2022.

11 According to the response of the Department for the Execution of Criminal Sentences of the Ministry of Justice of Ukraine No. 25/19-пі/5.4.3/14-25/ 3/1/24.1-25 of 31 January 2025 to the request of the Human Rights Centre ZMINA.

12 According to the response of the Health Care Centre of the State Criminal Executive Service of Ukraine No. 226-ЦА-25 of 05.02.2025 to the request of the Human Rights Centre ZMINA.

13 Ibid.

As for the legal grounds for pre-trial detention, 9,521 individuals were being held in pre-trial detention centres (SIZOs) or SIZO units at the beginning of 2025. Of these, 964 were suspected or accused of committing minor offences, while 8,557 faced charges of serious or particularly serious crimes.[14] At the beginning of 2022, 648 persons were held in pre-trial detention facilities located in the temporarily occupied territories, specifically in the Starobilsk, Kherson, and Mariupol SIZOs. Among them 53 for minor crimes and 595 for serious or especially serious crimes.[15]

As of early 2025, among those serving sentences in SCES institutions under government control, the largest categories of offences are theft (5,619 persons), intentional murder (4,998), robbery (2,075), brigandage (1,231), intentional grievous bodily harm (2,022), rape (623), crimes against the foundations of national security (649), military criminal offences (559), hooliganism (271), and misappropriation, embezzlement, or abuse of official position (74).

Among all convicts, 11,377 individuals are serving their first prison sentence.

Impact of war

The war has affected both the number and profile of detainees. As of early 2024, approximately 46,000 persons were held in custody, including 26,000 convicts and 20,000 pre-trial detainees, compared to nearly 49,800 before the invasion.[16] The decrease is linked to temporary occupation of territories and the parole of convicts to join the Armed Forces of Ukraine. Between February and April 2022, presidential decrees pardoned 363 prisoners to participate in hostilities,[17] and in May 2024, the Verkhovna Rada adopted a law permitting

14 According to the response of the Department for the Execution of Criminal Sentences of the Ministry of Justice of Ukraine No. 43/21-пі/5.4.3/14-25/ 3/1/24.1-25 of 07.02.2025 to the request of the Human Rights Centre ZMINA.

15 Ibid.

16 Levchenko T, 'Із в'язниці на фронт: які засуджені хочуть захищати Україну та хто з них зможе це зробити?' Радіо Свобода (15 April 2024): LINK.

17 See LINK.

voluntary mobilisation of convicts serving sentences of up to three years, excluding those convicted of serious offences.[18]

Key principles and issues established by the ECHR against Ukraine

Medical assistance

Systemic neglect or delay in securing hospitalisation, diagnosis, or specialised treatment may amount to inhuman treatment irrespective of intent, especially where the authorities are aware of the detainee's critical condition and disregard medical recommendations.[19] The Court has equally condemned the detention of seriously ill individuals in facilities lacking the capacity to provide necessary care, noting that the State cannot rely on the structural deficiencies of its prison system to justify the absence of adequate treatment.[20]

Under the procedural limb of Article 2, the Court has established that deaths or serious harm in custody engage an obligation of prompt, impartial, and thorough investigation. Formalistic or repetitive refusals to open criminal proceedings, or investigations confined to administrative inquiries, fall short of Convention standards. In this regard domestic mechanisms must offer detainees a realistic prospect of redress for ill-treatment or medical neglect, including access to judicial review of detention conditions.[21]

Material conditions of detention

While the Court in earlier judgments had identified discrete failings in Ukraine's detention regime (defective ventilation, inadequate lighting, insanitary cells, insufficient personal space, overcrowding, poor hygiene, and restricted time outdoors) these had been assessed case by case as constituting inhuman or degrading treatment under

18 Law of Ukraine №3687-IX 'On Amendments to the Criminal Code, the Criminal Procedural Code of Ukraine and other legislative acts of Ukraine concerning the introduction …' (Ukraine, 8 May 2024): LINK.

19 Kats and Others v. Ukraine, ibid., §§ 132–136; Logvinenko v. Ukraine, Application no. 13448/07, Judgment of 14 October 2010, §§ 63–68.

20 Isayev v. Ukraine, Application no. 28827/02, Judgment of 28 May 2009, §§ 53–58

21 Kats and Others v. Ukraine.

Article 3.[22] Over time the case-law crystallised that such deficiencies, when systemic and persistent, must be regarded not as isolated lapses but as evidence of a structural failure of the State to ensure that detention conditions remain compatible with human dignity and physical integrity.[23]

This doctrinal evolution culminated in the Sukachov pilot judgment, in which the Court formally recognised a “structural problem” of inadequate pre-trial detention conditions in Ukraine.[24] Cumulative impact of severe overcrowding, deficient lighting, ventilation, and sanitary arrangements, and the inadequate allowance of exercise constituted a violation of the substantive limb of Article 3.[25] The Court further held that Ukraine had breached Article 13 by failing to provide effective domestic remedies enabling detainees to challenge their material conditions.[26]

Despite the firm timeframe established by the Court to remedy the shortcomings found in the Sukhachov judgment, Ukraine has yet to comply with its obligations under Article 46 of the Convenion. Supervision of enforcement of the pilot judgment is now under the authority of the Committee of Ministers of the Council of Europe, which last examined the case at its 1537th DH meeting in September 2025.

Violence by the prison staff

In the **Davydov and Others v. Ukraine** judgment, the Court established that large-scale beatings, intimidation, and humiliating treatment of prisoners during searches and disciplinary operations by special forces amounted to inhuman and degrading treatment, reflecting a culture of tolerance toward excessive force in the penitentiary system.[27] It further held that the absence of effective judicial and prosecutorial oversight created structural impunity and violated the

22 See, for example, case of Yakovenko v. Ukraine, no. 15825/06, judgment of 25 October 2007.

23 See Orchowski v. Poland and analogous treatment-conditions case-law (requiring structural measures where individual adjudication is insufficient).

24 Sukachov v. Ukraine, Application no. 14057/17, Judgment of 30 January 2020.

25 Ibid, §§ 76–89.

26 Ibid, §§ 121-126.

27 Davydov and Others v. Ukraine, 39081/02, judgment of 1 July 2010, §§ 281–287.

procedural limb of Article 3.[28] The later case of **Karabet and Others v. Ukraine** confirmed these findings, reiterating that the collective nature of such violence, the use of masked officers, and the lack of effective domestic remedies revealed systemic failings in ensuring accountability and preventing recurrence.[29]

The Committee of Ministers of the Council of Europe is currently supervising the execution of these judgments within the **Karabet**/**Davydov** group (CM/Exec no. 004-32113). The Committee has recognised the problem as structural, urging Ukraine to adopt reforms guaranteeing that penitentiary staff and special intervention units operate under effective civilian control, that independent complaint and investigation mechanisms are established, and that training and monitoring systems ensure respect for human rights in places of detention.

The supervision of the **Karabet and Others** group of cases[30] by the Committee of Ministers remains open, due continuing concerns over the persistence of ill-treatment, lack of prosecutions, and insufficient preventive safeguards within Ukraine's penitentiary system.

Violence by fellow inmates

In **Plachkov v. Ukraine**, the Court found that the authorities' disregard for well-known tensions within a cell, their inaction despite earlier complaints, and the lack of supervision allowing sustained beatings demonstrated systemic negligence amounting to inhuman and degrading treatment.[31] Similarly, in **Orlov v. Ukraine (No. 2),** the Court reiterated that ineffective investigations, cursory prosecutorial reviews, and the absence of disciplinary or criminal consequences for staff who failed to protect the victim breached the procedural aspect of Article 3.[32]

28 Ibid, §§ 309-313.

29 Karabet and Others v. Ukraine, supra, §§ 276–283, 295–299.

30 Last examined by the Committee of Ministers at its 1340th DH meeting in March 2019.

31 Plachkov v. Ukraine, Application no. 76250/13, Judgment of 15 April 2021, §§ 80-87.

32 Orlov v. Ukraine (No. 2), Application no. 54015/17, Judgment of 4 July 2024, §§ 24-29.

Issues in the spotlight of the EU Commission

The European Commission's evaluation reports on Ukraine form part of the annual enlargement package assessing the country's progress toward EU accession, including its alignment with the acquis under Chapter 23, which covers the judiciary and fundamental rights. These reports provide a structured analysis of legislative and institutional developments, identifying achievements, shortcomings, and priorities for reform. Since Ukraine was granted candidate status in June 2022, the Commission has issued yearly progress reports. The findings of these reports guide both the EU's political dialogue with Ukraine and the conditionality attached to accession-related assistance.

Legislative and institutional reforms

The adoption of amendments to Article 127 of the Criminal Code in December 2022 marked a long-awaited tightening of Ukraine's anti-torture legislation. The reform abolished limitation periods for torture offences and excluded suspended sentences, bringing the domestic legal framework closer to the UN Convention against Torture. However, it is noted that the maximum penalties remain disproportionately low compared to other violent crimes, and courts have continued to impose non-custodial sentences in serious cases. The reform, though significant in form, has not translated into a measurable decline in abuse or an increase in accountability.[33]

Strategic and policy framework

The government's 2022–2026 Prison Reform Strategy and its 2025 operational plan were designed to respond to EU and CPT recommendations. Yet their implementation has been slow and their content limited. Most commitments remained within an already established framework that does not address the CPT's core demands.

Militarisation and the "policing" model of prison administration

A worrying development identified by both the Commission and civil society is the re-emergence of a policing approach within the penitentiary system. Since late 2024, the Ministry of Justice has

33 See 2023 EPLN's contribution to the consultation of CSOs on Chapter 23, p.2.

prioritised creating operational units within the State Penitentiary Service with police-type investigative and surveillance powers. This reform, justified as an effort to enhance internal security, effectively blurs the distinction between custodial and investigative functions and contravenes the principle that prisons must remain separate from law-enforcement structures to prevent coercion and abuse[34].

Healthcare and material conditions

The transfer of prison healthcare to the Ministry of Health remains a critical unmet obligation. The Commission's 2023 and 2024 reports reiterate that medical care continues to fall under the Ministry of Justice, despite years of CPT recommendations to the contrary. The NPM and NGOs report chronic understaffing, shortages of medicines, breaches of confidentiality, and dangerous mixing of inmates with infectious diseases.

Accountability and investigation of torture

The European Commission repeatedly notes that investigations into ill-treatment remain ineffective. Cooperation between the State Bureau of Investigation (SBI), prosecutors, and prison authorities is weak; specialised investigators are few and often assigned to unrelated cases.

EU Commission reports that in 2022, Ukrainian authorities registered 30 criminal cases alleging torture and 990 alleging abuse of power by law enforcement officers, leading to only a handful of prosecutions and even fewer convictions. Between 2018 and 2022, 484 torture cases were opened, resulting in 60 convictions but only 15 prison sentences. These figures illustrate the persistent failure of the criminal justice system to treat torture with due seriousness, reinforcing a climate of impunity among law enforcement and penitentiary staff.

The civil society and expert organisations confirm that impunity persists. In 2024, only three prison officers were charged nationwide,

34 According to the Rule 71 of the European Prison Rules, Prisons shall be the responsibility of public authorities separate from military, police or criminal. UN standards require also a "clear organisational separation between police and prison administrations" (see LINK.)

despite over 7,000 recorded[35] injuries among inmates. While legislation increased the SBI's staffing ceiling, the Bureau still lacks independence and transparency, and reforms such as quarterly reporting on torture cases have not been implemented.[36]

2 BODIES COMPETENT TO RECEIVE COMPLAINTS AND EFFECTIVENESS OF REMEDIES

OVERVIEW

Internal Administrative Complaints

Article 40 of the Constitution of Ukraine guarantees everyone the right to submit written individual or collective petitions or to address public authorities and officials in person, who must consider such petitions and provide a reasoned reply within the statutory timeframe. This right formally extends to persons deprived of liberty.

Under paragraph 6 of Article 13 of the Law "On Pre-Trial Detention," complaints, applications, and letters unrelated to criminal proceedings are to be reviewed by the administration or forwarded to the competent authority in accordance with legal procedures.

In practice, however, this mechanism remains largely illusory. Complaints submitted through internal administrative channels are rarely addressed effectively, and detainees have little access to independent oversight or follow-up once their correspondence leaves the facility.

35 3,762 in 2020, 3,782 in 2021, 3,000 in 2022 4,321 in 2023, According to the information provided in the shadow report submitted to the CAT in 2025 by Zmina, ULAG and Ukraine Without Torture, with regard to the figures for 2022,70% of these cases were recorded at the time of admission to the prisons and 897 cases (30%) were recorded during their stay.

36 See 2025 EPLN's contribution to the consultation of CSOs on Chapter 23, p.6.

External Administrative and Monitoring Bodies and Institutions

Prosecutor's Office

Under the Transitional Provisions of the Constitution, the prosecutor's office continues to supervise the observance of laws in the execution of sentences and other coercive measures restricting liberty. This function is intended to remain in place until a dual system of regular penitentiary inspections is introduced.

Although prosecutors retain formal authority to inspect detention facilities and respond to violations, in practice this mechanism is regarded as untransparent and ineffective[37]. The prosecutorial model lacks independence and often results in perfunctory reviews. The prosecution service has also been reluctant to relinquish this oversight role to another agency, which hinders the implementation of the dual-inspection model.

Ombudsperson

The Ukrainian Parliament Commissioner for Human Rights serves as an independent institution with general oversight over the observance of human rights. The Ombudsman has unrestricted access to places of detention within the framework of the National Preventive Mechanism and can investigate individual complaints.

The Commissioner cannot impose binding decisions or prosecute violations directly. Instead, findings are referred to relevant authorities for action. Consequently, while this mechanism contributes to transparency and monitoring, it lacks enforcement capacity and is not, nor is it intended to be, a remedy as defined by the European Court of Human Rights. Broader impact of the Ombudsperson and the National Preventive Mechanism on the rights of detainees, their access to legal information and legal advice, will be discussed in sections below.

37 ZMINA Centre for Human Rights, 'Прокурори не можуть проводити об'єктивні інспекції у в'язницях – юрист' ZMINA (10 July 2018): LINK.

The Penitentiary Inspectorate of the Ministry of Justice of Ukraine

Following the amendments to the Constitution in 2016, it was planned to abolish prosecutorial supervision in prisons. A working group under the Subcommittee on Reforming the Penitentiary System and Probation of the Parliament ("Verkhovna Rada") Committee has begun drafting a law "On a dual system of regular penitentiary inspections" (No. 5884)[38] and in 2021 it was submitted by the Cabinet of Ministers to the Verkhovna Rada.

Detention Conditions Commissions

Recently adopted and entered into force legislation[39] amends the Criminal Executive Code and the Law "On Pre-Trial Detention" by creating a Commission to review complaints about detention conditions. Detainees, convicts, relatives, or lawyers may apply, and Commission decisions can be appealed in court.

The Law defines adequate detention conditions in line with constitutional and international standards, requiring protection from ill-treatment, medical care, proper nutrition, living space, sanitation, light, ventilation, and compliance with health rules. The Commission is tasked with establishing the fact of inadequate detention conditions and ensuring preventive measures such as transfers, repairs, or reducing overcrowding.

Compensation measures such as sentence reductions, commutations, or cancellation of records will only take effect once a respective draft law[40] is adopted. Until then, only preventive measures apply.

Sub-legislation on the new Commissions

By Resolution No. 1549 of 31 December 2024, the Cabinet of Ministers approved the Regulation on the Commission for complaints about inadequate detention conditions. The Commission's role is

38 Draft law on the establishment of a dual system of regular penitentiary inspections. Draft law No. 5884 dated 02.09.2021: LINK.

39 Draft Law No. 5652, and Law No. 4093-IX entered into force on 1 January 2025.

40 Draft Law No. 5653 of 11 June 2025 was retracted by the Verkhovna Rada.

to establish whether detainees or convicts have been held in inadequate conditions and for how long.

Members of the Commission are appointed by the Ministry of Justice-for the term of three years, at least half of them shall represent civil society. Judges, prosecutors, lawyers, people with criminal records, or former detainees cannot serve.

Applications by the detainees may be submitted in paper form (not subject to monitoring) or electronically to the Commission's postal or email address. From the applicable legislation it is unclear how confidentiality is ensured if the prisoner is submitting a complaint electronically.

The Commission must immediately, and no later than two working days from receipt of the application, send a copy to the administration of the relevant institution. Within five days, the Commission or its authorised members, acting on the chairperson's instruction, visit the facility to examine the conditions of detention and the administration's compliance with standards. The Commission may inspect institutions without prior permission, review documents, make recordings, and speak with detainees and staff.

Within three days of the visit, the Commission holds a meeting to determine whether the person was held in inadequate conditions and for what period. The decision is formalised in a resolution signed by all members present.

A copy of the resolution must be sent within two working days of its adoption to the facility administration, the detained or convicted person, their family member or relative, or the lawyer who submitted the application.Decisions are binding on administrations, which must take corrective measures such as transfers, repairs, or reducing overcrowding, and report back within ten days. Copies of decisions are also sent to oversight bodies. If dissatisfied, detainees or convicts may appeal the Commission's decision in court within one year.

As of May 2025, four Commissions became operational within the relevant interregional Departments for the Execution of Criminal Sentences and they have considered 15 complaints finding no grounds to intervene for various reasons. Two other Commissions

were under formation.[41] Its effectiveness so far has been seen as low by the Committee of Ministers due to the lack of tangible improvements in detainees' conditions of detention.[42] Moreover it is unclear what is the role of the detainees and their lawyers in the process besides the initiation of complaint and possible appeal.

Criminal investigation bodies and Judicial Remedies

Criminal investigations by the National Police and State Bureau of Investigation

There is a long-standing practice of submitting complaints to the police under Article 364 of the Criminal Code (abuse of power or office) and Article 365 (exceeding authority or official powers) in cases of ill-treatment or other abuses committed by penitentiary or law enforcement officers. Formally, under the current Criminal Procedure Code, every such complaint should be immediately registered in the Unified Register of Pre-Trial Investigations, thereby triggering an official inquiry. In practice, however, this mechanism has proved ineffective. Law enforcement bodies frequently fail to register complaints, delay their examination, or conduct only superficial inquiries.[43]

Investigative judge

Under Article 206 of the Criminal Procedure Code, the investigating judge carries a broad duty to safeguard human rights in the course of pre-trial proceedings. This provision requires the judge to verify the lawfulness of detention and empowers them to order the release of a detainee if the detention proves unlawful. It also grants the judge the authority to intervene on their own initiative when there are signs of torture or ill-treatment, for instance by ordering a forensic medical examination and initiating a formal inquiry. In principle, this positions the investigating judge as a key guarantor of rights at the earliest stages of criminal proceedings. According to the expert

41 Action Plan by the Government Agent of Ukraine before the ECHR in the case of Sukachov v. Ukraine, examined by the Committee of Ministers of the Council of Europe.

42 See Notes in the case of Sukachov v. Ukraine, CMDH examination of 15-17 September 2025.

43 see, for example, Just Talk discussion paper, 25 June 2020, on the issue of investigations of torture: LINK.

community, judges rarely exercise these proactive powers and tend to avoid acting without a direct petition from the parties[44]. Even when defense counsel invokes Article 206 to challenge the legality of detention, such motions are often examined only after a preventive measure has already been applied, which significantly weakens their protective effect. The scope of authority under Article 206 remains ambiguous, as the Code does not provide a coherent framework for the judge's role, and the heavy caseload of investigating judges further limits their ability to engage in meaningful review.[45]

The new Law No. 4093-IX expands the judge's responsibilities by authorising judicial review of complaints against decisions of the Commissions on detention conditions. This effectively transforms the investigating judge into an "investigating and penitentiary judge." While this could provide a second level of review similar to an appeal on the merits, the exact scope of review is yet to be defined, raising concerns about potential overload and limited attention to individual cases. Additional concerns include conflict of jurisdiction given the absence of clearly defined rules on the matter.[46]

Administrative courts

Administrative courts are competent to consider claims against acts or omissions of public authorities, including those of penitentiary administrations. In principle, this remedy allows prisoners to challenge unlawful disciplinary actions, restrictions, or systemic deficiencies in detention facilities.

Under the Code of Administrative Justice, any decisions, actions, or inaction of public authorities may be appealed before administrative courts, which review whether the contested measures were taken lawfully, reasonably, and proportionately, ensuring a fair balance between the individual's rights and the legitimate aims pursued. Everyone has the right to apply to an administrative court if they consider that their rights or interests have been breached by such acts or omissions.

44 see, for example, Just Talk discussion paper, 20 December 2019, on the issue of application of Article 206 of CPC.

45 Ibid.

46 See, for example, decision of the Khadzhibey District Court of Odesa region of 4 June 2025 returning the appeal to the detainee due to the violation of the rules of jurisdiction: LINK.

Articles 537 and 539 of the Criminal Procedure Code define the scope of matters falling under the jurisdiction of courts during the enforcement of sentences. These provisions identify, among other entities, the administrations of penitentiary institutions as separate procedural subjects. Paragraph 13-1 of PART I of Article 537 specifies that during the enforcement of sentences, the court, as determined under PART II of Article 539, has the power to examine complaints against other decisions, actions, or omissions of the administration of a penal institution. Under PART II of Article 537, the same procedure applies to the appeal of decisions, actions, or omissions by the administration of pre-trial detention centers.

At the same time, Part 9 of Article 539 establishes that the examination of matters defined under Paragraph 13-1 of PART I of Article 537 shall be conducted in accordance with the rules of administrative proceedings. Consequently, challenges concerning the actions or inaction of the administration of penitentiary or pre-trial detention institutions fall within the jurisdiction of administrative, rather than criminal, courts.

From this framework, it follows that within criminal proceedings, the decisions, actions, or omissions of the administration or officials responsible for overseeing the detention of individuals in pre-trial detention centers are not subject to challenge as acts of pre-trial investigation or preparatory proceedings. Instead, in accordance with the express provisions of Articles 537 and 539 of the Criminal Procedure Code, such appeals fall within the scope of administrative jurisdiction.

This division of competence is subtle and may create confusion in legal practitioners, let alone detainees, between issues arising during the investigation of criminal cases and falling under Article 206 of Criminal code and those concerning the treatment of detainees within custodial institutions under Articles 537 and 539.

Constitutional Complaints

The Constitutional Court of Ukraine provides a constitutional remedy for individuals seeking to challenge the constitutionality of laws that directly affect their rights. In the penitentiary context, this includes the possibility of contesting legal provisions that restrict prisoners' rights or procedural guarantees.

The Constitutional Court plays an important role in shaping the governmental institutional architecture and feeds into the system of checks and balances when it comes to newly introduced reforms. For example, the court declared unconstitutional a provision that allowed investigators from the penitentiary system to investigate crimes committed within detention facilities[47]. The Court emphasized that such an arrangement creates an institutional conflict of interest, violating the constitutional and international standards of independence, impartiality, and effectiveness required for investigations into human rights violations. The Court reaffirmed that the State bears a positive obligation to protect life and human dignity, which includes ensuring independent investigations into abuses committed in detention. Such independence is impossible when investigators are hierarchically subordinate to the penitentiary administration. This decision is relevant not only to the investigative powers that had been granted to penitentiary staff, but also to the operational officers, whose powersare defined in regulations. These regulatory acts fail to guarantee the structural and institutional independence required for compliance with constitutional and international human rights standards.

Access to the Constitutional Court is constrained by strict procedural filters, which limit the number of cases admitted for consideration. While the Court has issued important judgments concerning procedural guarantees for persons in custody, constitutional review remains a narrowly accessible and time-consuming remedy.

Compensatory Remedies

Civil Actions for Damages

Prisoners may file civil claims seeking compensation for violations of personal rights, under Articles 22, 23, 1167, and 1195 of the Civil Code. They may also claim compensation within criminal proceedings under Chapter 9 of the CPC.

In practice, this remedy is seldom used by persons in custody. The concept of compensating non-pecuniary damage is still evolving

47 Decision of the Constitutional Court of Ukraine of 24 April 2018 No. 3-р/2018: LINK.

in Ukrainian case-law, compensation amounts are minimal, and proceedings are lengthy.

EFFECTIVENESS OF REMEDIES

Assessment by the European Court of Human Rights

The Court has repeatedly concluded that, given the structural nature of the deficiencies, the remedies available in Ukrainian law are ineffective both in theory and in practice.

While, in theory, Ukrainian law provides several channels through which individuals may raise complaints about violations of their rights, in practice these mechanisms are either inaccessible, purely formal, or ineffective in preventing or redressing ongoing violations.

Under domestic law, the public prosecutor bears responsibility for overseeing compliance with legal standards in the application of measures restricting personal liberty. In exercising this function, prosecutors have the authority to demand that officials of detention facilities eliminate any violations and the underlying causes or conditions that contributed to them. Although this supervisory power could, in principle, serve as an important safeguard, the ECtHR has repeatedly found that complaints to prosecutors fall short of the requirements of an effective remedy.

The principal deficiency of this mechanism lies in its procedural structure. A complaint to the prosecutor does not derive from a detainee's personal right to obtain redress and is not designed to ensure the complainant's participation in the process. The matter is handled exclusively between the prosecutor and the administration of the detention facility, without providing the detainee an opportunity to be heard, to comment on the submissions of the prison authorities, or to present additional evidence. The detainee's involvement is limited to receiving information about how the prosecutor has dealt with the complaint. The Court has held that this procedural arrangement deprives the remedy of the essential features of independence, transparency, and adversarial participation required under Article 13.

Moreover, even if a detainee were to obtain a formal order from the prosecutor directing the prison administration to correct unlawful or inadequate detention conditions, the systemic overcrowding of Ukrainian detention facilities would render the order largely ineffectual. The improvement of one detainee's situation would inevitably come at the expense of others, as the administration lacks the capacity to implement structural changes or accommodate simultaneous demands for redress. The Court has noted this problem in several judgments, emphasizing that the widespread and recurring nature of poor detention conditions in Ukraine precludes effective individual relief within existing administrative or prosecutorial frameworks.

In numerous cases, including those giving rise to the present findings, the Ukrainian Government has failed to demonstrate how a complaint to the prosecutor could have prevented or remedied violations of Article 3 of the Convention relating to inadequate detention conditions. The Court has thus reiterated that such a complaint cannot be considered an effective remedy.

Furthermore, the ECtHR has examined other remedies advanced by the Government as allegedly effective in addressing complaints about detention conditions (such as petitions to the administration of a pre-trial detention centre (SIZO), appeals to other state authorities, or civil and administrative claims before the courts) and has likewise found them ineffective. These mechanisms were deemed inadequate because they did not provide timely or enforceable relief and because they addressed only individual grievances rather than the structural deficiencies underlying the problem.[48]

Taken together, these findings demonstrate that Ukraine lacks domestic remedies capable of providing effective preventive or compensatory redress for violations of the right to humane treatment in detention. The reliance on prosecutorial supervision, internal administrative procedures, or slow-moving judicial actions has failed to ensure compliance with the standards of Article 13 of the Convention.

In cases concerning ill-treatment in Ukraine, the Court has held that under the Code of Criminal Procedure of 1960, the hierarchical

48 Zinchenko v. Ukraine, § 53; Koval v. Ukraine, § 96; Malenko v. Ukraine, no. 18660/03, § 37, 19 February 2009; Iglin v. Ukraine, § 43; Samoylovich v. Ukraine, no. 28969/04, § 55, 16 May 2013; Kobernik v. Ukraine, no. 45947/06, § 38, 25 July 2013.

appeals to superior prosecutors or to the courts cannot be regarded as effective remedies for complaints of police ill-treatment and inadequate investigations. While domestic bodies often issued instructions to take additional investigative measures during reopened or ongoing inquiries, these instructions were either ignored or implemented superficially. The result was a cycle of repetitive reviews and remittals without substantive progress, rendering the process illusory and incapable of providing genuine redress.[49]

In the more recent cases[50] the Court held that the Ukrainian Government failed to demonstrate that the remedies under the new procedural regime (appeal to the investigative judge) were materially different or more effective than those available under the previous Code. Moreover, the applicant's use of the new remedies yielded no tangible results, as the remittals continued to be based on identical shortcomings such as the failure to conduct essential investigative steps and to comply with directives from supervisory authorities.

Committee of Ministers

The recent Ukrainian reform embodied in Law No. 4093 of 1 January 2025 introduced a compensatory remedy for persons held in inadequate detention conditions. However, the mechanism established by this law does not envisage a direct or automatic reduction of the detainee's sentence. Instead, it requires the person concerned to satisfy additional criteria applicable to conditional release or commutation of sentence. As a result, the potential benefit of the remedy is contingent upon discretionary or unrelated legal conditions, which significantly undermines its effectiveness.

The absence of a clear and automatic link between the finding of inadequate conditions and the provision of concrete relief means that the mechanism fails to provide immediate and guaranteed redress to those affected. Victims of inhuman or degrading detention conditions are therefore left without a predictable or enforceable form of compensation.

49 See, Kaverzin v. Ukraine.

50 See, Adnaralov v. Ukraine, no. 10493/12, judgment of 27 November 2014 or, more recently, Karter v. Ukraine, no. 18179/17, judgment of 11 April 2024.

Given these shortcomings, the compensatory remedy established under Law No. 4093 cannot be regarded as meeting the standards required under Article 13 of the Convention.[51] It neither ensures prompt and direct redress nor provides adequate compensation proportionate to the gravity of the violation, as envisaged in the Court's case law and the Committee of Ministers' execution practice.

In the context of investigation of cases of ill-treatment, while the Committee of Ministers has initially been supportive[52] of the newly established independent body to investigate cases of torture committed by the State agents – State Bureau of Investigations, reports about the low number of initiated investigations in comparison to the overall number of complaints, low number of indictments in comparison to the overall number of ongoing investigations led to Committee's doubts as to efficiency of the investigations of such cases.[53]

51 See Notes in the case of Sukachov v. Ukraine, CMDH examination of 15-17 September 2025.

52 See Decision of the Committee of Ministers in the group of cases of Kaverzin/Afanasyev v. Ukraine during its 1323rd meeting in September 2018.

53 For more detailed info, see Notes by the Secretariat in the group of cases of Kaverzin/Afanasyev v. Ukraine for the 1483rd meeting in December 2023.

3 ACCESS TO LEGAL INFORMATION

Access to legal information for pre-trial detainees in Ukraine is structured through a combination of institutional resources (libraries, informational notices, and limited internet access) and personal assistance (visits by lawyers, legal aid services, and NGO/ombudsman interventions).

On paper, every pre-trial detention facility is required to provide detainees with core legal texts and updates, and detainees have avenues to learn about the law such as reading the Criminal Code in the library and receiving pamphlets on how to contact a lawyer.

In practice, as will be examined below, while these mechanisms have improved over time, they still fall short of fully empowering all detainees.

OBLIGATION TO INFORM DETAINEES OF THEIR RIGHTS

The right of persons deprived of liberty in the context of criminal inquiry to be informed of their rights is guaranteed by the Constitution and national legislation. Article 29 of the Constitution requires that every arrested or detained person be immediately informed of the reasons for detention, have their rights explained, and be given the opportunity to defend themselves and receive legal assistance from a lawyer. Articles 57 and 59 further establish the right to know one's rights and duties and to obtain professional, including free, legal assistance.

The Criminal Procedure Code obliges investigative bodies to appoint officials responsible for registering detainees and promptly explaining the grounds for detention and their rights[54]. From the first moment of custody in the context of criminal investigation, detainees must be informed of their key rights such as to know the accusation, to counsel, to remain silent, and to notify relatives.

54 Article 212.

Under the Law "On Pre-Trial Detention", detainees may defend their rights within the criminal inquiry personally or through a lawyer from the moment of detention[55]. They must also receive a printed explanation of the relevant constitutional provisions and their procedural rights, including the right to remain silent and to legal defense.

Access to Legal Materials and Information

Prison Libraries

All pre-trial detention centers in Ukraine shall maintain libraries that detainees may use to obtain literature, including legal texts. The Ministry of Justice's Internal Rules for SIZOs mandate that the library's collection include up-to-date copies of key legal documents. By regulation, the SIZO library must stock the Constitution of Ukraine, the Criminal Code and Criminal Procedure Code, the Criminal Executive Code, Civil Code and Civil Procedure Code, and other laws governing criminal justice (such as laws on the Prosecutor's Office and National Police) and life in detention (such as Law "On Pre-Trial Detention" or Internal Prison Rules by the MoJ).[56] Importantly, it must also hold texts of major human rights instruments and standards – for example, the European Convention on Human Rights, the European Prison Rules, and the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules). It is, however, unclear how fully these provisions are fulfilled in practice.

SIZO staff shall facilitate access by delivering books and newspapers to detainees' cells. Regulations require that a designated officer circulate library books to each cell at least once every 10 days. There is no formal limit on the variety of reading materials available, aside from security screening of content, and detainees engaged in studies can possess necessary textbooks in addition to recreational reading.

Notices and Information in Detention

Beyond library resources, pre-trial facilities shall disseminate legal information through other channels. It is common for notice boards

55 Article 9.

56 Internal Rules of Pre-Trial Detention Centres, Ministry of Justice of Ukraine.

or posted leaflets to display important contact information (such as how to reach the Ombudsman or free legal aid hotlines) and to outline complaint procedures.

Coordination Center for Free Legal Aid has developed information pamphlets specifically for pre-trial detention settings: these posters, intended to be placed in areas where detainees have phone or internet access, explain how to contact the national free legal aid call center and how to use the "client's cabinet" portal to request assistance.[57]

Findings from the field research: according to a representative of the State Criminal-Executive Service (SCES), detainees in pre-trial detention centres (SIZOs) have access to information about their rights and how to exercise them through banners, leaflets, and an electronic library: "We have banners and leaflets in the institution, and each one explains where they can turn for their needs... Also, regarding access to legal acts... we have an e-book in the library."

In practice, written materials are usually displayed on information stands in the corridors of SIZOs or penitentiary institutions. However, many prisoners do not read them or cannot access them because they rarely leave their cells or are not allowed into those areas. Information provided verbally upon admission is often limited to formality. As one former detainee stated: "I saw nothing in SIZO. I received information about my rights only in the courts, but nothing in SIZO. Even fiction books are difficult to get, not to mention booklets."

An NPM monitor reported that during his visits to penitentiary institutions functioning as SIZOs between 2019 and 2021, information stands often contained outdated materials, and none displayed examples of how to file a complaint against the administration. In one such institution, an information stand included contact details for the Ombudsman's Office.

Internet

In recent years, Ukraine has introduced ways to modernize detainees' access to communications and information technology, albeit in a controlled manner. According to the Procedure for Providing

57 Memos on access to legal aid for pretrial detention facilities: LINK.

Convicts with Access to the Internet,[58] access to the global network is granted through specialised technical devices and tablets. SIM cards and cameras are blocked by software to ensure security. Each institution's administration compiles a list of websites allowed under the Ministry of Justice's official order. The list includes websites of Ukrainian state authorities and institutions, foreign governments and embassies, the European Court of Human Rights (including the eComms service), local authorities, registered media, international organisations, educational and cultural institutions, healthcare facilities, political, public and religious organisations, as well as sports, creative, reference and legal websites.

The administration may expand this list upon request from a detainee. According to information provided by the Department for the Execution of Sentences,[59] as of 1 October 2024, convicts possessed 5,659 personal tablets, and an additional 206 tablets were available in cells with improved detention conditions,[60] held on the balance sheet of pre-trial detention centres and penitentiary institutions.

In 2021, a ministerial order introduced an experimental initiative aimed at providing pre-trial detainees with paid access to the internet and IP-based telephony within detention facilities. The measure was presented as a progressive step toward improving communication and access to information for persons in custody.[61] However, despite its formal adoption, there is no evidence that the initiative has been implemented in practice.

Findings of the field research: some places of detention require that every email be reviewed by an operational officer, while others monitor communications only when there are security concerns, such as suspected fraud or intimidation. Internet access is restricted to approved government and legal websites, and in many

58 On approval of the Procedure for organising access to the global Internet for convicts: Order of the Ministry of Justice of Ukraine dated 19.10.2017 No. 3233/5: LINK

59 Response of the Department for the Execution of Sentences of the Ministry of Justice of Ukraine No. 12_0291 dated 09.12.2024 to the information request of Human Rights Centre ZMINA.

60 The so-called "paid cells" of the MoJ - On Approval of the Procedure for Arrangement of Cells with Improved Conditions of Detention and Provision of Paid Services to Persons in Detention in Pre-trial Detention Facilities of the State Criminal Executive Service of Ukraine to Ensure Improved Conditions of Detention: Order No. 3292/5 dated 15 September 2023: LINK.

61 Order of the Ministry of Justice, by 15 September 2023 No. 3292/5: LINK.

facilities computers are disconnected from the Internet entirely. Human rights monitors report that in some facilities the staff have undermined the intended purpose of the tablet program by blocking access to legal resources. According to the NGO "Protection of Prisoners of Ukraine",[62] certain SIZO administrations only allow detainees to use the provided tablets for trivial purposes (like watching entertainment content), while preventing access to human rights websites or online legal databases.

The availability of tablets has improved access to legal aid in certain institutions. For example, some life-sentenced prisoners now use the **Electronic Court** system to file motions and receive court decisions online. Yet, in others (particularly women's colonies) administrations report that inmates "do not need" Internet access, effectively denying them these tools.

In pre-trial detention centres, new IP telephony systems allow detainees to make calls without prior approval, and pilot projects enable self-funded calls through personal accounts. Despite these advances, most communication remains monitored, undermining confidentiality and raising concerns about interference with prisoners' right to legal correspondence.

Access to Legal Information Through Advice

As explain above, Ukrainian detainees' choice in legal information is limited to outdated text of the laws and internet resources, if allowed by the facility administration. However, it is known that the Ukrainian legal system is complex and difficult to navigate if you're not trained, let alone if you're in a vulnerable situation such as pre-trial detention.

Free Legal Aid Services

Ukraine's Free Secondary Legal Aid system plays a significant role in providing lawyers to indigent detainees and offering legal consultations. Every individual taken into custody under criminal charges has the right to a state-funded lawyer.

62 Prison conditions, Ukriane, 2024 report, p. 37: LINK.

The respective Law "On Free Legal Aid" was adopted in 2011 and contains definitions of key concepts, a list of legal service providers, a list of entities entitled to free legal aid, etc. In particular, the authorities provide primary and secondary legal aid. Primary legal aid includes: providing legal information; providing advice and clarification on legal issues; drafting applications, complaints and other legal documents (except for procedural documents); providing assistance in ensuring a person's access to secondary legal aid and mediation. Secondary free legal aid includes the following: defence; representation of the interests of persons entitled to secondary free legal aid in courts, other state bodies, local self-government bodies, and before other persons; drafting of procedural documents.

The regional Centers for Free Secondary Legal Aid assign attorneys to represent detainees during investigation and trial. In addition to courtroom representation, these legal aid lawyers are available to answer detainees' questions about legal procedure, help prepare complaints or motions, and guide them on possible remedies (such as appeals, applications to the European Court of Human Rights, etc.).

While the law provides for free counsel, in practice detainees in remote or conflict-affected areas often face delays in seeing a lawyer. The ongoing war has exacerbated this, as courts and legal aid offices near frontlines may be disrupted. Reports indicate that access to qualified legal aid is "often hindered" in such areas, undermining detainees' ability to get advice or prepare their defense. Even before the war, underfunding meant that legal aid lawyers carried heavy caseloads and could not always devote extensive time to educating clients about the law – a point noted by prison rights advocates who observe persistent gaps in legal awareness among prisoners[63]. Field research shows that lawyers working with clients in places of detention in Ukraine face practical and logistical challenges that hinder their work. Many detention facilities are located in remote areas, far from urban centres, which forces lawyers to travel long distances at their own expense and spend considerable time in transit. These difficulties have been compounded by the effects of martial law and the security restrictions imposed in regions close to the frontline. Although lawyers are technically permitted to move during curfew hours, this often does little to resolve the broader logistical constraints they encounter.

63 Prison conditions, Ukriane, 2024 report: LINK.

Frequent air alerts, particularly in regions affected by shelling, disrupt court proceedings and scheduled visits, while inconsistent responses from courts to such alerts further complicate the work of defence counsel. Organisational obstacles within detention facilities also remain common. At the end of reporting periods or before holidays, investigators and prosecutors tend to occupy meeting rooms for urgent procedural matters, which restricts lawyers' access to their clients. Even when special meeting rooms are available, delays often occur in bringing detainees to those rooms, resulting in shortened or cancelled meetings.

Access to legal aid in the temporarily occupied territories of Ukraine is severely restricted and difficult to verify, as independent institutions no longer operate. Russia has imposed its legislation on these areas, replacing Ukrainian law and requiring lawyers to obtain Russian citizenship and pass exams in Russian law to continue practicing.

After 2014, the number of lawyers in Crimea dropped from about 1,700 to 800, many of whom, especially those defending political prisoners, faced harassment, detentions, and prosecution. In the so-called "DPR" and "LPR," local "bar associations" and "courts" were established under occupation authorities, forcing lawyers to cooperate to retain their licenses.

Following Russia's full-scale invasion and annexation in 2022, Russian law was extended to all occupied territories. Ukrainian lawyers in government-controlled areas cannot legally work there, while residents of the occupied zones distrust remote consultations due to security concerns. As a result, effective access to legal aid in these regions remains almost nonexistent.

Ombudsperson

Secretariat of the Parliament Commissioner for Human Rights (Ombudsperson) also contribute to detainees' access to legal information. Ukraine's National Preventive Mechanism (under the Ombudsman's office) conducts monitoring visits to SIZOs and often provides detainees with information on how to file complaints. During such visits, officials might answer detainees' questions about their rights or assist in transmitting grievances.

A number of human rights NGOs such as the Kharkiv Human Rights Protection Group, Ukraine Without Torture, Protection for Prisoners of Ukraine are authorized to visit detention facilities and have been known to educate inmates on their rights and legal options as part of their monitoring. While not a formal system of legal counseling, these monitoring bodies **de facto** perform an advisory function, helping prisoners understand avenues for relief. For instance, they might inform a detainee about the possibility of challenging ill-treatment or about procedural rights that detainee can insist upon.Reportedly, the NGO visits are more likely to happen in post-conviction facilities and access remains limited for pre-trial detention.

PROVISION OF LEGAL INFORMATION TO FOREIGN PRISONERS

Ukrainian law guarantees non-native speakers the right to interpretation and translation during criminal proceedings. This right is established by Article 29 of the Constitution, which guarantees the right to defence, and Article 68 of the Criminal Procedure Code, which obliges investigators and courts to provide interpreters when needed.

Language may not be a ground for restricting access to legal aid. If a detainee does not speak Ukrainian, the Free Legal Aid Centre must provide an interpreter free of charge. All procedural documents must be translated during the trial. However, the Law "On Free Legal Aid" mentions interpreter assistance only for secondary legal aid, such as court representation and procedural drafting, and not for primary legal aid, which covers access to legal information.

One of the lawyers interviewed for this research noted that interpretation is usually available during the first meeting with a lawyer and for the translation of case materials, complaints, and other documents. Foreign prisoners have the same formal right to legal aid as Ukrainian citizens, and those who do not speak the language of the proceedings are provided with a defence lawyer at the state's expense.

In 2023, the State Criminal-Executive Service translated internal regulations into seven languages to improve access to information

on detainees' rights. Despite these measures, the shortage of qualified interpreters, especially for less common languages, continues to delay proceedings and hinder effective legal assistance.

COURT FEES, COMPLAINT FILING COSTS, AND LEGAL REPRESENTATION REQUIREMENTS

Postal service

An important aspect of ensuring access to justice for those in pre-trial detention concerns the costs of filing complaints with courts and the responsibilities of SIZO administrations in this process.

Pursuant to Article 13 of the Law of Ukraine "On Pre-trial Detention," the SIZO administration is required to forward complaints, applications, and petitions not related to criminal proceedings through the relevant services within three days of their submission.

Special provisions regulate the transmission of correspondence to international organisations and authorised officials. Prisoners may address complaints to the Ombudsperson, the European Court of Human Rights, the International Criminal Court, and other international bodies or authorised persons of organisations of which Ukraine is a member or participant, as well as to the prosecutor. Such correspondence is exempt from review by the SIZO administration and must be dispatched to the addressee within one day of submission.

While the costs of sending complaints in criminal proceedings are borne by the SIZO administration. All other correspondence is paid for by the detainee. Where a detainee lacks the financial means to purchase envelopes or stamps, the necessary items shall be provided at the expense of the administration, as stipulated by the Internal Regulations.[64]

64 Chapter 7 Clause 3 Sub-Clause 1 On approval of the Rules of Procedure for pre-trial detention centres of the State Penitentiary Service of Ukraine: Order of the Ministry of Justice of Ukraine dated 14.06.2019 No. 1769/5: LINK.

Prisoners personally seal their letters before handing them to a designated official of the SIZO administration to ensure the confidentiality of correspondence. Upon receiving letters intended for courts or other authorities, the responsible official must issue a confirmation slip certifying that the correspondence has been accepted for dispatch.

The law imposes an obligation on SIZO administrations to forward complaints to the courts within the prescribed time limits and to cover postal costs where detainees are unable to do so.

Court Application Fees

Under Ukrainian criminal procedural law, prisoners may apply to the court for the protection of their rights without paying a court fee. This exemption applies in particular to complaints submitted to investigating judges, which are central to prison-related litigation.

In administrative proceedings of a non-pecuniary nature, prisoners must pay a court fee amounting to 1,211.20 UAH[65] in 2024. Individuals who cannot afford to pay may be exempted from payment or granted a deferral, instalment, or reduction of the fee. This aspect is of particular relevance given that the detainees have limited opportunities to work while in pre-trial detention and reportedly receive 2-3 times less than a legal minimum. In one instance a detainee received 150 UAH for a month of work.[66]

According to Article 82 of the Civil Procedure Code of Ukraine and Article 88 of the Code of Administrative Procedure, an application for exemption from the court fee must be attached to the claim or filed as a separate document. The applicant must submit evidence of financial hardship, such as a certificate of income and family composition, a bank statement confirming the absence of funds, a certificate from the tax authorities on available accounts, or proof of supporting dependents who are unable to work.

The Supreme Court has emphasised that courts must carefully examine a claimant's real ability to pay when disputes involve public authorities and the applicant seeks exemption, reduction, or deferral of court fees. Courts are required to specify the evidence needed

65 PART II of Article 4 of the Law of Ukraine "On Court Fees": LINK.

66 Office of the Prosecutor General, 2023: LINK.

to substantiate financial hardship, assess it properly, and provide a reasoned decision reflecting the applicant's circumstances and the nature of the dispute.[67] If an exemption is denied, the decision may be appealed only together with the judgment on the merits.

Court decisions may also be appealed in cassation. However, refusals to grant exemption from court fees cannot be challenged separately in cassation, as confirmed by the decision of the Grand Chamber of the Supreme Court of 14 June 2023, which established a specific procedural framework for appealing such matters.[68]

Financial Implications for Legal Aid Recipients Following an Unsuccessful Case

The financial implications of unsuccessful litigation vary depending on the type of proceedings initiated by a detainee. In criminal procedure, all costs associated with the exercise of remedies (such as complaints to the investigating judge) are borne by the State. Detainees are not required to pay court fees in these cases, even if their complaints are dismissed.

In contrast, proceedings before administrative courts, including those concerning prison conditions or disciplinary measures, are subject to court fees. When an administrative claim is unsuccessful, the applicant is generally responsible for covering these costs. However, under Article 133 of the Code of Administrative Procedure of Ukraine, the court may, taking into account the applicant's financial situation, reduce the amount of court fees, exempt the person from payment in full or in part, or defer or allow payment in instalments for a defined period.

Importantly, if a detainee who has been exempted from court fees loses the case, the expenses incurred by the defendant are reimbursed from the State Budget of Ukraine in accordance with procedures established by the Cabinet of Ministers.

67 Resolution of the Supreme Court dated July 31, 2019 in case No. 821/1896/15-a (No. K/9901/14384/18): LINK.

68 Resolution of the Grand Chamber of the Supreme Court dated June 14, 2023 in case No. 607/23244/21: LINK.

Mandatory Legal Representation in Court Proceedings on Detention Conditions and Prisoner Status

Article 52 of the Criminal Procedure Code of Ukraine defines the cases where defence counsel participation is compulsory. It is required in criminal proceedings concerning especially grave offences from the moment a person becomes a suspect.

Mandatory legal representation also applies to minors, persons with mental or physical disabilities, individuals who do not know the language of the proceedings, and those subject to compulsory medical or educational measures. It is further required in cases involving special pre-trial or judicial proceedings, rehabilitation of deceased persons, and plea agreements.

Outside these categories, Ukrainian law does not require mandatory legal representation in prison-related or post-conviction proceedings. Legal aid in such matters is provided only upon request and based on eligibility under the free legal aid framework.

It needs to be also noted that since the 2016 Constitutional amendments related to justice, representation in courts can be conducted exclusively by attorneys (legal professionals admitted to the Bar), apart from a small category of cases in civil, commercial and administrative jurisdictions, inapplicable to prison litigation matters. Representation before the public authorities outside of the judiciary and criminal proceedings remains possible for non-attorney professionals, such as NGO lawyers.

Legal Assistance to Detainees in Disciplinary Proceedings

The Rules of Internal Procedure of Pre-Trial Detention Centres of the State Criminal-Executive Service of Ukraine regulate, among other matters, the procedure for applying incentives and disciplinary sanctions to detainees and convicted persons held in SIZO[69].

The Rules provide that the decision to apply a disciplinary sanction must be taken by a disciplinary commission established within each

69 These provisions are based on Articles 14 and 15 of the Law of Ukraine "On Pre-Trial Detention" and Articles 67–69, and 130–135 of the Criminal-Executive Code of Ukraine.

SIZO. The commission functions on a permanent basis and includes the head of the SIZO, deputies, and heads of relevant services who have direct contact with detainees. It is competent to examine the circumstances of the alleged disciplinary offence and to determine whether a sanction is appropriate. A detainee must be informed in writing of the time and place of the disciplinary hearing at least one day in advance, and this period may be extended by up to two days upon a written request from the detainee.

Under the amendments introduced by Order No. 2060/5 of the Ministry of Justice of 24 July 2025, the Rules now explicitly recognise the right of detainees to obtain legal assistance during the preparation and conduct of disciplinary proceedings. A detainee may, at their own choice, be represented by a lawyer or another specialist in the field of law who is authorised to provide legal assistance under national legislation.

If a detainee does not have access to a lawyer or other qualified legal professional, the SIZO administration must ensure that they can contact a provider of free legal aid. This must be arranged without undue delay and within twenty-four hours of receiving a written request from the detainee or their close relatives. The Rules specify that contact may be facilitated by telephone, by electronic communication, or by post, depending on the detainee's choice. The administration is required to record the time, date, and method of this communication and attach the record to the detainee's personal file.

The Rules also provide that detainees and their representatives have the right to access information and documentation relevant to the disciplinary case not later than one day before the hearing. They may examine the materials of the disciplinary proceedings and their personal file, make notes, copy documents, submit explanations or objections orally or in writing, and request the participation of other persons whose presence may help establish the relevant circumstances.

4 LEGAL AID

SCOPE OF LEGAL AID BEYOND CRIMINAL PROCEEDINGS

In Ukraine, the legal aid regime is anchored primarily in criminal and related proceedings. The Law "On Free Legal Aid" distinguishes between primary legal aid (legal information, consultations, legal advice) and secondary legal aid (representation before governmental institutions, drafting procedural documents, defence in court, etc.).

By virtue of law, persons placed in pre-trial detention are automatically entitled to legal services listed in points 1 and 3 of part two of Article 13 of the Law, which include defence in criminal proceedings and drafting of procedural documents. They are also entitled to representation before the authorities if they have been subjected to violence, torture, or other cruel, inhuman, or degrading treatment while in custody.

In procedures beyond the criminal proceedings, assistance may be granted under Article 14, PART I, paragraph 1 of the Law, under the "means test". The decision to provide such aid is made by the Free Secondary Legal Aid Centres (FSLACs) if the applicant lacks sufficient financial means to hire a lawyer.

A person qualifies for legal aid if their family's average monthly income is below the subsistence minimum established in accordance with the Law of Ukraine "On the Minimum Subsistence Level" for the relevant social and demographic group.

However, in practice the application of legal aid to prison-related litigation or internal administrative complaints is significantly constrained. The system reluctantly provides continuous representation for prisoners in internal prison matters such as complaints to prison administration or disciplinary proceedings. Legal aid is more readily accessible when prison-related issues escalate to court, such as for instance, in judicial review of prison decisions, appeals on sentence execution, or civil or administrative claims before courts.

OVERVIEW: FUNDING STRUCTURES FOR PRISON-RELATED LEGAL WORK

The financing of prison litigation in Ukraine relies, where applicable, on the state-funded system of free legal aid administered by the Coordination Centre for Legal Aid Provision under the Ministry of Justice. Lawyers providing state-funded legal services are remunerated from the State Budget according to fixed hourly rates established by the Cabinet of Ministers.

Alternative sources of financing, such as private legal insurance or structured pro bono schemes, are largely absent. While some non-governmental organisations and human rights groups, as will be examine further, provide legal assistance to prisoners in strategic cases or in applications to the European Court of Human Rights, such interventions ado not substitute for systemic state support.

LEGAL FRAMEWORK AND FUNDING OF LEGAL AID SCHEME

The right to legal assistance in Ukraine is guaranteed by both international and domestic law. Under Article 6 § 3(c) of the European Convention on Human Rights and Article 14(3)(d) of the International Covenant on Civil and Political Rights, everyone charged with a criminal offence has the right to defend themselves personally or through legal assistance of their choosing. Those without sufficient means are entitled to free legal aid when required by the interests of justice.

Domestically, Article 59 of the Constitution of Ukraine enshrines the right to legal aid, stipulating that it shall be provided free of charge in cases defined by law. The Law of Ukraine “On Free Legal Aid” defines free legal aid as state-guaranteed assistance funded in whole or in part by the state or local budgets. Article 42(3)(3) of the Criminal Procedure Code of Ukraine further provides that suspects and accused persons have the right to defence counsel upon request, including confidential consultation before the first interrogation and representation at the state’s expense when they lack financial means. The Council of Europe Parliamentary Assembly Resolution

No. 1466 (2005) similarly urged Ukraine to establish a free legal aid system in line with Council of Europe standards and the case law of the European Court of Human Rights.

The free legal aid system in Ukraine operates under the supervision of the Coordination Centre for Legal Aid Provision within the Ministry of Justice. It is governed by the Law "On Free Legal Aid" and relevant procedural codes, including the Criminal Procedure Code, the Code of Administrative Justice, and the Code of Administrative Offences. The law distinguishes between primary legal aid, which includes legal information, consultations, and assistance in drafting applications or complaints, and secondary legal aid, which covers representation before courts and public authorities and the preparation of procedural documents.

Primary legal aid is provided by executive authorities, local self-government bodies, free legal aid centres, specialised institutions created by local authorities, private legal entities engaged by local governments, and individual lawyers contracted in accordance with the law. In practice, however, most of these institutions lack sufficient capacity to ensure consistent and effective assistance. Secondary legal aid is delivered through a nationwide network of Free Secondary Legal Aid Centres and by lawyers registered in the official Register of Legal Aid Providers.

Financing of the legal aid system is determined by the Cabinet of Ministers of Ukraine, which sets the methodology for compensating legal aid lawyers. Primary legal aid is funded through state and local budgets, while secondary legal aid is financed directly from the State Budget under allocations to the Ministry of Justice.

HISTORY OF THE LEGAL AID SCHEME

Before the adoption of the Law "On Free Legal Aid" in 2011, Ukraine had no centralised or unified state system for providing free legal assistance. However, certain categories of individuals were entitled to free defence under existing procedural legislation, and various forms of publicly funded and **pro bono** legal help already operated within a fragmented legal framework.

The aforementioned law of 2011 laid the foundation for a structured and state-funded mechanism. In 2012, the Coordination Centre for Legal Aid Provision was created under the Ministry of Justice to manage and develop the national network of legal aid institutions. Regional centres for secondary legal aid began functioning in 2013, and in 2015, local centres were opened in regions, extending services beyond criminal law to include civil and administrative cases. From 2016 onwards, local bureaus of legal aid were established in almost every district. Quality standards for legal aid were gradually developed and implemented to regulate the work of lawyers and maintain the consistency of services.

REMUNERATION

Remuneration for lawyers providing free secondary legal aid is regulated by Resolution No. 465 of the Cabinet of Ministers of Ukraine dated 17 September 2014[70], which approved the Procedure for Payment for Services and Reimbursement of Expenses of Lawyers Providing Free Secondary Legal Aid, as well as the Methodology for Calculating the Amount of Remuneration[71]. The current payment system has been criticised by the legal community for its low remuneration rates and failure to reflect the actual time and effort required to provide quality legal assistance.

The hourly remuneration of a lawyer amounts to 5 percent of the subsistence minimum for able-bodied persons at the time the power of attorney is issued. In 2024, this corresponds to approximately UAH 151.40 (approximately EUR 3.1) per hour. The calculation system applies coefficients that consider the duration and complexity of proceedings, as well as the timeliness of reporting. The formula takes into account the number of lawyer visits and procedural actions but does not provide additional compensation for particularly complex or time-consuming prison cases.

70 Issues of payment for services and reimbursement of expenses of lawyers providing free secondary legal aid: Resolution of the Cabinet of Ministers of Ukraine dated September 17, 2014 No. 465, LINK.

71 The Procedure for Payment for Services and Reimbursement of Expenses of Lawyers Providing Free Secondary Legal Aid and Reimbursement of Lawyers' Expenses and the Methodology for Calculating the Amount of Remuneration of Lawyers Providing Free Secondary Legal Aid were approved by the Resolution of the Cabinet of Ministers of Ukraine dated September 17, 2014 No. 465: LINK.

In criminal proceedings, similar formulas are used, with certain coefficients applied for the complexity of the case or for performance incentives. Even when these coefficients are included, the effective hourly remuneration typically ranges between ₴150 and ₴300 (~ EUR 3 and 6, respectively), which does not adequately compensate for the actual workload involved.

Overall, the current remuneration system for lawyers, including those handling penitentiary matters, requires comprehensive reform. To ensure fair compensation, it is necessary to link payments to the real time and complexity of work performed, establish transparent funding mechanisms, and optimise the allocation of financial resources within the free legal aid system.

Findings from the field research: following the full-scale Russian invasion in February 2022, state resources were redirected to military and security needs, while compensation for FLA lawyers was classified as a non-protected budget item. As a result, payments for legal aid services and reimbursement of expenses were temporarily suspended. Despite these financial constraints, lawyers continued to provide assistance within reassurances to be ever compensated. By the end of May 2022, the debt owed to FLA lawyers had reached approximately UAH 60 million. Following joint efforts by the Coordination Centre for Legal Aid Provision and the Ministry of Justice, amendments to Treasury regulations allowed partial restoration of payments. In April 2022, the first transfers were made, and by late May, UAH 46.8 million had been paid to cover part of the outstanding debt.[72]

REIMBURSABLE EXPENSES

The legal aid framework provides for the reimbursement of certain expenses incurred by lawyers in the course of delivering free secondary legal assistance. Covered costs include remuneration for legal services at all procedural stages, including pre-trial investigations, court hearings, and appeals. Compensation also extends to participation in procedural actions recognised by the financing mechanism.

72 Funding for payment for services and reimbursement of expenses of lawyers providing FLA was provided. Kyiv Region Bar Council, 2022: LINK.

Lawyers are entitled to reimbursement for travel expenses, including public transportation costs and fuel used when operating personal vehicles in areas with limited transport access or during night-time travel. Business travel expenses such as per diem allowances and accommodation are covered when service provision requires travel outside the lawyer's home region.

Additional reimbursable expenses include postal and communication costs directly related to legal aid, as well as the purchase of personal protective equipment, such as masks and gloves, when representing clients during quarantine periods or in cases involving infectious diseases.

ELIGIBILITY

Ukrainian legislation defines a broad range of persons entitled to receive free secondary legal aid (FSLA), which covers representation before courts and other state authorities, as well as defence in criminal and administrative proceedings. The right to such assistance is guaranteed without financial assessment for specific categories of individuals and extended, under certain conditions, to others on the basis of their financial situation.

Free secondary legal aid is granted automatically to persons deprived of liberty or otherwise subjected to coercive measures. This includes individuals placed under administrative detention or arrest, those detained within criminal proceedings, and those remanded in custody as a preventive measure. It also covers persons entitled to legal assistance under the Criminal Procedure Code in cases where defence is mandatory, where a lawyer must be appointed due to the lack of financial means or other objective reasons, where the "interests of justice" require representation, or where legal assistance is needed for a single procedural act. Prisoners serving sentences of deprivation or restriction of liberty are also entitled to free secondary legal aid.

For other criminal cases not covered by the mandatory categories, legal aid may be granted by decision of the Free Secondary Legal Aid Centres if the applicant lacks sufficient means to hire a lawyer.

APPLICATION PROCEDURE

To obtain defence, representation before a court or help with drafting of procedural documents, a person in pre-trial detention must submit a written application for free secondary legal aid. The application is addressed to the relevant regional or local centre for free legal aid but must first be handed to the administration of the penitentiary facility. The administration is responsible for forwarding the application, together with a cover letter, to the appropriate legal aid centre.

Indeed, unlike correspondence with domestic and international human rights institutions, requests for the provision of legal aid is not excluded from the automatic screening by the prison authorities. Nor, at the early request stage, can it benefit from the lawyer-client confidentiality privilege. Thus, in the context of prison litigation, prisoners might be reluctant to express their grievances to the FLA center due to the fears of retaliation.

Upon receipt, the legal aid centre examines the application and issues a decision on whether to grant or deny legal aid within ten days. If the decision is positive, a lawyer or authorised legal specialist is appointed to the case. Within five days from the appointment, the lawyer shall conduct the first confidential meeting with the convicted person to provide legal assistance and discuss the details of representation.

The effectiveness of this procedure depends on the timely processing of correspondence by the prison administration, which, in situations of conflict with a detainee, may have little interest in facilitating access to legal aid for prison litigation and retains full control over the process. According to one human rights lawyer interviewed for the study, in some cases prison officials have been reported to simulate the dispatch of legal aid requests by falsifying entries in the outgoing mail register.

EVALUATION AND GRANTING OF APPLICATIONS

At the operational level, regional and local centres for free secondary legal aid are responsible for providing legal representation in courts and before public authorities, while legal aid bureaus, as structural units of local centres, deliver primary legal assistance such as consultations and legal information. Applications for free legal aid may be submitted to any of these bodies.

When a centre receives an application for free secondary legal aid, it must consider it in accordance with the procedure and time limits established by Article 19 of the Law of Ukraine "On Free Legal Aid." The centre examines the applicant's eligibility (such as their financial situation or the fact of detention) and the nature of the legal issue, then issues a decision either granting or refusing legal aid within ten working days from receipt of the request and supporting documents.

If an application is granted, the legal aid centre appoints a lawyer or authorised legal specialist. In urgent cases, such as those requiring defence during investigative or judicial actions, the decision on appointment must be taken without delay (without specified deadline). If the applicant does not meet the eligibility criteria, the centre issues a written refusal within ten working days, explaining the reasons and informing the applicant of the right to appeal. Delays and omissions by the legal aid centre in performing their public functions are subject to appeal in line with the rules of administrative procedure.

Under Article 20 of the Law, free secondary legal aid may be denied if the applicant does not belong to an eligible category, provides false information or documents, requests actions not covered by law, has already received legal aid on the same matter, or has exhausted all domestic remedies in the case concerned.

Decisions refusing legal aid may be appealed. The applicant must first submit a written complaint to the higher-level legal aid centre. If the response is unsatisfactory, the applicant may challenge the decision before an administrative court. The appeal must include the refusal decision, supporting documents, and a statement explaining the grounds on which legal aid is necessary.

CHOICE OF LAWYER

Once a request for legal aid is granted, the legal aid centre appoints a lawyer from the Register of Lawyers Providing Free Secondary Legal Aid – a list of attourneys, managed by the Coordinational Center for Legal Aid Provision, who signed framework contract to provide free legal aid. When assigning a lawyer, the legal aid centre takes into account several statutory criteria, including the lawyer's professional expertise, experience, workload, and the complexity of the case.

The system operates within a number of structural constraints. Participation of lawyers in the free legal aid system is voluntary, allowing them to determine how many legal aid cases they accept. There is therefore no option for detainees to request appointment of a specific lawyer to provide legal aid. However, in the context of shortage of available legal professionals (more on the issue is discussed below), it is possible in theory that upon agreement between a person in detention and a lawyer that is registered with the free legal aid system, for the latter to request to be assigned to a particular legal aid assignment.

REPLACEMENT OF A FREE LEGAL AID LAWYER

Under Article 24 of the Law "On Free Legal Aid," a free legal aid lawyer or centre employee may be replaced in certain circumstances. Grounds for replacement include illness, incapacity, death, failure to fulfil contractual duties, refusal to execute an assignment, or other statutory reasons. The replacement must preserve continuity of legal aid so that the beneficiary is not left without representation.

A mere disagreement between a detainee and their free legal aid counsel over style or approach is not sufficient to justify replacement. What matters is a failure to comply with the standards of free legal aid. For instance, neglecting procedural duties or breaching quality obligations under the law. In such cases, the centre may replace the lawyer to safeguard the integrity of representation.

Because lawyers participate voluntarily in the free legal aid system, it is possible for a free legal aid lawyer and a prisoner to reach a mutual agreement under which the lawyer resigns and a new counsel is appointed.

Domestic courts have recently reinforced[73] a high standard of proof in decisions on replacing a legal aid lawyer: the applicant must convincingly demonstrate not only dissatisfaction but a violation of aid-quality norms or a breach of obligations.

In 2023, during a monitoring visit to the Khmelnytskyi pre-trial detention centre, the Ombudsman identified cases in which detainees had not received adequate legal assistance from the Regional Centre for Free Secondary Legal Aid. Prisoners reported that their assigned lawyers had neither attended court hearings conducted by video conference nor met with them to coordinate the defence strategy.

Following the Ombudsman's intervention, the Regional Centre conducted an internal investigation and confirmed that the lawyer in question had violated the Quality Standards for the Provision of Free Secondary Legal Aid in Criminal Proceedings. As a result, the lawyer was removed from the Register of Lawyers providing free legal aid, and the contract for legal service provision was terminated.[74]

NON-UKRAINIAN SPEAKERS

Recent provisions[75] allow free legal aid centres to engage interpreters under service contracts, including contracts with individual entrepreneurs or legal entities, in accordance with the requirements of civil legislation.

When it comes to litigation, according to PART I of Article 12 of the Law of Ukraine "On the Judiciary and the Status of Judges," court proceedings in Ukraine are conducted in the state language. Persons who do

73 Judgment of the Supreme Court in the case Top of Form 748/1972/19 of 20 November 2019Bottom of Form.

74 Special report of the Ukrainian Parliament Commissioner for Human Rights on the state of implementation of the national preventive mechanism in Ukraine in 2022. URL: LINK.

75 Resolution No. 1048 of the Cabinet of Ministers dated 20 December 2017. LINK.

not speak the language of the proceedings are guaranteed the right to participate with the assistance of an interpreter.

BAR ASSOCIATION AND PRISON LITIGATION

In Ukraine, the responsibility for providing free legal aid, including to prisoners, lies primarily with the state-run Free Legal Aid system. The Bar does not directly administer free legal assistance but performs an essential coordinating and supervisory role within the legal profession.

The Ukrainian National Bar Association (UNBA) and regional bar councils serve as self-governing institutions for advocates. They regulate access to the profession, oversee compliance with ethical and professional standards, conduct disciplinary procedures, and organise continuing legal education. These functions ensure the competence and integrity of lawyers, including those who participate in prison litigation.[76]

According to the Law "On the Bar and Practice of Law," a person seeking to acquire the status of a lawyer and the right to practice law must meet several general requirements: hold a full higher legal education, speak the state language, have at least two years of legal work experience, successfully pass the qualification examination, complete an internship (unless exempted), take the oath of the Ukrainian Bar, and obtain a certificate granting the right to practice law.[77] These requirements are uniform for all lawyers, as Ukrainian legislation does not prescribe mandatory specialisation for advocates in specific areas such as penitentiary or detention law.

Any licensed advocate may therefore represent prisoners or provide legal assistance in cases involving deprivation of liberty. Lawyers cooperating with the Free Legal Aid system must, however, pass a competitive selection process and sign a contract with the relevant regional legal aid centre before they can be appointed to cases.

76 Ukrainian National Bar Association. Law of Ukraine on the Bar and Practice of Law.

77 Ibid., Article 6.

Although UNBA plays no direct role in prison litigation, it contributes indirectly by regulating access to legal profession, maintaining professional standards and overseeing the quality of legal services.

This role is particularly important given that under Ukrainian law, only licensed members of the Bar are permitted to represent parties in courts and provide legal defence services. Ordinary jurists, legal consultants or in-house counsel may offer legal advice and draft documents but do not have the statutory right to act as defenders in court proceedings.[78]

5 OBSTACLES IN USING REMEDIES BY THE DETAINEES

OBSTACLES RELATED TO THE DISPATCH OF COMPLAINTS

Ukrainian prison correspondence is governed by internal penitentiary regulations that historically grant administrations wide discretion to monitor, censor, or delay letters. Over the years the ECHR judgments revealed a consistent pattern of overreach by prison authorities and the absence of effective mechanisms to guarantee confidential and timely communication. In **Glinov v. Ukraine**[79] and **Davydov and Others v. Ukraine,**[80] it found that systematic monitoring and delays of letters to domestic institutions and lawyers were arbitrary and lacked legal safeguards. In **Belyaev and Digtyar v. Ukraine,**[81] the Court identified a blanket system of censorship applied to all correspondence, while in **Vintman v. Ukraine**,[82] the interception of letters addressed to the European Court was held to violate both Article 8 and the right of individual petition under Article 34.

78 Ibid, Article 4

79 Glinov v. Ukraine, no. 13693/05, 19 November 2009.

80 Davydov and Others v. Ukraine, nos. 17674/02 and 39081/02, 1 July 2010.

81 Belyaev and Digtyar v. Ukraine, nos. 16984/04 and 9947/05, 16 February 2012.

82 Vintman v. Ukraine, no. 28403/05, 23 October 2014.

Following the delivery of the above judgments, national law formally exempts correspondence with courts, the prosecutor, the Ombudsman, defence counsel, and international bodies from review. Yet, numerous monitoring reports reveal that these requirements remain largely theoretical.

Reportedly no sealed appeals were sent to the Ombudsman, the prosecutor's office, or human rights organisations in twelve institutions over the entire monitoring period. A similar situation was documented, among others, in Arbuzynska Correctional Colony No. 83 and Bozhkovska Correctional Colony No. 16. In six additional institutions, no correspondence to the Ombudsman was recorded, though a few appeals were registered with the prosecutor or other state bodies. In nineteen institutions, there were fewer than five appeals to the Ombudsman during the same period. In total, almost half of all those that responded to the monitors' requests reported either no or minimal correspondence with oversight bodies.[83]

The data strongly suggest that this cannot be explained by a genuine absence of need, given the general condition of the penitentiary system, but rather by the existence of administrative or informal obstacles. These include delayed or blocked dispatch of letters, denial of envelopes, and even the "loss" of correspondence by staff.. In one case recorded during a monitoring visit to the Kharkiv SIZO, a prisoner sent a letter to the Ombudsman and received confirmation of dispatch, but the letter never reached the Ombudsman's Secretariat, demonstrating a clear breach of the rules on prisoner correspondence.

Retaliation by the authorities

Within places of detention, the obstruction of prisoners' correspondence rarely manifests only through formal censorship. Equally pervasive is the atmosphere of psychological pressure and fear of retaliation that discourages detainees from exercising their right to communicate freely with oversight or legal bodies.

Prisoners often internalize the risk that any attempt to report abuse, corruption, or violations of rights may provoke disciplinary sanctions,

83 In 18 penitentiary institutions, convicts have never appealed to the Ombudsman for a year and a half. Information portal of the Kharkiv Human Rights Protection Group, 2023: LINK.

loss of privileges, or harsher treatment by staff. This climate of intimidation leads to widespread self-censorship: detainees refrain from writing complaints or sending letters not because they lack grievances, but because they fear the consequences of doing so.

For example, in the case of **Sergey Volosyuk v. Ukraine,**[84] the applicant, fearing the prison authorities, sent a complaint directly to the Prosecutor General through informal means, bypassing prison censorship. When the authorities found out about this, the applicant was punished by being put in a disciplinary cell. The Court held that this sanction was retaliatory and incompatible with the principles of legality and proportionality under Article 8. It emphasised that punishment for exercising the right to complain not only violates the individual's correspondence rights but also deters others from doing the same.

Use of force in retaliation

The CPT has repeatedly drawn attention to the mistreatment of prisoners by special prison forces. In 2007, the United Nations Committee Against Torture urged the Ukrainian authorities to prohibit the use of anti-terrorist units within prisons in order to prevent intimidation and abuse of inmates. Nevertheless, such special forces continue to be deployed routinely, often in the absence of any genuine security necessity. According to the Ukrainian authorities, between 2017 and 2019 alone, special prison forces were deployed 2,765 times.[85]

A new spike in ill-treatment of detainees was seen after the full-scale invasion in 2022 during the evacuation of correctional facilities from conflict zones. Human rights monitors documented instances of abuse during the transfer of inmates from Orikhiv Correctional Colony No. 88 to Kropyvnytskyi Correctional Colony No. 6, where prisoners were reportedly beaten upon arrival.[86] In other institutions, evacuated prisoners reportedly faced mistrust and reduced access to work or rehabilitation programmes.

84 See Sergey Volosyuk v. Ukraine, 1291/03, 12 March 2009, paras. 91-92.

85 See, 1377th meeting (June 2020) (DH) - Action plan (22/04/2020) - Communication from Ukraine concerning the case of Karabet and Others v. Ukraine (application No. 38906/07) and Davydov and Others v. Ukraine (application No. 39081/02), available at: LINK.

86 During the evacuation of prisoners from Zaporizhzhia to Kirovohrad region, they were severely beaten and tortured – human rights defenders. ZMINA, 2022: LINK.

Disciplinary and criminal action

A criminal punishment mechanism which criminalises "persistent disobedience to the lawful demands of prison authorities." reflects the pressures that complainants face in Ukrainian prisons.

This provision, a legacy of the Soviet era, is so vague that it allows prison administrations to convert minor disciplinary infractions into criminal offences, granting them unchecked power to punish dissent. A bill envisages making this criminal offence subject to disciplinary measures.[87] International and national human rights bodies, including the CPT and the United Nations Working Group on Arbitrary Detention, have repeatedly condemned Article 391 as an instrument of repression.

Use of coercion by fellow inmates

The administration continues the practice of delegating control and internal order to selected groups of inmates. These individuals, known as "duty prisoners" or "administration assistants," form an informal yet powerful caste within the prison hierarchy, acting on behalf of the prison authorities. They often serve as intermediaries of coercion and intimidation.

These inmate groups, operating under the administration's direction, have become one of the principal tools of deliberate ill-treatment and torture, perpetuating cycles of violence and reinforcing prison subculture. The Council of Europe's Committee for the Prevention of Torture has repeatedly condemned[88] this practice and called for its complete abolition.

87 It is accessible to prison administrations to fabricate or exaggerate disciplinary violations, such as improper dress, unmade beds, or verbal resistance, to create the preconditions for prosecution under Article 391. Once a detainee has accumulated enough penalties, they can be placed in isolation or stricter conditions of confinement, which, first as a punishment in itself, then serves as formal justification for criminal proceedings. The result is a self-reinforcing system that punishes those who attempt to exercise their rights. In the case of Denys Kmet, who publicly denounced torture at Berdiansk Correctional Colony No. 77, he faced an immediate surge in disciplinary penalties and prolonged solitary confinement. In 2022 he was convicted under Article 391. His punishment followed a clear sequence of retaliation for lawful complaints, reflecting a broader strategy to silence witnesses of abuse. It needs to be noted that the provision covers post-conviction prisoners.

88 CPT/Inf (2020) 40, https://rm.coe.int/1680a0b93c, paras. 26 and 36; CPT/Inf (2024) 20: LINK, para. 4.

LEGAL AID AND PRISON LITIGATION UNDER MARTIAL LAW

The introduction of martial law following the full-scale Russian invasion of Ukraine in February 2022 profoundly affected the functioning of the criminal justice and penitentiary systems, including the provision of legal aid and access to defence for persons in detention. The war created unprecedented challenges for lawyers, detainees, and state institutions responsible for safeguarding human rights. Shortages of legal professionals, restricted movement, disrupted infrastructure, and shifting criminal policy have significantly limited the ability of the system to operate effectively, particularly in frontline and temporarily occupied regions.

The following sections examine these developments in detail, outlining the main challenges and institutional responses shaping the provision of legal aid and prison litigation in Ukraine under martial law.

Shortage of Lawyers and Pressure on the Legal Profession

Ukraine has recently experienced a significant shortage of lawyers, particularly in regions near the frontline. In 2023, new forms of pressure emerged, including intimidation and the use of draft notices against male lawyers. According to several practitioners, such practices intensified in 2024, leading many male lawyers to avoid travelling to detention facilities or court hearings. In some cases, legal teams adapted by dividing tasks (male lawyers prepared legal positions remotely, while female colleagues attended investigative actions, detention centres, and court proceedings).

Remote Participation in Criminal Proceedings

During martial law, amendments to the Criminal Procedure Code introduced provisions allowing the remote participation of defence counsel.[89] Investigators and prosecutors may ensure the participation of lawyers in procedural actions through video or audio communication if physical attendance is impossible. While intended to maintain access

89 PART 12 of Article 615.

to defence, this measure has raised concerns[90] among human rights organisations about confidentiality and the effectiveness of remote representation. The law does not require the consent of the lawyer or client for remote participation, and the absence of rules ensuring private communication between lawyer and detainee undermines the right to confidential defence.

Access to Detention Facilities and Movement Restrictions

Under martial law, the movement of lawyers has been restricted due to curfews and security checkpoints. FLA lawyers were later allowed[91] to travel during curfews upon presentation of an official order, identity document, and bar certificate. However, legal professionals interviewed for the research note that in practice, access to detention facilities often depends on the discretion of checkpoint officers, many of whom are unaware of lawyers' rights to unrestricted movement for legal purposes. Lawyers also report vehicle inspections and additional checks, especially near strategic or administrative facilities.

Impact of War on the Profile of Detainees

The population of pre-trial detention facilities in Ukraine includes, among others, individuals suspected of collaboration and treason. Since the onset of the armed conflict in 2014, the number of detained military personnel has increased, covering both general criminal offences and those related to military service, such as desertion, unauthorised absence, and insubordination.

Military personnel in custody are held either in institutions under the Ministry of Justice or in military prisons subordinated to the Military Law Enforcement Service of the Armed Forces of Ukraine. According to a lawyer interviewed for the study, access to legal aid for detained military personnel remains problematic. Many are held in combat zones or within military units, making lawyer visits difficult. In addition, the law imposes particularly strict preventive measures for military offenders, leaving detention as the primary option.

90 Hloviuk I., Drozdov O., Teteriatnyk H., Fomina T., Rohalska V., Zavtur V. Special regime of pre-trial investigation, trial under martial law: scientific and practical commentary on Section IX-1 of the Criminal Procedure Code of Ukraine. Edition 3. 2022: LINK.

91 Resolution No. 630 of the Cabinet of Ministers of Ukraine of 24 June 2023: LINK.

Impact of War on Detention Numbers

As noted above, by early 2024, Ukraine held about 46,000 detainees (26,000 convicts and 20,000 pre-trial) down from nearly 49,800 before the invasion, due to occupied territories and prisoner mobilisation. Several hundred inmates were pardoned or allowed to enlist under new laws permitting voluntary service for those with short sentences. **Decline in Legal Aid Capacity**

Legal practitioners interviewed for the research note that the overall capacity of the FLA system has diminished sharply. In some regions, such as Kherson, the number of active FLA lawyers has dropped from around 100 to fewer than 10. Many lawyers have left the country or refuse to take high-risk cases, leading to reduced availability of legal aid even in safer regions such as Lviv. Moreover, while certain state institutions are exempt from mobilisation, the legal profession is not, leaving lawyers vulnerable to conscription and further weakening the system's continuity.

Violations of Lawyers' Professional Rights

Reports from the Ukrainian National Bar Association indicate incidents of lawyers being unlawfully detained, mobilised, or searched by territorial recruitment centres and security services[92]. These actions interfere with professional independence and violate attorney-client privilege. The situation underscores the need for stronger guarantees to protect the legal profession, ensure the uninterrupted provision of legal aid, and maintain access to justice even during wartime.

92 Territorial centres of recruitment and social support, which are military administration bodies.

6 CIVIL SOCIETY AND ACADEMIC ACTORS: KEY PROVIDERS AND MONITORS OF LEGAL AID AND PRISONERS' RIGHTS

Civil society play a central role in promoting the protection of prisoners' rights and ensuring access to justice in Ukraine. Alongside the state-run free legal aid system, a network of non-governmental organisations, public councils, and academic institutions contributes to monitoring detention conditions, providing legal assistance, and advocating for systemic reforms.

Ombudsperson

The National Preventive Mechanism (NPM) in Ukraine is a system of regular monitoring of places of detention aimed at preventing torture and other forms of cruel, inhuman, or degrading treatment. Its activities are regulated by the Optional Protocol to the UN Convention against Torture and the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights."

Ukraine has adopted the Ombudsman+ model, which combines the work of the Ombudsman with active participation from civil society. This approach allows independent experts, human rights defenders, representatives of non-governmental organisations, lawyers, and academics to take part in monitoring visits. Within the structure of the Ombudsman's Office, the Department for the Implementation of the NPM is responsible for coordinating these activities.

Under Article 19 of the Optional Protocol[93] the NPM must have the authority to conduct unannounced visits to places of detention, inspect conditions and treatment of detainees, hold confidential interviews with prisoners and staff, analyse relevant legislation, and submit recommendations to public authorities to prevent human rights violations. The NPM Implementation Department consists of 22 staff members and several specialised units.

93 Clarifications on the implementation of the national preventive mechanism in Ukraine, The National Preventive Mechanism: LINK.

The Analytics and Public Relations Unit collects and analyses data, prepares reports, and cooperates with human rights organisations. The Department for the Inspection of Controlled Facilities in Law Enforcement, Judicial Bodies and Military Formations monitors detention centres, prisons, temporary holding facilities, police stations, and courts. The Healthcare Monitoring Unit supervises psychiatric hospitals, rehabilitation centres, and medical institutions providing compulsory treatment. Another unit oversees social welfare and educational institutions, including retirement homes and orphanages.

Although the NPM does not directly provide legal aid, its monitoring plays a crucial preventive role. When cases of limited access to legal aid, lack of confidential meeting facilities, or obstruction of contact with lawyers are identified, the NPM records these violations and refers them to the competent authorities for action.

The **Ombudsman+** model also facilitates cooperation with independent experts and non-governmental organisations capable of providing legal assistance. When monitoring reveals cases that require legal intervention, such as the preparation of a complaint or court application, the NPM may refer the matter to appropriate NGOs or lawyers specialising in prisoners' rights.

Public councils before the Ministry of Justice

Public councils are under the central executive authority responsible for the implementation of state policy in the field of execution of criminal sentences and probation, as well as under its regional departments. Public councils ensure citizen participation in the management of public affairs, exercise civic oversight over the activities of penitentiary institutions, and strengthen cooperation between state authorities and civil society.

The councils are composed of representatives of civil society organisations that voluntarily unite for this purpose, while the secretary of the council represents the respective central or regional authority. The composition of the council is approved by the head of the central body or its regional administration. The members of the councils work on a voluntary basis and without remuneration.

During visits to penitentiary institutions, members of the councils may freely move around the premises and facilities, review official and

statistical documentation, personal files of prisoners and other relevant materials, and communicate with staff and inmates, including confidentially. They may also conduct inspections and audits, submit oral or written requests, and verify compliance with legislation.

If necessary, members of the council may take photographs, make audio or video recordings, and disseminate collected information. They have the right to challenge unlawful actions or omissions of officials, demand their immediate cessation, and request accountability of responsible persons. The institution must provide a written response regarding the measures taken within ten days of receiving such a request.

Interviewed for the purposes of the research, representatives of NGOs – members of the Public Council noted that despite their extensive mandate they often face difficulties trying to access penitentiary institutions or during the visits, notably because there exists no liability for obstruction of their work by the detention facility staff.

Human rights NGOs

It must be noted that the Ukrainian Helsinki Human Rights Union (UHHRU), and the Kharkiv Human Rights Protection Group (KHPG) play a central role in shaping the development of prison law in Ukraine. Through their long-standing engagement in litigation before domestic courts and the European Court of Human Rights, these organisations have significantly contributed to advancing legal standards on the protection of prisoners' rights, the prevention of ill-treatment, and the enforcement of the Court's judgments.

The Ukrainian Helsinki Human Rights Union (UHHRU)

The Ukrainian Helsinki Human Rights Union (UHHRU) was established in 2004 as an association of human rights organisations. Today, the Union unites 26 member organisations, several of which operate public reception offices across the country. Nineteen public reception centres currently provide legal assistance and advocacy services at the local level. Although their areas of activity differ depending on the mission of the host organisation, the network operates under common standards and addresses a wide range of legal issues.

The Union primarily focuses on protecting individuals whose rights have been severely violated and on conducting strategic litigation that can influence broader law enforcement practices in Ukraine. Key areas of its work include violations of prisoners' rights, prevention of torture, lack of medical care in detention, and unlawful arrests. UHHRU's structure includes several specialised departments: the Legal Aid Department provides individual advice and representation; the Strategic Litigation Department manages cases that may set important legal precedents; the Analytical Department conducts research on human rights observance; the Education Department organises training for lawyers and the public; and the Advocacy Department cooperates with government and international partners to promote legal reforms. A central focus of the organisation's recent work has been the protection of human rights in detention, including cases of torture, denial of medical care, and the illegal transfer of prisoners from occupied regions such as Kherson and Zaporizhzhia region to the Russian Federation.

The Kharkiv Human Rights Protection Group (KHPG)

KHPG, founded in 1992, is one of Ukraine's olofdest and most influential human rights organisations. It monitors human rights in detention, provides legal assistance, and pursues strategic cases before the European Court of Human Rights. The organisation also contributes to legislative discussions on reforming the penitentiary system, particularly in areas related to prison medicine and detainees' rights. After the Russian invasion in 2022, KHPG expanded its work to include documenting war crimes and searching for deported civilians. The organisation employs lawyers and legal experts who handle cases according to their complexity through its Strategic Litigation Centre, which manages applications to the ECtHR, and a monitoring group that conducts visits to detention facilities.

KHPG prioritises cases involving torture, ill-treatment, and lack of medical care for prisoners suffering from HIV/AIDS, tuberculosis, or cancer. It also works on cases concerning life-sentenced prisoners who have served more than 20 years, advocating for their right to sentence review, and addresses judicial errors, including those stemming from Soviet-era convictions. Case selection is based on the strategic value of the issue, the gravity of human rights violations, and available organisational resources.

Protection for Prisoners of Ukraine (PPU)

PPU is a Ukrainian non-governmental organisation composed of individuals including former detainees, dedicated to defending the rights of prisoners and advocating for reform in the penitentiary system. Its work encompasses documentation and monitoring of detention conditions, combating torture and ill-treatment, and legal support in cases where prisoners' rights have been violated. Through interviews with former inmates, collaboration with other NGOs, and strategic litigation, the organisation contributes data, legal analysis, and advocacy aimed at systemic change in Ukraine's prison system. Notably, staff members of PPU are also members of Public Council before the MoJ, discussed above, that allows them extensive access to detention facilities when performing their functions.

Ukraine Without Torture (UWT)

UWT was established in 2016 by monitors of the National Preventive Mechanism to strengthen independent monitoring of detention conditions. Its main goal is to prevent torture and ill-treatment in penitentiary institutions. The organisation conducts regular monitoring visits, trains new NPM monitors, and collaborates with the Ombudsman's Office on human rights research. The main office is in Kyiv, with branches in eleven regions and a membership of over one hundred people, including both full and associate members. Membership is dynamic, as some monitors leave and new experts join.

While Ukraine Without Torture does not provide regular legal aid, it once experimented with offering legal assistance to victims of torture in detention, focusing narrowly on cases involving ill-treatment. This limited the scope of potential beneficiaries, as the organisation does not handle other legal matters such as property or family law. The organisation also operates a hotline that receives calls from victims of war crimes, including detainees. Although it does not provide direct legal aid, it refers callers to partner organisations that can offer legal or psychological support depending on their needs.

Legal clinics

Legal clinics in Ukraine contribute to the system of free legal aid by offering consultations to socially vulnerable groups, including low-income

individuals and persons in difficult life circumstances. However, their involvement in assisting prisoners and convicts remains limited.

During the research, the Association of Legal Clinics of Ukraine[94] confirmed that none of its member institutions currently provide legal aid to persons in detention. Similarly, representatives of the legal clinic at Yaroslav the Wise National Law University reported that they do not receive requests from prisoners. Their work primarily focuses on civil and administrative issues such as social benefits, inheritance disputes, and housing rights. As legal representation in criminal cases can only be provided by licensed lawyers, the clinic does not handle such matters. There is also no institutional cooperation between university legal clinics and the Bar, nor dedicated grant funding for projects involving legal aid to prisoners.

An exception is the legal clinic of the Penitentiary Academy of Ukraine in Chernihiv, which maintains a dedicated focus on detainees and convicts. The clinic's former head noted that clients are reached through several channels, including monitoring social media groups where relatives of prisoners post requests for assistance, direct email communication, and on-site consultations in detention facilities. Before the introduction of martial law, the clinic also organised "reception days" in pre-trial detention centres, allowing for direct interaction and educational outreach.

Funding Structures and Sustainability of Legal Aid by NGOs

The financial stability of human rights organisations working in the field of detention and prisoners' rights in Ukraine depends almost entirely on donor and grant support. While this model ensures institutional independence from state influence, it also creates vulnerabilities related to the sustainability of operations, the prioritisation of cases, and exposure to fluctuations in international funding, particularly during wartime.

The Ukrainian Helsinki Human Rights Union operates exclusively through grants, which cover staff salaries, expert fees, legal representation, monitoring, and research activities. This form of financing enables the organisation to remain independent and focus on

94 As of 2024, the Register of Legal Clinics of Ukraine includes more than 60 clinics in different regions. Association of Legal Clinics: LINK.

socially significant cases. However, limited human and financial resources force the team to prioritise cases carefully. As noted by one of the organisation's representatives, project-based work influences case selection but does not entirely restrict flexibility. The team can pursue cases outside formal projects if they have broader social relevance or raise important systemic issues.

The Kharkiv Human Rights Protection Group also relies solely on donor funding and receives no financial support from the state. Its projects are implemented in cooperation with international partners who cover the costs of monitoring, litigation, and research. Some of the organisation's initiatives, particularly those concerning the rights of life-sentenced prisoners, are supported partly through volunteer work. The organisation maintains strict confidentiality regarding clients' personal data, and publicity of cases is permitted only with the client's consent. If disclosure could endanger a person (such as those suffering from illness or held in occupied territories) the case remains confidential.

Similarly, Ukraine Without Torture operates entirely through project-based funding. The organisation prioritises the reimbursement of logistical expenses for its monitors, such as transportation and accommodation, but financial constraints limit its ability to maintain regular monitoring missions.

Impact of the War and Donor Withdrawal

Since the start of the full-scale Russian invasion, human rights organisations have faced a sharp increase in workload, primarily related to documenting war crimes, providing legal support to deported prisoners, and ensuring access to justice in conflict-affected regions. At the same time, resources for penitentiary-related work have decreased, and physical access to prisoners has become more difficult due to security concerns and movement restrictions.

A major challenge arose in early 2025 following the suspension of funding from the United States Agency for International Development (USAID) and other American programmes. A directive issued by the U.S. State Department on 24 January 2025 introduced a 90-day audit of foreign aid projects, leading to the temporary suspension or termination

of many[95] By 10 March 2025, approximately 5,200 contracts (about 82% of all active USAID projects) had been cancelled, and nearly a thousand programmes were being transferred to the direct oversight of the U.S. State Department.[96]

This sudden withdrawal has severely impacted Ukrainian human rights NGOs, many of which depend on U.S.-funded projects. The resulting uncertainty threatens the continuity of ongoing initiatives, particularly those supporting prisoners, monitoring detention conditions, and documenting wartime human rights violations.[97]

95 USAID stopped funding in Ukraine: how it will affect socially important projects and who is "happy" about such changes. ZMINA, 2024. URL: LINK.

96 The United States has officially announced the shutdown of most USAID programmes. ZMINA, 2024: LINK.

97 The interview was conducted at the end of February 2025, before the official shutdown of most USAID programmes was announced.

CONCLUSIONS AND RECOMMENDATIONS

EUROPEAN PRISON LITIGATION NETWORK

ZMINA HUMAN RIGHTS CENTER

CENTRE FOR EUROPEAN CONSTITUTIONAL LAW

FORUM PENAL Associação de Advogados Penalistas

Author:
Viktoria Kasongo Akerø
European Prison Litigation Network

Editors:
Béranger Dominici
Hugues de Suremain
Julia Krikorian
European Prison Litigation Network

TABLE OF CONTENTS

1 Conclusion on National Chapters 306

Legal Information and Advice in Detention: Foundational Yet Neglected Preconditions for Access to Justice 308

Legal Aid: A Lever of Transformation with Unrealised Potential 315

The Involvement of Bar Associations and Lawyers in Prison Litigation: Structural Absence and Professional Disincentives 325

2 Conclusions on European and International Standards 333

United Nations 333

Council of Europe 335

European Union 338

3 General Conclusion And Recommendations 340

Recommendations at UN Level 341

Recommendations on the Level of the Council of Europe 342

Recommendations at EU Level 343

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".

EUROPEAN PRISON LITIGATION NETWORK

21 ter rue Voltaire
75011 Paris
France

contact@prisonlitigation.org
www.prisonlitigation.org

© European Prison Litigation Network, 2025