



# COMPLAINT PROCEDURES AND THE RIGHT TO INFORMATION IN PRISONS



A Handbook for National Preventive Mechanisms





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# Complaint procedures and the right to information in prisons

-A Handbook for National Preventive Mechanisms-

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It was written in the framework of the EU Project “Improving judicial cooperation across the EU through harmonised detention standards – the role of National Preventive Mechanisms”, implemented by the Ludwig Boltzmann Institute of Fundamental and Human Rights (Austria), and in cooperation with the Hungarian Helsinki Committee (Hungary), the Bulgarian Helsinki Committee (Bulgaria) and the Associazione Antigone (Italy).

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## EXECUTIVE SUMMARY

What makes a complaint procedure system efficient? What are the rules regarding the right to information, accessibility of staff or protection against reprisals? What are the relevant international standards? What are best practices to assess the efficiency and fairness of the complaint procedures? What monitoring tools are available for NPMs?

The handbook aims to facilitate the operation of NPMs by **(1) compiling international standards and good practices, and (2) recommendations on relevant monitoring methodologies.** It is structured in both respects based on the key issues related to complaint procedures. As a starting point, potential **addressees and contact points for the submission of complaints** should

be available at any time and even simultaneously. Similarly, accessible information about the right to complain is at the heart of a fair and efficient procedure. Detainees must be informed about the everyday issues and human rights violations that can be addressed by complaints, and the institutional rules of the complaint procedure. Effective communication means that the detainees' mental and linguistic capabilities must be paid attention to. Information should be provided in plain language, and with due consideration to the individual and special needs of prisoners.

As to the **effectiveness and fairness of the complaint procedure**, potential failures of the penitentiaries and challenges of monitoring bodies related to confidentiality, promptness,



effective participation of complainants, the right to a reasoned decision and appeal are discussed. The detainees should have an enforceable right to compensation for inhumane detention conditions. However, the prospect of future compensation shall not legitimize inhumane and degrading treatment and thereby weaken the legal obligation of the states to bring their standards of detention in line with international standards.

Reliable and thorough complaint management as a part of the general **data management** system is a prerequisite of the effective management of any penitentiary institution. In addition to the diligent management of data in individual cases, states should routinely compile and publish comprehensive disaggregated statistical information about all complaints received. A thorough data management includes the analysis of received complaints in order to identify recurring problems.

**Protection against reprisal** is a key issue related the right to complain. An effective complaint procedure can be exercised only if the detainee cannot reasonably assume any form of reprisal, intimidation

or any negative consequences upon the submission of a complaint. Prisons should apply all available protective measures (e.g. relocation, or severely sanctioning the staff responsible for intimidation) aimed at the prevention of reprisal or intimidation, and refrain from discouraging attitudes related to complaints.

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## 1. INTRODUCTION

### Project background

This Handbook has been written in the framework of the EU Project “Improving judicial cooperation across the EU through harmonised detention standards – the role of National Preventive Mechanisms”, implemented by the Ludwig Boltzmann Institute of Fundamental and Human Rights, and in cooperation with the Hungarian Helsinki Committee, Bulgarian Helsinki Committee and the Associazione Antigone.

The latest case-law of the European Court of Human Rights (ECtHR) as well as recommendations by international and national torture prevention bodies show that no European Union (EU) Member State has eradicated the problem of ill-treatment in prisons, and that there are significant disparities between penal systems within the EU.<sup>1</sup> This raises a major challenge for EU cross border cooperation. Judges must verify that fundamental rights, especially the prohibition of torture and ill-treatment, are respected before they can implement mutual recognition instruments.<sup>2</sup> The latest available statistics concerning the European Arrest Warrant (EAW) are exemplary: EU Member

1. See ECtHR, *The European Court of Human Rights in Facts and Figures: 2019 (2020)* <[https://www.echr.coe.int/Documents/Facts\\_Figures\\_2019\\_ENG.pdf](https://www.echr.coe.int/Documents/Facts_Figures_2019_ENG.pdf)> pp 10–11. There are 180 cases of violations of Art 3 ECHR in the Council of Europe Member States, 70 of which (as correctly stated in the text) concern EU countries. Those 70 cases translate into 55 direct cases of torture or ill-treatment (under Art 3), 10 cases where states have not conducted effective investigations (under Art 3) and 5 cases where a conditional violation was found (under Art 2/3).

2. Relevant EU instruments are: the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures (2002/584/JHA), Recital 12; and the Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, Recital 13 and Art 3. See also *CJEU, Aranyosi and Căldăraru*; Joined Cases C-404/15 and C-659/15 PPU, 5 April 2016; *CJEU, ML*, C-220/18 PPU, 25 July 2018; *CJEU, Dumitru-Tudor Dorobantu*. C-128/18, 15 October 2019; and for a more detailed overview *EUROJUST*, ‘Case law by the Court of Justice of the European Union on the European Arrest Warrant’ (2020) <[https://www.eurojust.europa.eu/sites/default/files/2020-09/2020-03\\_Case-law-by-CJEU-on-EAW\\_EN.pdf](https://www.eurojust.europa.eu/sites/default/files/2020-09/2020-03_Case-law-by-CJEU-on-EAW_EN.pdf)>.

States have refused execution on grounds of fundamental rights issues in close to two hundred cases throughout 2017-18 alone.<sup>3</sup> The compatibility of prison conditions with fundamental human rights is thus a problem that goes beyond national contexts, and has practical relevance for the EU.

EU binding minimum standards for detention conditions are urgently needed. However, as the political will to implement such change is currently lacking, this Project looks at alternative paths for facilitating the consolidation and harmonisation of detention standards, at least to the extent it is realistically possible without actions from the EU. The Project thus explores the role of NPMs in improving detention conditions across the EU, departing from the assumption that improving detention conditions “at home” can contribute to increased mutual trust between the Member States (MSs). NPMs are in an ideal position to observe the implementation of international standards that support and reinforce the prohibition of torture and ill-treatment. Their role is all the more important because with their strong powers to access places, documentations, and persons, NPMs are able to assess if these standards are met in law and practice.<sup>4</sup>

Further, according to the SPT “*the prevention of torture and ill-treatment embraces – or should embrace – as many as possible of those things which in a given situation can contribute towards the lessening of the likelihood or risk of torture or ill-treatment occurring. Such an approach requires ... that attention also be paid to the whole range of other factors relevant to the experience and treatment of persons deprived of their liberty and which by their very nature will be context specific.*”<sup>5</sup> This means that NPMs have a broad mandate that allows them to identify all factors that may be relevant for the prevention of torture and ill-treatment in concrete cases and, thus, have all it takes to investigate the root causes of the problems.

For these reasons, NPMs can and should go beyond mere inspection and

3. European Commission, ‘Replies to Questionnaire on Quantitative Information on the Practical Operation of the European Arrest Warrant – Year 2018’, SWD(2020) 127 final, July 2020, § 6.

4. Subcommittee on Prevention of Torture (SPT), ‘The Approach of the Subcommittee on Prevention of Torture to the Concept of Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’ (2010), CAT/OP/12/6, § 4.

5. *Ibid.*, § 3.

monitoring of compliance. Rather they should offer recommendations on how to reduce the likelihood or risk of torture or ill-treatment that aim to support the State in the identification of forward-looking solutions and achieving change. As a result, NPMs can be a key player in upholding and harmonising EU standards on detention conditions.

### **Project objectives**

To facilitate their work, this Project produced a series of Handbooks for NPMs. These Handbooks collect relevant international standards and provide guidance on monitoring detention conditions. They are intended as a practical tool for NPMs to get a better understanding on:

- The thematic issues and risks for the prevention of torture and ill-treatment connected to them
- The existing international standards on selected thematic issues
- How to apply these international standards in practice and monitor selected thematic issues

Overall, the Project aims to support NPMs in putting forward recommendations on how to reduce the likelihood or risk of torture or ill-treatment and, ultimately, contribute to prison conditions in full compliance with fundamental rights in the EU.

### **Project methodology**

The EU-funded Project began in January 2019 and covered four thematic issues, identified on the basis of results from previous projects and in direct consultations with EU NPMs. Under the overall coordination of the Ludwig Boltzmann Institute of Fundamental and Human Rights, each Project Partner was responsible for research on one particular thematic issue, namely: the Ludwig Boltzmann Institute of Fundamental and Human Rights for prison violence; the Hungarian Helsinki Committee for requests and complaints; the Bulgarian Helsinki Committee for persons in a situation of vulnerability; and the Associazione Antigone for solitary confinement. The Project started with a desk research phase on existing international standards related to the four thematic issues, as well as on how EU NPMs monitor and contribute to the development

of the standards in these thematic areas.<sup>6</sup> The research began after a brief initial consultation with NPMs to refine the project focus.<sup>7</sup> Within the framework of the Project, several consultations took place. Representatives of NPMs and other experts exchanged experiences and best practices at four workshops – one per each thematic issue – as well as in a final conference, which took place on 3 and 4 November 2020.<sup>8</sup> In addition, each Project Partner conducted several bilateral interviews with representative of NPMs, as well as other national or international experts and practitioners.

The Project findings resulted in four thematic Handbooks. While there are strong interlinkages between them, the Consortium found it necessary to have four separate Handbooks in order to address the specific international standards and monitoring challenges for each thematic issue in depth. Accordingly, each Handbook was authored by the staff of the respective Project Partner.

## **Introduction to the Handbook**

Complaint mechanisms constitute a fundamental safeguard against torture, inhuman and degrading treatment, or any other forms of the violations of the rights of detainees. Efficient request and complaint mechanisms are not only in the interest of prisoners, but also in the interest of the prison system as a whole. Still, this important issue is reflected in different degrees in the reports of National Preventive Mechanisms (NPMs). In certain countries, complaint procedures are regular areas of focus in the reports, while there are countries where it is almost completely disregarded.

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6. The Project covered 22 EU Member States. 4 EU Member States (Belgium, Ireland, Latvia and Slovakia) were not covered because they have not yet ratified the OPCAT; 2 EU Member States (Denmark and the United Kingdom) were not covered because they do not participate in the European Commission Justice Programme. It is also worth noting that the United Kingdom withdrew from the EU on 31 January 2020 and therefore since 1 February 2020 is no longer an EU Member State.

7. The online survey was conducted in March 2019. 14 out of 22 NPMs participated.

8. The first Workshop “Treatment of certain groups of prisoners in a situation of vulnerability Goal” took place in Sofia on 18 – 19 November 2019; the second Workshop “Isolation and solitary confinement in prison” took place in Rome on 27 – 28 January 2020; the third Workshop “Requests, complaint procedures and the right to information in prisons” took place online due to the Covid-19 pandemic on 27 – 30 April 2020; the fourth Workshop “Preventive Monitoring of Violence in Prisons” took place also online on 20, 27 May and 3 June 2020. Moreover in July 2020 an online consultation on the Systemic Approach to NPM work was held.

An efficient complaint mechanism is not only in the interest of prisoners, but also in the interest of the prison system, as it helps the prison administration identify systemic problems and develop solutions. Efficient complaint procedures play a key role in building a positive relationship between prisoners and the members of the staff, and can help the detainees have their voice heard in prisons. As the Cyprus NPM put it, “*efficient and fair management of complaints can contribute to a stable environment within the prison setting*”.<sup>9</sup>

As opposed to detainee requests related to everyday aspects of prison life (e.g. request to be transferred to a different institution, request for being involved in education or being employed, or request for additional time in the library, etc.), complaints address problems qualifying as a violation of the rights of detainees. For the purpose of the present handbook, complaints in penitentiaries mean – according to the definition provided by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) – all complaints lodged by, or on behalf of, persons deprived of their liberty against decisions, actions or lack of official action on a variety of issues, in particular: staff misconduct, inadequate protection from other persons deprived of liberty who may cause them harm, poor material conditions, lack of activities or insufficient provision of health care. Complaints qualify as such irrespective of the seriousness of the issues complained of, and whether or not they could amount to ill-treatment.<sup>10</sup> Complaints are essential tools of remedy for the violation of the rights of detainees. Consequently, detention facilities shall have efficiently functioning formal procedures to allow detainees to register complaints about their treatment or the detention conditions.

The Handbook discusses both internal complaints (submitted to the prison staff and management) and external ones (sent to an institution independent from the penitentiary, e.g. the National Human Rights Institution, the NPM or a civil society organization providing legal representation to detainees).

9. Written response of the Cyprus NPM on the project interview questionnaire. 10 June 2020

10. CPT: Complaints mechanisms – Extract from the 27th General Report of the CPT, CPT/Inf (2018) 4-part, 2018

The relationship between the issue of the complaint and torture prevention becomes clear if we think of an example: a letter sent to a prisoner by his or her partner may arrive too late. The reasons for this might be of several kinds. This can occur because of the overburdened administrative staff, because of systemic problems that can be primarily traced back to regulatory faults, such as the requirement to check the letters before forwarding it to the detainees, or because of the intentional violation of the rules related to the delivery of letters by some members of the staff. The latter action can have various roots: burnout or previous conflicts with the respective inmate might make a prison guard systematically undermine the respect for the rights of the prisoner. If there is no internal complaint system or if it is not an effective one, the prisoner will never be able to find out what is the reason for the late delivery of the letters, which might be emotionally stressful and demanding because the only caring words for a prisoner might sometimes come from their partners and relatives outside the penitentiary.

The uncertainty about the reasons for regular delays or the wrong assumption that they are caused intentionally by some members of the prison staff can create tension, which might escalate into physical violence between prison staff and prisoners. This is how we end up at what is qualified as torture or other forms of ill-treatment by the international human rights norms due to a minor issue, which would never lead to such an extreme situation in the outside world. The same things have a completely different meaning, relevance, and consequence inside and out of the prison system. Similar hypothetical - but in fact in real-life typical - cases can be enumerated endlessly. The message of this example is simply that the ultimate function of a complaint system and torture prevention might always be interconnected, even if that relationship is not evident at first sight.

Therefore, the existence and the quality of a prison complaint system is relevant for the purposes of torture prevention, which means, of course, that torture prevention mechanisms have a role in monitoring and

analyzing complaint systems and make recommendations whenever it is warranted to do so.<sup>11</sup> As summarized by Coyle and Fair, “one of the main objectives of the prison administration in this area should be to prevent a simple request developing into a complaint, or a complaint developing into a formal grievance, or a grievance developing into an appeal to a higher body”.<sup>12</sup> From another perspective, appropriate complaints systems also protect staff from wrongful allegations and safeguard the reputation of the institution.<sup>13</sup>

Low numbers of complaints do not necessarily indicate the lack of systemic problems related to detention conditions. Detainees might refrain from submitting complaints due to reprisals or discouraging behaviour by the prison staff or co-inmates. Collecting evidences of negative culture in prisons in this sense is extremely difficult, hence NPMs can face extraordinary challenges while monitoring the efficiency of complaint procedures. At the same time, it is essential for NPMs to advocate for an efficient complaint procedure system, since detainees’ complaints are important indicators of systemic problems related to detention conditions.

As mentioned in the project methodology, the present handbook provides a structured compilation of international standards and monitoring methodologies in order to facilitate the work of NPMs. In addition to an analysis of NPM reports, the findings are based on information provided by NPMs in interviews and workshops focused on the subject matter of complaint procedures in prisons. Two online workshops were carried out on 27 and 30 April 2020 and a final conference session on 3 November 2020, with the attendance of representatives of NPMs, the academia, international and civil society organizations. The events provided a forum for exchange about the practical challenges in monitoring the fairness and efficiency of complaint procedures in prisons. All common conclusions were channeled into the text of the present handbook. Online interviews were conducted with 8 interviewees, independent experts,

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11. Contribution by Balázs Tóth, Hungarian Helsinki Committee

12. Andrew Coyle – Helen Fair: A Human Rights Approach to Prison Management – Handbook for Prison Staff, ICPR, 2018, p 188

13. OSCE ODHR: Guidance Document on the Nelson Mandela Rules, 2018, p 31



legal practitioners and the representatives of 5 NPMs (Croatia, Cyprus, Hungary, Slovenia, The Netherlands).

The handbook aims to present the relevant international standards and monitoring methodologies in a thematic structure built in line with the fundamental aspects of complaint procedures, thereby providing an easily accessible manual discussing the main foci of the relevant monitoring activities.

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## 2. INTERNATIONAL STANDARDS

International standards and professional guidelines can be categorized based on the position of the detainee in the complaint procedure and the quality of the procedure along the following relevant issues: (1) the right to complaint, (2) information about the right to submit a complaint, (3) addressees and contact points for the submission of the complaint, (4) the effectiveness and fairness of the complaint procedure, (5) data management, and (6) protection against reprisals.

These are the issues related to which recurring problems can be identified, such as the ones articulated by the CPT: lack or inadequate provision of information about complaint procedures, undue delays in the examination of complaints, lack of thoroughness, lack of independence or impartiality of the officials dealing with the complaints, or insufficient protection against intimidation or reprisals.<sup>14</sup> During monitoring visits, the CPT found various particular practices of the violation of prisoners' rights related to the quality of the complaint procedure, such as the lack of confidentiality (e.g. written complaints to be handed over or put in complaint boxes in open envelopes,<sup>15</sup> the presence of staff members while judges talked to detainees, resulting in the lack of complaints<sup>16</sup>), the lack of perceived independence<sup>17</sup>, the lack of effectiveness (e.g. lack of response to complaints<sup>18</sup>, cursory responses to

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14. CPT: Complaints mechanisms - Extract from the 27th General Report of the CPT, CPT/Inf(2018)4-part, 2018, 69

15. Report to the Slovenian Government on the visit to Slovenia carried out by the CPT from 28 March to 4 April 2017, CPT/Inf(2017)20, 73.; Report to the Croatia Government on the visit to Croatia by the CPT from 14 to 22 March 2017, CPT/Inf(2018)44, 68.

16. Report to the Croatia Government on the visit to Croatia by the CPT from 14 to 22 March 2017, CPT/Inf(2018)44, 70; Report to the Slovenian Government on the visit to Slovenia carried out by the CPT from 28 March to 4 April 2017, CPT/Inf(2017)20, 74.; Report to the Romanian Government on the visit to Romania carried out by the CPT from 7 to 19 February 2018, CPT/Inf(2019)7, 145.

17. Report to the Russian Government on the visit to the Russian Federation carried out by the CPT from 21 May to 4 June 2012, CPT/Inf(2013)41, 157.; Report to the Romanian Government on the visit to Romania carried out by the CPT from 7 to 19 February 2018, CPT/Inf(2019)7, 145.

18. Report to the Government of Cyprus on the visit to Cyprus carried out by the CPT from 2 to 9 February 2017, CPT/Inf(2018)16, 106.

complaints<sup>19</sup>). or the lack of promptness.<sup>20</sup> The CPT, during its monitoring visits, found various forms of reprisals and threats related to complaints or discouraging practices, such as the failure to transmit complaints to external complaint bodies, threatening the inmates upon complaints with the loss of privileges such as leaves,<sup>21</sup> placement in disciplinary confinement upon complaints, pressuring detainees to make them sign false statement to discredit complaints submitted by other inmates<sup>22</sup>, or obliging detainees to hand over their complaints in open envelopes.<sup>23</sup>

In order to address recurring problems related to complaints, specific international norms are enshrined in both universal and regional sources, including the United Nations Standard Minimum Rules (Nelson Mandela Rules, NMR), the European Prison Rules (EPR), reports issued by the Committee against Torture (CAT) and the CPT or the judgments delivered by the European Court of Human Rights (ECtHR). The present handbook will be limited to general rules on complaint procedures and does not cover specific rules applicable in cases of allegations of ill-treatment that should lead to criminal investigation.

## 2.1. The right to complaint

The primary persons who have the right to complain are the detainees themselves. According to the Nelson Mandela Rules, *“Every prisoner shall be allowed to make a request or complaint regarding his or her treatment, without censorship as to substance, to the central prison administration and to the judicial or other competent authorities, including those vested with reviewing or remedial power.”*<sup>24</sup> In an ideal situation, the detainee should be in the position of being able to address the competent members of staff, the head of the penitentiary and outside authorities with complaints on detention

19. Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the CPT from 30 March to 12 April 2016, CPT/Inf(2017)9, 78.

20. Report to the Bulgarian Government on the visit to Bulgaria carried out by the CPT from 25 September to 6 October 2017, CPT/Inf(2018)15, 108.

21. Report to the Bulgarian Government on the visit to Bulgaria carried out by the CPT from 25 September to 6 October 2017, CPT/Inf(2018)15, 108.

22. Report to the Russian Government on the visit to the Russian Federation carried out by the CPT from 21 May to 4 June 2012, CPT/Inf(2013)41, 157.

23. Report to the Croatia Government on the visit to Croatia by the CPT from 14 to 22 March 2017, CPT/Inf(2018)44, 68.

24. Report to the Croatia Government on the visit to Croatia by the CPT from 14 to 22 March 2017, CPT/Inf(2018)44, 68.

conditions or any forms of violation of the detainee's rights. In practice, there are cases **when the prisoner faces barriers in exercising the right to complaint** and needs assistance due to physical inability, fear of reprisals, or the need for professional assistance. Consequently, international norms provide for **the right of the following third persons to submit a complaint on behalf of the detainee.**

### *UN and CoE Regulation*<sup>25</sup>

#### **Beneficiaries of the right to complaint:**

- Primarily, the detainee
- Legal adviser/representative
- Member of the prisoner's family → *If neither the prisoner nor his or her legal adviser has the possibility*
- Organisation concerned with the welfare of prisoners → *Consent of the prisoner concerned required*
- Any other person who has knowledge of the case

If the detainee cannot submit a complaint for any reason, it is not required to provide any proof of the detainee's inability to submit a complaint.<sup>26</sup> Family members and other visitors may play a crucial role in efficiently exercising the right to complaint, for instance, they may facilitate the access of detainees to counselling and proper legal representation.<sup>27</sup> According to the CPT, relatives of detainees should be entitled to the right to submit a written complaint if the violation of the prisoner's rights can reasonably be presumed.<sup>28</sup> The CPT expects monitoring bodies to thoroughly review both internal and external complaint mechanisms in detention facilities that are an essential precondition for the prevention of human rights abuses and ill-treatment in prisons and other places of detention.<sup>29</sup>

## **2.2 Information about the right to submit a complaint**

Detainees can fully exercise their right to complaint only if they are

25. United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), GA Res. 70/175, Annex, 17 December 2015, Rule 56, 4.; European Prison Rules, 70.10-12

26. Essex paper 3, Initial guidance on the interpretation and implementation of the UN Nelson Mandela Rules, Penal Reform International, 2017, p 114

27. OSCE ODIHR: Guidance Document on the Nelson Mandela Rules, 2018, p 119

28. CPT: Complaints mechanisms-Extract from the 27th General Report of the CPT, CPT/Inf(2018) 4-part, 2018, 77

29. Jim Murdoch – Vaclav Jiricka: Combatting Ill-treatment in Prison, CoE, 2016, Chapter 8 – Complaints, inspections and the duty to investigate, p 80

informed in an accessible way about the human rights violations that can be addressed by complaints, and the institutional rules of a complaint procedure. This precondition of the ability of prisoners to use their right to complaint is enshrined in all relevant international documents and has been a crucial point of monitoring visits conducted by international treaty bodies. **Practices violating the rights of detainees to proper information** have been identified by the CPT through monitoring visits, such as the lack of awareness of inmates about the existence of internal and external complaint mechanisms (e.g. information was not displayed in their units).<sup>30</sup>

Specific duties of the penitentiaries related to the right to information about complaint procedures are provided for both at the universal and regional level of international regulations. All the below listed aspects of the right to information are essential for an efficient exercise of the right to complaint.

#### ***UN and CoE Regulation:***<sup>31</sup>

**Content of the information to be provided to detainees:**

*(upon admission, + as often as necessary afterwards; in writing + orally)*

- The prison law and applicable prison regulations
- Prisoners' rights, including authorized methods of seeking information,
- Any legal proceedings in which they are involved
- Access to legal advice, including through legal aid schemes
- If they are sentenced, the time to be served and the possibilities of early release
- Procedures for making requests or complaints
- Prisoners' obligations, including applicable disciplinary sanctions
- All other matters necessary to enable the prisoner to adapt himself or herself to the life of the prison

**Availability and accessibility:**

- Information shall be provided in a written form and orally in a language the detainees understand

30. Report to the Estonian Government on the visit to Estonia carried out by the CPT from 30 May to 6 June 2012, CPT/Inf(2014)1, 102.

31. Report to the Estonian Government on the visit to Estonia carried out by the CPT from 30 May to 6 June 2012, CPT/Inf(2014)1, 102.

- Prisoners shall be allowed to keep in their possession a written version of the information
- Information shall be available in the most commonly used languages according to the needs of the prison population
- If a prisoner does not understand any of the most commonly used languages, interpretation shall be provided
- Specific information about legal assistance shall be provided to prisoners who are foreign nationals in a language they understand
- If a prisoner is illiterate, the information shall be conveyed to him or her orally
- Prisoners with sensory disabilities should be provided with information in a manner appropriate to their needs
- Summaries of the information shall be displayed in common areas of the prison
- Practical information about request and complaint procedures shall be communicated effectively to all prisoners

**A key issue at the heart of the enforcement of the right to information is accessibility.** Detainees shall be informed orally if needed, and in plain language. Special needs shall be addressed, including Braille, easy-to-read formats and sign language.<sup>32</sup> The obligation of states to ensure the respect of the right of detainees to information on the complaint procedure has been confirmed also by the UN Committee Against Torture (CAT).<sup>33</sup>

Universal and regional norms do not significantly differ related to the content of information. Both regulations refer to information on the rights and duties of detainees within the prison, disciplinary rules, the rules of requests and complaint procedures, and the possibility of legal aid. However, the EPR, unlike the NMR, emphasizes that this essential information should not be provided only at admission, but as often as necessary afterwards. The regional regulation together with the Commentary of the EPR provides a more detailed regulation related to the availability and accessibility of the information.

**As the Commentary of the European Prison Rules (EPR) explains,**

32. Essex paper 3, p 114

33. UN CAT: Concluding observations on the eighth periodic report of Norway, CAT/C/NOR/CO/8, 5 June 2018, 11.

technological aids, including an introductory video, may be useful in informing the detainees about their rights and duties in an accessible way. The proper and continuous information of prisoners should be ensured. **Effective communication** is essential to ensure that prisoners are aware of their right to requests and complaints, and the practical aspects of the procedures triggered by them. Effective communication entails paying **due regard to the prisoners' linguistic and mental capabilities**, and ensuring that special attention is paid when providing information to foreign nationals and detainees with disabilities, including those with psychological or learning disabilities.<sup>34</sup> This rule does not require that requests or complaints be submitted in writing. Illiterate prisoners should be able to ask to meet the civil servant or the competent agency in order to transmit the request or the complaint orally. The authorities would then have the obligation to put it in a written form.<sup>35</sup>

Furthermore, the CPT provided a more detailed set of prerequisites of the sufficient enforcement of the right to information. In accordance with the EPR, the Committee emphasized that prisoners should be informed about all internal and external avenues of complaint, including appeal procedures. The penitentiaries should provide information in straightforward, user-friendly and non-legalistic formats so that the detainees have a clear understanding of the modalities for exercising their right to lodge a complaint. **Appropriate information tools** can be posters in communal areas, a section on complaints procedures in the house rules, information leaflets issued by complaints bodies, or information videos.<sup>36</sup> **Particular attention should be paid to persons with particular needs**, such as juveniles, persons with psychosocial and/or learning disabilities, or persons having problems with understanding, speaking, reading or writing the official language(s) of the country concerned, including foreigners.<sup>37</sup>

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34. Commentary on the European Prison Rules, Rule 30

35. Commentary on the European Prison Rules, Rule 7

36. CPT: Complaints mechanisms - Extract from the 27th General Report of the CPT, CPT/Inf (2018)4 part, 2018, 79-80

According to Coyle and Fair, information on complaint procedures should be integrated into the information package provided to each prisoner upon arrival to the detention facility, and if resources are limited, rules and regulations should be put on posters and fixed to a wall in a prominent place, as outlined by Coyle and Fair.

Coyle - Fair: 2018, p 117

37. CPT: Complaints mechanisms - Extract from the 27th General Report of the CPT, CPT/Inf(2018)4 part, 2018, 79-83

## 2.3 Addressees and contact points for the submission of the complaint

### *UN and CoE Regulation:*<sup>38</sup>

#### **Potential addressees of complaints:**

- Prison director
- Authorized prison staff members
- Inspector of prisons
- Central prison administration, any other competent authority within the prison system
- Judicial or other competent and independent authorities with reviewing and remedial power

In addition to **internal complaint** mechanisms (with the prison director and authorized prison staff members as potential addressees), detainees should have the possibility to turn to authorities and independent bodies outside the prison in the framework of **external complaint procedures** (with the judicial or prosecutorial inspector of prisons, the central prison administration, ombudspersons, national human rights institutions or civil society organizations as potential addressees).

The OSCE (Organization for Security and Cooperation in Europe) ODIHR (Office for Democratic Institutions and Human Rights) emphasized in its commentary about the NMR that **all potential addressees should be available and can be turned to by detainees at any time and even simultaneously**, in the following terms:

*“Prisoners must be able to make requests and complaints to any or all of the individuals or bodies listed above, in any order. There should be no requirement to exhaust one avenue of request or complaint before accessing another. Clear information must be provided to prisoners on who they should address their requests and complaints to and how they can do so.”*<sup>39</sup>

The Essex expert group, in comments on the Mandela Rules, drew the attention to a particular practice of employing non-operational members of staff as ‘**contact officers**’ seen as less threatening and more approachable.

38. Nelson Mandela Rules, Rule 56; European Prison Rules, 70.1

39. OSCE ODIHR: Guidance Document on the Nelson Mandela Rules, 2018, p 36



However, the expert group warned against the assignment of ‘yard bosses’ as recipients of informal complaints in light of potential abuses.<sup>40</sup>

**The European Prison Rules’ Commentary** goes into further details by referring to the ECtHR case law and emphasizing that the **internal complaints mechanism does not in itself satisfy the requirements of an effective remedy** under Article 13 of the European Convention of Human Rights (ECHR).<sup>41</sup> Complaints can be directly submitted to an external complaints mechanism (judicial or other independent authority). Different bodies may exercise the function of an external complaint mechanism having different mandates and procedures depending on the domestic circumstances and legislation, but they should have the power to make binding decisions.<sup>42</sup> Effective complaint mechanisms should be transparent and non-discriminatory. They must substantially address the problem in the focus of the complaint and detainees should be ensured that those responsible for the violations of their rights will be called to account.<sup>43</sup>

Complaints written even on a napkin should be taken seriously. The exercise of **the right to complaint or request should not be restricted by formal preconditions applied to their submission**. As to the internal complaint procedure, according to Coyle and Fair, each working day, the prison director or a senior member designated by the director should consider all complaints. Ideally, the detainees should be allowed to explain their complaints in person. However, in the case of a high number of complaints, the possibility of written submission should be ensured.<sup>44</sup> In practice, the burden of duties might not allow staff members at the highest level of prison management to be available for internal complaints on an everyday basis, but international regulations, both at the universal and regional level, provide for their availability.

The CPT emphasized the importance of **oversight over the internal complaint mechanisms in general by external complaints or monitoring bodies** (e.g. prosecutors or judges specialized in penitentiary matters, national ombudspersons, or administrative courts). In individual cases,

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40. Essex paper 3, p 116

41. Commentary on the European Prison Rules, Rule 70

42. 27th General Report of the CPT [CPT/Inf (2018) 4], paragraph 71.

43. OSCE ODIHR: Guidance Document on the Nelson Mandela Rules, 2018, p 34

44. Coyle – Fair: 2018, p 118

complaints should be accepted by these external institutions no matter if submitted on a standards complaint form or on a non-standard form. External complaints bodies should be unconnected and separate from the agencies responsible for persons deprived of their liberty. It is essential that they are, and are perceived as independent.<sup>45</sup> Based on the findings of monitoring visits, the CPT articulated an important aspect of the lack of individual complaints to external institutions, as follows:

*“The virtual absence of complaints in a place of detention may demonstrate a high degree of satisfaction among inmates. On the other hand, it may provide an indication that, for whatever reason, inmates lack confidence in the complaints procedures concerned. [...Independent complaints bodies] should not limit their activities to seeing prisoners who have expressly requested to meet them, but should take the initiative and visit the establishments’ detention areas and enter into contact with inmates. Those exercising the oversight function should talk with prisoners and staff in the detention areas and carry out spot-checks of practice and conditions.”<sup>46</sup>*

#### **2.4. Effectiveness and fairness of the complaint procedure**

The SPT and the Special Rapporteur on Torture similarly put emphasis on the **independence, impartiality, perceived fairness, effectiveness, promptness and confidentiality of the complaint procedure.**<sup>47</sup> The UN CAT emphasizes the obligation of states to ensure that an effective complaint procedure mechanism is available to detainees also in high security detention units designated for terrorists.<sup>48</sup>

#### **UN and CoE Regulation:**<sup>49</sup>

##### **Fundamental principles and requirements:**

- Free communication → *in case of external inspectors and monitors, without the director or any other staff member present*
- Full confidentiality, if requested so by the complainant

45. CPT: Complaints mechanisms – Extract from the 27th General Report of the CPT, CPT/Inf (2018) 4-part, 2018, 71-73, 79-84, 87

46. Report to the Croatia Government on the visit to Croatia by the CPT from 14 to 22 March 2017, CPT/Inf(2018)44, 69-70.

47. Essex paper 3, p 116-117

48. UN CAT: Concluding observations on the seventh periodic report of the Netherlands, CAT/C/NLD/CO/7, 18 December 2018, 28.

49. Nelson Mandela Rules, Article 56-57; European Prison Rules, 70.1-8

- No censorship as to the substance of requests and complaints
- Promptness
- Right to a reasoned decision
- Right to appeal to a judicial or other authority → *in the case of rejection or undue delay*
- Prisoners' effective participation
- Alternative dispute settlements to be prioritized if appropriate → *prohibited in cases of ill-treatment or other serious human rights violations*
- Effective investigation upon complaints related to ill-treatment or death

As opposed to the universal level, the regional regulation provides for **the option of alternative, informal dispute settlement** wherever it is appropriate, excluding the cases of ill-treatment or any other serious human rights violations. According to the **European Prison Rules' Commentary**, the task of mediation can be entrusted to a local supervisory committee or a judicial authority. If the conflict is not resolved by mediation, the prisoner should still be allowed to submit a formal complaint.<sup>50</sup> The prisoners have **the right to appeal** if their complaint is rejected and the Commentary adds that where complaints are found to be justifiable, the prison authorities should take **specific steps to rectify the conditions that led to the complaint**.<sup>51</sup> As to **promptness**, Coyle and Fair emphasized the right of detainees to information if their complaint is not processed in due course due to the complexity of the case. In this case, the affected detainee should be provided information about how long the procedure will take. Depending on the content of the complaints, the requirement of expeditiousness differs; obviously, an allegation of torture or inhuman treatment demands greater urgency, immediate action.<sup>52</sup>

**Recurring problems reflecting the lack of fairness of the complaint procedure** have been identified by the CPT through monitoring visits, such as the lack of trust of detainees in the internal complaint system (due to the fact that even though closed complaints' boxes were available, their

50. Commentary on the European Prison Rules, Rule 70

51. Ibid.

52. Coyle – Fair: 2018, p 118-119

complaints were never responded to, or in several cases, complaints were ripped up in front of their eyes).<sup>53</sup> The CPT emphasized that the internal complaint mechanism should be immediately accessible to detainees. Complaints may initially be made orally and recorded by a staff member on duty. **Direct access and confidentiality in internal complaint procedures** can be ensured by locked complaint boxes accessible to complainants in appropriate locations, to be opened only by persons specially designated to ensure the confidentiality of the complaints. Staff who have persons deprived of their liberty directly in their charge should not be in a position to filter complaints.

### ***Relevant ECtHR practice:***

- According to the reasoning of the ECtHR (in relation with complaints submitted to a prosecutor and under Article 13 of the ECHR), **prisoners' effective participation in the complaint procedure** is a precondition of its efficiency. The fact that the prosecutor monitoring the detention facilities was not obliged to hear the complainant was qualified as a procedural shortcoming by the Court.<sup>54</sup>
- **Prompt relief** was held also by the ECtHR a prerequisite for an effective remedy.<sup>55</sup>
- As to **preventive and compensatory remedies**, the ECtHR found those domestic remedies of the greatest value that would **terminate the ongoing violation** of Article 3 ECHR by the improvement in the material conditions of detention. However, the detainees should have an **enforceable right to compensation for inhumane detention** conditions. The **prospect of future compensation shall not legitimize the violation of Article 3** and thereby weaken the legal obligation of the states to bring their standards of detention into line with the Convention requirements. For a **preventive remedy** with respect to conditions of detention **before an administrative authority to be effective**, the authority must (a) be independent of the authorities in charge of the penitentiary system, (b) secure.

53. Report to the Government of Cyprus on the visit to Cyprus carried out by the CPT from 2 to 9 February 2017, CPT/Inf(2018)16, 106.

54. Ananyev and Others v. Russia, nos. 42525/07 and 60800/08, para 104; Neshkov and Others v. Bulgaria, nos. 36925/10 et al., para 212.

55. The Court held in a case of Croatia that „By not answering the applicant's complaint for eighth months which the applicant spent in the same conditions, the national authorities did not comply with the requirement of promptness". Longin v. Croatia, No. 49268/10, para 41.

the inmates' effective participation in the examination of their grievances, (c) ensure the speedy and diligent handling of the inmates' complaints, (d) have at its disposal a wide range of legal tools for eradicating the problems that underlie these complaints, and (e) be capable of rendering binding and enforceable decisions in due course. **With regard to compensatory remedies** in respect of conditions of detention, whether judicial or administrative, the burden of proof imposed on the claimant should not be excessive. While inmates may be required to make a *prima facie* case and produce such evidence as is readily accessible, such as a detailed description of the impugned conditions, witness statements, or complaints to and replies from the prison authorities or supervisory bodies, then fall to the authorities to refute the allegations.<sup>56</sup>

## 2.5 Data management

As to the data management related to complaints about torture and ill-treatment, the UN CAT urges states under review routinely to compile and publish comprehensive disaggregated statistical information related to all complaints and reports received.<sup>57</sup> The systematic analysis of incoming complaints facilitates the identification of recurring problems in the prison system.

Reliable and thorough complaint management should be part of a general and efficient data management system that is **the prerequisite of the efficient management of any penitentiary and detention facility and the respect of human rights of prisoners**, as outlined by the UN Office on Drugs and Crime (UNODC).<sup>58</sup>

### **CoE Regulation:**<sup>59</sup>

- The prison authority shall keep a record of requests and complaints made
- The principles of confidentiality and...
- ...safety shall be respected

56. Neshkov and Others v. Bulgaria, nos. 36925/10 et al., para 97–98, 183–184; Varga and Others v. Hungary, nos. 14097/12 et al., para 106–110.

57. UN CAT: Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland, CAT/C/GBR/CO/6, 7 June 2019, 14.

58. UNODC: Handbook for Prison Leaders, UN, 2010, p 94

59. European Prison Rules, 70.13

The European Prison Rules' Commentary emphasizes that complaints should be registered for the benefit of the prison administration and for the inspection of monitoring bodies.<sup>60</sup> In addition, the CPT outlines the following standards. **The register should include** the names of the complainants, the type and the subject of complaints, the outcome of the complaint procedure and of any appeal procedure, follow-up action taken to remedy the situation complained of, and any compensation provided to the complainants. **The records assist the prison management to identify** Staff members to whom multiple complaints relate,

- Certain categories of prisoners who hardly ever lodge formal complaints,
- Patterns of problematic issues to be addressed at a general level, and
- Areas of discontent within the prison.

**All staff should be trained** on the importance of the complaints' system and their role within this system.<sup>61</sup>

## 2.6. Protection against reprisal

**The right to submit a complaint and an effective complaint procedure can be exercised only if the detainee cannot reasonably assume any form of reprisal, intimidation or any negative consequences (e.g. threats, solitary confinement, or other discouraging measures, such as transfer into a less furnished cell) upon the submission of a complaint. The norm that prisoners shall not be punished in any way for lodging a complaint is enshrined in both the universal and European regulations.**<sup>62</sup> The Essex expert group cited the recommendation of the UN CAT on available protective measures (e.g. relocation, on site security, hotlines, or judicial orders of protection) aimed at the prevention of such reprisal.<sup>63</sup>

Based on monitoring experiences, the CPT highlights that any information suggesting that a prisoner has been subjected to threats and/or reprisals

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60. Commentary on the European Prison Rules, Rule 70

61. Report to the Government of Cyprus on the visit to Cyprus carried out by the CPT from 2 to 9 February 2017, CPT/Inf(2018)16, 106.

CPT: Complaints mechanisms - Extract from the 27th General Report of the CPT, CPT/Inf(2018)4-part, 2018, 90.

62. Nelson Mandela Rules, Rule 57, 2. European Prison Rules, 70.9

63. Essex paper 3, p 118

for having exercised his/her right to lodge complaints should result in a thorough investigation of the incident and suitable sanctioning.<sup>64</sup> The CPT has detected a **direct correlation between the prevalence of ill-treatment in a specific place of detention, and the risks of intimidation and reprisals upon monitoring visits.** It emphasizes that all staff working for detention facilities must be informed that the highest authorities remain vigilant to ensure that detainees who wish to communicate with the Committee about their complaints will not be subject to any kind of intimidation or reprisals, and **whoever from staff would act against this norm, will be severely punished.** Additional specific preventive measures can be initiated in this regard to adopt rules **prohibiting the management and staff from recording names of persons interviewed** by external monitoring bodies. Where appropriate, **victims of reprisals, with their consent, can be transferred to another detention facility.**<sup>65</sup>

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64. Report to the Russian Government on the visit to the Russian Federation carried out by the CPT from 21 May to 4 June 2012, CPT/Inf(2013)41, 157.

65. 24th General Report of the CPT, CoE, 1 August 2013- 31 December 2014, 21-23.

*“Efficient and fair management of complaints can contribute to a stable environment within the prison setting.”*

*(National Preventive Mechanism of Cyprus)*

### 3. THE ROLE OF NPMs

NPMs can face extraordinary challenges while monitoring the efficiency of complaint procedures. At the same time, it is essential for them to advocate for an efficient complaint procedure system, since detainees’ complaints are important indicators of systemic problems related to detention conditions, and NPMs have a broad mandate and the authority to investigate potential gaps and detect the inefficiencies of the complaint system in prisons.

The present chapter provides a list of questions and a range of recommendations related to monitoring methodologies. The findings are based among others on the discussions during the project’s online workshop and project interviews conducted with representatives of European NPMs and experts of detention conditions and monitoring practices.

#### 3.1. Information about the right to submit a complaint

##### *Review of the files:*

- › **Do individual files include declarations signed by the detainees that prove that upon admission, they received written and accessible oral information about their rights, including their right to request and complain?**

An obvious way of proving that detainees are properly informed about their rights upon admission is to provide a form on which by their signature they can approve that they were given accessible information. It does not mean that each detainee received accessible information in accordance with potential special needs (out of disability or illiteracy), but the signed forms serve as a first guarantee to respect the right of detainees to information. NPMs should monitor



the relevant practice of detention facilities under review.<sup>66</sup>

› **Is all essential information included in the written information provided to the detainees upon admission?**

According to international standards, this information includes the prison law and applicable prison regulations, prisoners' rights, including access to legal advice, rules of procedures for making requests or complaints, prisoners' obligations, including applicable disciplinary sanctions, all other matters necessary to enable the prisoner to adapt himself or herself to the life of the prison.

› **Is written information provided in the most commonly used foreign languages?**

The most commonly used foreign language should be identified based on the needs of the prison population of the specific penitentiary institution.<sup>67</sup>

› **Is there any information about the right to appeal in the written decision delivered in the internal complaint procedures?**

It is not sufficient that detainees are informed about their right to appeal and its preconditions at the time of admission to the prison. They should be informed in each and every complaint procedure. The rules of exercising the right to appeal and the relevant deadlines should be explained in the written decision.<sup>68</sup>

66. In their written response to the project's interview questionnaire, the Cyprus NPM reported about their systematic approach in this regard. Detainees' files are systematically reviewed by the NPM team in order to check whether they include forms that detainees have signed acknowledging the receipt of the information on the right to complain.

67. In Germany, all official procedures have to be run in German. The expert interviewee Christine Graebisch (University of Applied Sciences and Arts Dortmund, interview of 20 May 2020) mentioned the case of a detained client of hers, who could not successfully submit a complaint in English. An additional problematic part of the story is that he turned also to the ombudsman with his complaint, but the ombudsman rejected him by saying that they can deal only with complaints written in German, and advised him to ask a cellmate to translate his complaint. This approach seriously violates international standards on the right to information. The 2016 Annual Report of the Norwegian NPM shed light on the issue, as follows: "*many of the foreign inmates the NPM has spoken to expressed a high degree of frustration over not receiving or understanding important information on arrival. Some foreign inmates expressed that they had to rely on other inmates for information. Inadequate information about procedures and rights can contribute to inmates feeling insecure, especially foreign inmates who are often far away from their family and social network and can feel isolated due to lack of information.*" [https://www.sivilombudsmannen.no/wp-content/uploads/2017/05/SIVOM\\_FOREBYGGENH\\_A%C3%8ARSMLD\\_ENGELSK\\_2016\\_WEB.pdf](https://www.sivilombudsmannen.no/wp-content/uploads/2017/05/SIVOM_FOREBYGGENH_A%C3%8ARSMLD_ENGELSK_2016_WEB.pdf), p.21

68. In Germany, the rules of appeal do not appear in the written decisions delivered in internal complaint procedures. Consequently, not all detainees are aware of them once they receive a decision of rejection of their complaint.

Interview with Christine Graebisch (University of Applied Sciences and Arts Dortmund), online, 20 May 2020

- › **Are the detainees properly informed about substantive changes in the rules of internal complaint procedures or judicial compensatory remedies?**

In the case of broad, systematic changes in the rules of legal remedies related to detention conditions, all prisoners should be informed in written form and in an accessible way about the new rules. A systematic change in the rules of legal remedies can be the result of the execution of the recommendation of a national or international monitoring body, or a judgment delivered by a higher domestic or international court.<sup>69</sup> The detainees need to be aware of the up-to-date, valid and applicable rules. The diligent and widespread dissemination of information about the new rules is essential for the efficient exercise of the right to complain.

- › **Are there any categories of prisoners who do not submit any complaint according to the files?**

The low number of complaints from certain specific categories of detainees (e.g. foreigners or detainees with disabilities) can be an indicator of the lack of awareness about the possibilities of complaint. In case such a phenomenon is detected by the NPM, the issue should be further investigated through interviews with the members of the affected specific group of prisoners.

### ***Monitoring of prison facilities:***

- › **Are house rules or flyers available in common open spaces? Do they include not only the obligations but also the rights of detainees?**

Written information on the rights of detainees, including the right to request and complain should be accessible in each unit of the prison

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69. In Hungary, upon the pilot judgment delivered in the case of Varga and Other v. Hungary by the ECtHR (nos. 14097/12 et al.), a new compensatory judicial procedure was introduced. A precondition of the successful application to the courts is the proper submission of a complaint to the head of the prison where the applicant is detained. An instruction was issued by the National Penitentiary Headquarters that all prisons should inform the detainees about this and all the other rules related to the new compensatory procedure. Detainees were supposed to declare in written form that they had been informed properly. In practice, as said by a practicing lawyer interviewee (Online interview, 28 April 2020), detainees were not informed, he has not had any client who would have been informed about the rules of the new procedure. When he requested the court to oblige the prisons to prove that detainees had been properly informed, usually the courts refused to do so. The judicial explanation was that it can be assumed that the prisons complied with their obligation to inform the detainees, and no evidentiary procedure is needed on this issue. In his practice, only one judge sought information from the prison relevant to the case. Even this judge deemed it sufficient to close the issue without further evidences that the prison declared that they provided the necessary information to the prisoners.

and each wing of the detention facilities. NPMs should vigorously monitor whether detainees are in any way hindered in accessing the house rules or flyers.

- › **Are house rules and the basic rules on the execution of judgments available in the foreign languages most commonly used in the monitored detention facility?**
- › **Are databases, handbooks about the applicable legal regulations on detention conditions available for detainees?**

Due to the potentially limited possibility of providing access to electronic databases, access should be ensured at least to up-to-date handbooks, guidelines, which introduce the applicable national and international legal norms on detention conditions.<sup>70</sup> The NPMs can initiate cooperation between expert representatives of the academia and civil society for the prisons to gain access to copies of handbooks and relevant reports published by them.

- › **Are proper professional, interactive trainings delivered to prison staff about accessible information and plain language?**

The obligation to provide written information is more easily complied with. At the same time, prison staff should have the necessary skills to provide oral information about their rights and the house rules to the detainees in an accessible way. The NPM should monitor whether these skills are developed through interactive trainings by specialized experts. The required skills should be specifically identified in the recommendations of the NPM. If possible, NPMs can propose to the relevant authorities or the national human rights institution (NHRI) to map and trigger the action of experts and institutions who are competent in the field of plain language and in delivering professional trainings.

### **Interviews:**

- › **Are all detainees informed about their right to complain and the rules of a complaint procedure?**

The failure of prison staff to properly inform all categories of

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70. A German expert shared her experience during the project interview that she offered her accessible monograph (about the domestic penitentiary system and standards applicable to detention conditions) to prison libraries as a gift but they refused this offer. Interview with Christine Graebisch (University of Applied Sciences and Arts Dortmund), online, 20 May 2020

detainees can result from domestic legislation, for example, if the rights of defendants in pre-trial detention are enshrined in a legal regulation different to those on the execution of sanctions.<sup>71</sup> In these cases, NPMs should consider initiating an amendment of the national law in order to provide the same rights to individuals held in pre-trial detention as to those of the convicted prisoners.

› **Are prisoners informed about their right to request and complain upon their admission both in a written form and orally if needed?**

Accessible oral information can be facilitated by social workers. In the interviews with prisoners, it is essential for the NPM to inspect whether detainees in fact understood the rules of the right to request and complain. It is not sufficient to check whether the detainees are aware of the rules at the time of the interview, since they might have been informed by their cellmates while integrating into the community of detainees. The detention facilities cannot rely on other detainees in the hope and assumption that they would inform the newly admitted prisoners. It is the obligation of the prison staff to provide accessible information to all the detainees, and NPMs should strive for a thorough assessment of the relevant practice.<sup>72</sup>

› **Do detainees clearly understand the house rules, including the rules of requests and complaint procedures?**

NPMs should vigorously inspect through individual interviews whether the detainees clearly understand in what cases, how and to whom they can turn internally and externally if they have any request or complaint, and what they can do if their request or complaint was rejected. If they understand, it does not automatically mean that the prison staff complied with their obligation to properly inform the prisoners. At the same time, the lack of a clear understanding in the case of multiple

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71. In Croatia, only the Code on Criminal Procedure provides for rules on pre-trial detention. However, this Code does not include the rights of pre-trial detainees related to detention conditions. Therefore, they do not receive any written information about detention conditions or the right to complain upon the admission and as opposed to convicted prisoners. The Croatian NPM turned to the Ministry of Justice proposing the amendment of the law to ensure the rights of individuals held in pre-trial detention. Interview with Anica Tomšić-Stojkowska (Croatian NPM), online, 22 May 2020

72. One of the NPM interviewees shared her view that the NPM monitors conducting the interviews with the detainees „sense” how much they are informed about the house rules and the rules of a complaint procedure. They also monitor written information provided to the detainees, and then they become aware of all the details while integrating into the detainee community. In many cases, the NPM monitors found that detainees had been provided written information, which were then explained by their cellmates. Interview with Katalin Haraszti (Hungarian NPM), online, 27 April 2020

detainees can be a strong indicator of the failure in this regard.

› **Do detainees with special needs clearly understand the rules of requests and complaint procedures?**

Special consideration should be given to prisoners with special needs, e.g. illiterate detainees, those living with disabilities, juveniles or foreigners. Drafting the rules in plain, accessible language is an essential element in enforcing the right to information.

### **3.2. Addressees and contact points for the submission of the complaint**

#### *Review of the files:*

› **Do individual complaints sent to the ombudsperson or civil society organizations indicate any systemic problem with regard to the internal complaint procedure in a specific prison?**

In both cases: if the NPM operates independently from the ombudsperson or integrated in the system in the ombuds office, the NPM can cooperate with the individual complaint department of the ombuds office by gaining information about incoming individual complaints. The same practice can be maintained in the framework of cooperation with civil society organizations mandated with providing representation to prisoners in complaint procedures.<sup>73</sup> Additional useful preliminary information can be gained from reports of international organizations and the media. Based on the analysis of the patterns drawn by individual complaints and other resources of information, the NPM can prioritize particular areas of detention or particular categories of detainees that require special attention during the monitoring visit.

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73. For example, the Slovenian NPM maintains fruitful cooperation with civil society organizations not only in the way of information exchange but also through their inclusion in NPM monitoring visits. NGOs are invited to cooperation through a public call. The NPM selects the competent NGOs for cooperation, and then the selected NGOs appoint their staff members for contributing to the work of the NPM as experts (currently, more than 40 experts from 9 NGOs are involved in official cooperation with the NPM). In the case of a specific monitoring visit, the NPM selects experts from this list to participate in the monitoring visit. They conclude a special agreement with the NPM, sign a confidentiality declaration and become a full member of the NPM monitoring team. Written information sent by the Slovenian NPM; Interview with Ivan Šelih (Slovenian NPM), online, 25 May 2020. The Croatian NPM is currently in similar cooperative relation with 15 NGOs. Staff members of NGOs are similarly involved in monitoring visits. The Croatian NPM shared an additional positive experience. An NGO conducted a monitoring visit focused on health conditions of female detainees. The NGO itself did not have the capacity to provide representation to certain prisoners who shared their individual complaints during the monitoring visit. Consequently, the NGO submitted all these complaints to the NPM. Interview with Anica Tomšić-Stojkowska (Croatian NPM), online, 22 May 2020.

› **Was the prison director available for direct complaints?**

The question of whether the prison director is in fact available for direct complaints of detainees can be inspected by reviewing the related files since ideally, all interviews with the prison director should be duly recorded<sup>74</sup> so that external monitoring bodies, including the NPM, have access to the details. If such recording practice is missing, the NPM should consider proposing the introduction of the obligation to record each interview within internal complaint procedures. Obviously, the prison director is the adequate addressee only of complaints which relate to problems falling within the scope of his activities and competence.<sup>75</sup>

› **Were other members of the prison staff available and accessible for the complaints and requests of detainees?**

**Monitoring of prison facilities:**

› **What kind of complaints are received by the psychologist, chaplains, social workers or teachers?**

Even though the above staff members are not official addressees of non-medical complaints, it can be useful to ask them not only about issues and treatment falling in the scope of their activities, but also about everyday complaints, which are not considered significant in a medical sense. They can be the staff members to whom prisoners turn with the most trust. For example, further questions should be posed if upon the question of what kinds of complaints they receive from the detainees on an everyday basis, the doctor answers that complaints are mostly about non-significant matters, such as a little headache or toothache. It is an indicator that detainees turn to the doctor with trust and they probably share with him or her non-medical complaints about problems that should ideally be included in official internal complaints addressed to the prison management.

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74. A recommendation by Ivan Šelih (Slovenian NPM) in the online interview of 25 May 2020

75. In the Czech Republic in 2016, the area of health care services affecting the inmates, the Public Defender of Rights in the NPM capacity signaled the lack of an effective remedy, calling the complaint system “absurd [...] with respect to the provider of health care services, where complaints under Section 93 (5) of the Health Care Services Act are generally resolved by the head of the prison – a person without medical qualification who, moreover, requires the patient’s approval to inspect his or her medical files. I have repeatedly encountered cases where convicts refused to allow the head of the prison to inspect their medical files, which made the complaint impossible to resolve” Prisons – Report on Systematic Visits Carried Out by the Public Defender of Rights, 2016. p 26.

[https://www.ochrance.cz/fileadmin/user\\_upload/ochrana\\_osob/ZARIZENI/Veznice/2016\\_prisons.pdf](https://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/ZARIZENI/Veznice/2016_prisons.pdf)

This says a lot about the lack of trust in the prison management, the reasons of the low number of official internal complaints, and everyday problems in the institution.<sup>76</sup>

› **Are prosecutorial services and judicial bodies efficient in monitoring the prisons or providing effective legal remedy to detainees whose rights have been violated?**

Even though many NPMs are not entitled to review and officially comment on the operation of prosecution services and courts,<sup>77</sup> if during a monitoring visit failures or misconduct is detected by the NPM, the ombudsperson's or NHRI's attention should be drawn to the issue, who can then continue with appropriate action in compliance with the broader ombuds/NHRI mandate.<sup>78</sup> In addition, professional trainings on the significance of the proper management of detainees' complaints and its practical aspects can be recommended to judicial and prosecutorial authorities by NPMs even if they are not entitled to review the operation of these bodies.

**Interviews:**

› **To whom do prisoners first turn with their requests and complaints?**

An open question (e.g. 'What would you do if you had any problem?') can facilitate identification of the most trusted persons the detainees turn to with their requests and complaints, and the responses also provide the NPM monitoring team with useful information about the awareness of detainees about their rights and possibilities. Open questions should be followed by more specific questions on internal and external possibilities.

› **Are detainees fully aware of the mandate and scope of operation of the NPM?**

For building trust in detainees as a first step, it is essential to clarify exactly what they can and cannot expect from the NPM. The detainee interviewees of a monitoring visit should be fully aware of the fact

76. Interview with Gergely Fliegauf (criminologist, psychologist, Hungary), online, 28 April 2020

77. French NPM is entitled to review the prison monitoring and complaint handling operation of the prosecution services.

Interview with Gergely Fliegauf (criminologist, psychologist, Hungary), online, 28 April 2020

78. As suggested by the Slovenian NPM in the written response.

In terms of good governance, the ombudsperson is entitled by law to propose a way to remedy the irregularity, to repeat a procedure and to suggest a compensation for the damage caused by the irregularity. The ombuds can also propose a disciplinary procedure against the employee of the given authority who is responsible for the detected irregularity

that the NPM is not an addressee of potential individual complaints.<sup>79</sup> Due to the frequent institutional connection between the NPM and the ombudsperson's office, detainees can have the wrong impression that their individual complaints will be automatically handled by the NPM itself even if the latter institution's mandate does not cover the management of individual complaints. This can result in unnecessary disappointment. Therefore, in these cases, it is important to articulate at the very beginning of each interview that (depending on the relevant authority of the NPM and its institutional connection with the ombudsperson<sup>80</sup>) the NPM may be able to transfer incoming individual complaints but it is not the NPM who would then manage them. Leaflets can facilitate the explanation of the different roles of the institutions.<sup>81</sup>

› **Do detainee interviewees have any individual complaint?**

Even if the NPM is not mandated with handling individual complaints, if a monitoring team member becomes aware of an individual complaint of the detainee interviewed about the general detention conditions, and records the summary of the complaint, the NPM should transfer it to the ombudsperson's office or its complaint handling department for further investigation.

### **3.3. Effectiveness and fairness of the complaint procedure**

#### ***Review of the files:***

› **Is there an adequate institutional and normative framework in place related to the right of detainees to appeal?**

The NPM can easily review whether the institutional and normative

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79. There are NPMs who are handling and deciding upon individual complaints. For instance, in The Netherlands every prison has a Commission of Oversight who are independent bodies integrated in the system of the NPM. If the detainee who submitted a complaint is not satisfied with the decision of the Commission (the Commission is entitled to award compensation), its decision can be appealed against at the Council for the Administration of Criminal Justice and Protection of Juveniles. This Council is composed of (amongst others) judges and its verdicts are publicly available. In addition, detainees can turn to the Inspectorate of Justice and Security as a supervisory body.  
Interview with NPM representative (The Netherlands NPM), online, 27 May 2020

80. It can be an advantage related to the efficiency of the NPM if it is integrated in the ombudsperson's office (e.g. in Croatia or Hungary), since before the monitoring visit preliminary information can be gained from complaints received by the ombudsperson. However, in these cases it is important not just to remain silent about the complaints from the monitored institution, but to explain to the detainees the mandate of the NPM in order to prevent possible confusion.  
Interview with Anica Tomšić-Stojkowska (Croatian NPM), online, 22 May 2020

81. The Slovenian NPM uses such leaflets.  
Interview with Ivan Šelih (Slovenian NPM), online, 25 May 2020



framework is adequate related to the right of prisoners to appeal against internal decisions upon complaints. The effective and impartial management of appeal complaint procedures prevents arbitrariness and ensures individual accountability of prison staff in cases of personal failures and unlawful action. If the essential institutional or normative framework is missing, the NPM should make the necessary proposals to the respective authorities.

› **In case of successful complaints, are adequate preventive and reparatory remedies provided in the internal complaint procedure?**

Even though the NPM has access to all personal files of detainees, its limited capacity can prevent it from reviewing each and every personal file. A random selection of personal files and their thorough review can be sufficient for the identification of gaps in the practice of complaint procedures.

› **Do the prisoners have the possibility to participate in a hearing about their complaints?**

For a diligent review of more complex complaints and for a well-established decision in these cases, it is essential for the decision-maker to hear the details of the case from all possible sides involved. The written complaint should be considered only a summary of the case followed by a thorough questioning focused on the details of the complaint, as a precondition of the fairness of the complaint procedure.

› **Do written decisions about complaints include detailed reasoning?**

Especially if the complaint of a prisoner is rejected, the decision should be underpinned by detailed reasoning. Without that, detainees are also deprived of their right to an effective appeal.<sup>82</sup> If the complaint procedure files reviewed by the NPM indicate that detainees are not informed about the reasons of rejection in a written decision, the NPM should make the necessary recommendations to the prison management to fill this gap in their practice.<sup>83</sup>

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82. The German expert interviewee shared her experiences in cases where she provided legal representation to detainees in courts. She emphasized that the lack of a detailed written decision of the prison, the appeal procedure at the court can be undermined. The prison might present a different arguments to justify their decision than the ones they orally provided to the detainee and which were therefore included in the motion to appeal.

Interview with Christine Graebisch (University of Applied Sciences and Arts Dortmund), online, 20 May 2020

83. The Croatian NPM successfully recommended the change of practice in the Croatian prisons in this regard. Currently, most of the penitentiary institutions provide detailed feedback to the prisoners about their complaints and requests.

Interview with Anica Tomšić-Stojkowska (Croatian NPM), online, 22 May 2020

› **How much time does it take for the prison director to provide an opportunity for the prisoner to talk about the submitted complaint?**

NPMs should inspect whether interviews with the prison director about complaints are regularly conducted, and how long detainees have to wait from the submission of their complaint until they are heard by the director. The exact time of the submission of request for a hearing to the prison director should be recorded, so that records and waiting time can be monitored. It depends on individual cases whether the complaint demands urgent action. However, general expectations related to promptness can be set.<sup>84</sup>

› **How much time does it take for the prison to make a decision about a complaint?**

The normative framework might reflect adequate deadlines for decision-making in compliance with the requirement of promptness. However, NPMs should closely review whether those deadlines were in fact met by the monitored prison, and whether decisions were made in each and every complaint procedure.<sup>85</sup>

***Monitoring of prison facilities:***

› **Are closed complaint boxes located in all separate units of the prison under appropriate circumstances?**

All detainees should be able to easily access complaint boxes and submit their written complaints in a safe and confidential way. Neither the boxes for complaints addressed to the prison management, nor those for letters to external monitoring bodies can be under surveillance by cameras in order to prevent the prison staff from inspecting who and when submits a complaint. The installation of separate boxes for medical requests in each prison unit might be considered for recommendation.

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84. The Slovenian NPM considers a term of more than 1 month an excessive waiting time, in general. Interview with Ivan Šelih (Slovenian NPM), online, 25 May 2020

85. A Hungarian practicing lawyer representing a large number of detainees shared his experiences that even some of the complaints submitted by him on behalf of his clients have not been decided upon by the respective prisons. In one of these cases, the prison responded to his complaint about the lack of any decision about a complaint submitted in 2017 that a decision has not been made due to the release of the detainee in 2019. According to the lawyer, it is a general practice that no decision is made by the prison even after 6 months even though under law, complaints shall be decided upon within 30 days after the submission. Interview with Hungarian practicing lawyer (Online, 28 April 2020)

› **Are there cameras installed at the complaint boxes for their surveillance?**

The confidentiality of complaint submissions has to be ensured. Furthermore, cameras surveilling complaint boxes undermines the trust of the detainees in the fair management of complaints submitted through them.<sup>86</sup> Therefore, the surveillance of closed complaint boxes is unacceptable.

› **Who empties the complaint boxes and how regularly?**

Locked complaint boxes should be opened only by persons specially designated to ensure the confidentiality of the complaints. Staff who have persons deprived of their liberty directly in their charge should not be in a position to filter complaints. If complaint boxes are installed also for complaints addressed to the ombudsperson's office, the NPM should monitor whether it is only the staff members of the office who are emptying those complaint boxes. Staff members of the prison cannot have access to these boxes in compliance with the principle of confidentiality.

› **Is the right of prisoners to access to a lawyer respected in the complaint procedures?**

Access to a lawyer is a key safeguard of the rights of detainees, including the protection against ill-treatment. A lawyer provides an important service in explaining the rights of detainees and procedural issues relevant to the enforcement of those rights. Any exception to the enjoyment of this right should be clearly circumscribed and its application strictly limited in time. Prisons are responsible for ensuring adequate opportunities, time and facilities for the lawyers' visits and their communication with clients in full confidentiality. Detainees should be allowed to access or have on them materials relevant to the proceedings discussed with the lawyer.

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86. At the final conference of the present project (online, 3 November 2020) the representative of the Croatian NPM shared her experience with the Macedonian NPM. In one of the monitored prisons, the boxes for complaints to the ombudsperson were surveilled by camera, according to the reasoning of the prison management, due to security concerns so that inmates do not destroy the boxes. A consequence of the surveillance was that detainees refrained from submitting any written complaints to the ombudsperson.

### ***Interviews:***

- › **Is confidentiality ensured at interviews conducted with detainees by the NPM?**

Prison staff shall not be present at the interviews. In addition, upon the request of the detainee or based on the assessment of the NPM, the possibility of private conversations without the presence of other detainees should be ensured.

- › **How long do detainees usually wait for a response on their internal complaints?**
- › **Do detainees get a detailed reasoning if their complaint is rejected?**
- › **Are their complaints and requests usually heard and adequately handled by the prison staff and the prison director?**
- › **Have they experienced any systematic changes as a result of their repeatedly submitted complaints? Are they satisfied with the outcome of complaint procedures?**
- › **Do prison staff handle complaints properly?**

Like in many other issues, also related to the efficiency of internal complaint procedures, it can be particularly useful to conduct interviews with prison staff that are in everyday contact with detainees. If the members of the monitoring team pose a general question focused on the common routine (e.g. ‘How can prisoners make a complaint?’ or ‘What do you do if a prisoner gives you a closed envelope with the request to hand it over to the prison director?’), and the prison staff responds reluctantly (e.g. ‘I don’t know, we’re overburdened, I don’t have time for tiny little everyday requests.’), this demonstrates that complaints and requests are not paid due attention, and a problem with the efficiency of the internal complaint mechanisms can be assumed.

### **3.4. Data management**

#### ***Review of the files:***

- › **Does the prison maintain full records about requests and complaint procedures?**

All significant details of the requests or complaint procedures should be duly recorded by the prison administration. A centralized

registration system about requests and complaints has been the focus of European NPMs.<sup>87</sup> In addition to the existence of such a system in the monitored prison, it should be also reviewed what information is registered in the system, which ideally includes:

- *The identity of the complainant,*
- *The date of the submission and the type and subject of the complaint,*
- *The date and content of the decision on the complaint or request,*
- *The signed declaration of the detainee about the receipt of the information about the rules of procedure, including the right to and the rules of appeal,*
- *Potential motions of appeal,*
- *The date and summary of the final decision,*
- *The preventive and reparatory measures taken upon the complaints as remedy.*

› **Does the prison management conduct a systematic analysis of complaints?**

The analysis of incoming complaints assists the prison management in identifying staff members to whom multiple complaints relate, patterns of problematic issues to be addressed at a general level, areas of discontent, and certain categories of prisoners who hardly ever lodge formal complaints.<sup>88</sup>

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87. "During a visit to the Vienna-Simmering correctional institution, a representative of institution management informed the commission of the sharp increase in complaints (about tenfold) and administrative penalty proceedings", but "It was not possible to obtain objective documentation or an overview of the complaints received due to the absence of a centralised file or complaint register."

Annual Report 2015 on the activities of the Austrian National Preventive Mechanism, p. 116–117. [https://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM\\_2015.pdf](https://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM_2015.pdf)Croatia: In some penal institutions [...] no records of complaints are being kept, making it impossible to determine the frequency and the reasons for which prisoners complain, nor whether complaints have been responded to within the legally determined time limit. Report on the Performance of Activities of the Croatian National Preventive Mechanism for 2016, p. 16.

<http://ombudsman.hr/en/reports/send/66-ombudsman-s-reports/999-report-on-the-performance-of-activities-of-the-national-preventive-mechanism-for-2016>

The 2015 Spanish NPM Report states that the Secretary-General of Prison Institutions "has accepted the Recommendation to establish a book for registering complaints, reports or judicial proceedings in relation to inappropriate actions by prison staff," [https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2017/03/NPM\\_Annual\\_Report\\_2015.pdf](https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2017/03/NPM_Annual_Report_2015.pdf), p. 46

88. A good practice from NPMs is the systematic analysis of complaints submitted by prisoners to the Commissions of Oversight in The Netherlands. The analysis is carried out by the Sounding Board Group of the Commissions of Oversight for Penitentiary Institutions.

Interview with NPM representative (The Netherlands NPM), online, 27 May 2020

- › **Are all prison staff trained on the importance of the complaints' system and their role within this system?**

**Interviews:**

- › **Are all submitted complaints registered?**

By reviewing individual files, the NPM can only gain information about the registered complaints. However, prisons might not maintain a practice of diligent registration of all incoming complaints. (In the case of illiterate prisoners, the accurate written record of their oral complaints is particularly important.) During interviews with detainees, the monitoring team can gain further information about orally submitted requests and complaints. If some of them were not registered, the introduction of the systematic practice of the registration of all complaints might be recommended.<sup>89</sup> If the monitoring team is informed about an oral complaint submitted by a detainee, the prisoner should be asked as to whom the complaint was communicated.

Then the specific prison staff should be asked about complaints coming from 5 or 6 detainees (among them the one whose case is under review, which prevents potential reprisals upon the complaint of the prisoner to the NPM) and show all the complaints registered by the questioned prison staff in a given timeframe, including the date when the interviewed prisoner communicated the specific complaint under review. In this way, the identity of the complainant is not revealed to the prison staff, and the potential failure to register the complaint can be easily checked. The failure to register internal complaints can also undermine the right to appeal related to detention conditions. In judicial procedures, it is essential that detainees are provided confirmation about the submission of the complaint, since in many jurisdictions<sup>90</sup> it is the precondition of the judicial procedure.

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89. In Croatia, the system of the registration of all complaints was introduced upon the recommendation made by the Croatian to the Ministry of Justice's Directorate of Execution of Sanctions.

Interview with Anica Tomšić-Stojkowska (Croatian NPM), online, 22 May 2020

90. In the project interviews, controversies related to the lack of registration of complaints resulting in the rejection of the appeal to courts were discussed related to Germany and Hungary. For example, the German expert interviewee, who regularly provides legal representation to prisoners, told about the rule that prisoners can turn to the court if the penitentiary failed to respond to a complaint for three months. A recurring problem is that the prison declares at the court that no complaint was received by the applicant. This problem resulted in the proposal of the expert presented above. Interview with Christine Graebisch (University of Applied Sciences and Arts Dortmund), online, 20 May 2020

A simple solution for ensuring that no submitted complaints are “forgotten” can be that all detainees submitting a complaint receive a written, dated and signed confirmation about the submission.

### **3.5. Protection against reprisals**

#### ***Review of the files:***

- › **Do any of the prison files indicate protective measures (e.g. relocation, on site security, hotlines, or judicial orders of protection) aimed at the prevention of reprisals upon complaints?**
- › **Are there rules in place that provide for severe sanctioning of intimidation or reprisals upon requests or complaints?**

#### ***Monitoring of prison facilities:***

- **Are there any video recordings related to an incident of reprisals (reported by a detainee) available?**

As a routine methodology, access to video footage of the CCTV system should be requested. At the same time, if an interview with a detainee suggests that an incident of physical or verbal reprisal occurred upon a complaint either by the prison staff or another inmate, the claim should be followed up by reviewing the recordings done at the time and place of the incident.

- **Do trainings provided to prison staff include the significance and the prohibition of reprisals upon requests and complaints?**

In case of reprisals by the prison staff, it is extremely challenging to change the culture of solidarity between members of prison staff and the consequent impunity. In trainings, individual responsibility should be emphasized.

#### ***Interviews:***

- › **Have any of the prisoners who submitted a complaint or talked to external bodies experienced reprisals or less favourable treatment?**

Detainees who submitted a complaint to the ombudsperson or a civil society organization can be asked during a monitoring visit whether they experienced any degrading treatment or discouraging attitude (e.g. pressuring questions about why the submission of the complaint was necessary) by the prison staff. If any discouraging attitude was

detected by the NPM, the attention of the prison director should be called to the prohibition of reprisals and discouraging behaviour related to requests and complaints. Monitoring teams should strive to mitigate the risk of reprisals against interviewed detainees. Possible tactics include conducting interviews with as many detainees as possible, or the notification of the prison director about an expectable future follow-up visit where the monitoring team would investigate potential signs of reprisal upon the monitoring visit.

› **Does the prison staff behave in a discouraging way that contributes to the maintenance of a prison culture hindering complaints?**

Not only physical or verbal reprisals can prevent a prisoner from submitting any complaints. Non-verbal acts (e.g. tearing the envelope containing a complaint into pieces in front of the complainant detainee, moving the prisoner in a less well-furnished cell or prison unit after the complaint without any reasonable justification etc.) also can send a strong message to the prisoners that complaints and requests are not welcome, and they should refrain from submitting them if they wanted to avoid conflict with the prison staff.<sup>91</sup> For NPMs, it is very difficult to prove such an attitude by the prison staff through triangulation methods of investigation. If the allegation of discouraging behaviour is based solely on the statement of the detainee, it might not be sufficient to qualify the situation as a violation of the prohibition of inhumane or degrading treatment. However, the facts of the case as presented by multiple detainees can be presented in the monitoring report and communicated to the prison director, demanding the prevention of similar incidents. He has a duty to promote a culture where

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91. The problem has appeared in NPM reports as in the following examples. “Prisoners do not exercise legal remedies because they do not wish to make the officials angry and because they fear negative consequences, for example being given lower prisoner performance evaluation, not being granted any benefits or losing work engagement.” Report on the Performance of Activities of the Croatian National Preventive Mechanism for 2016, p10 <http://ombudsman.hr/en/reports/send/66-ombudsman-s-reports/999-report-on-the-performance-of-activities-of-the-national-preventive-mechanism-for-2016> — “Their [the inmates of the Tököl Juveline Correction Facility] experience is that it is best not to report abuse by other inmates to the prison staff because it can result in treats or more violence in retaliation.” Comprehensive Report of the Hungarian Commissioner for Fundamental Rights on the National Preventive Mechanism of OPCAT of 2015, p 38 <https://www.ajbh.hu/documents/10180/2537582/OPCAT+Elis%C5%91%20%C3%89ves+Jelent%C3%A9s+v%C3%A9gleges.pdf/5b4bcdc7-bc38-461c-b42e-9f4333651dd6> In the 2015 Annual Report of the Lithuanian NPM related to the Lukiskes Remand Prison, it is mentioned that upon the recommendations “measures were taken to ensure that complaints addressed to the director of the Correction Home regarding possibly inappropriate behaviour of officers were registered separately; a staff member responsible for the control of drawing up of replies to inmates’ complaints was designated;” [http://www.lrski.lt/images/dokumentai/SeimoKontrolieriai\\_ataskaita\\_EN\\_2015.pdf](http://www.lrski.lt/images/dokumentai/SeimoKontrolieriai_ataskaita_EN_2015.pdf)



professionalism entails abstaining from discouraging behaviour related to prisoners' requests and complaints.

› **Are detainees discouraging each other from submitting complaints?**

Prison management and staff are responsible for ensuring that detainees do not discourage each other from submitting a request or complaint. If such an attitude is detected by the NPM, it should remind the prison director of the obligation to ensure that complaint procedures are considered by all detainees as part of the everyday life in prison, and that the possibility is open for all to address problems or needs related to detention conditions. However, obviously, the NPMs can face significant challenges both in investigating potential inter-prisoner reprisals and in achieving considerable change in the prison atmosphere. It might be that the interviewed prisoners expressly tell the NPM monitoring team that they are not open for any substantive discussion because other detainees saw the team entering their cells. At the same time, there might be other indicators of discouraging behaviour by co-detainees. An additional indicator might be the hierarchical system within the prison population, for which proof can be that certain cells are much better furnished (e.g. large TV, better furniture, cleaner and less populated cell can be the cell of the "princes", detainees at the top of the hierarchy) than the majority of the cells in the prison.<sup>92</sup> In this case, the NPM monitoring team should pay particular attention to potential inter-prisoner reprisals. In this process, it is also essential to identify the most withdrawn and shy prisoners who - as vulnerable members of the prison population - might be more likely subjected to inter-prisoner reprisal.

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92. Interview with Gergely Fliegau (criminologist, psychologist, Hungary), online, 28 April 2020

## 4. CONCLUSION

Complaint mechanisms constitute a fundamental aspect of the efficient exercise of the rights of detainees related to detention conditions and humane treatment. Efficient request and complaint mechanisms are not only in the interest of prisoners, but also in the interest of the prison system as a whole. International standards – both at the universal and regional level – provide a general outline of the prerequisites of fair and effective complaint mechanisms, focusing on the key areas highlighted in the present handbook: the right to information, addressees for the submission of complaints, effectiveness and fairness, data management and protection against reprisal.

NPMs can face extraordinary challenges while monitoring the fairness and efficiency of complaint procedures or discouraging attitudes related to complaints. At the same time, it is essential for NPMs to advocate for them, since detainees' complaints are important indicators of systemic problems related to detention conditions, and NPMs have a broad mandate and the authority to investigate potential gaps and detect the inefficiency of the complaint system in prisons.

The present handbook raises questions and compiles recommendations related to relevant monitoring methodologies based on discussions during the project's online events on complaints, and project interviews conducted with representatives of European NPMs and experts of detention conditions and monitoring practices. The findings are rooted among other sources in good practices of NPMs, and the handbook aims to facilitate

their future capacity-building by providing a structured summary of the relevant international standards and a compilation of key questions that should be considered during the review of files, monitoring of physical conditions and interviews with detainees and prison staff. NPMs are key institutions in the external review of the operation of prisons, and their systematic approach in monitoring complaint procedures is essential in encouraging penitentiary institutions to ensure fairness and efficiency while handling complaints.

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# A Handbook for National Preventive Mechanisms

