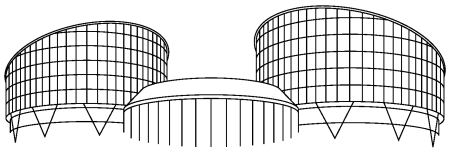

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Guide on the case-law of the European Convention on Human Rights

Prisoners' rights

Updated on 31 August 2025

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Note to readers

This Guide is part of the series of Case-Law Guides published by the European Court of Human Rights (hereafter "the Court", "the European Court" or "the Strasbourg Court") to inform legal practitioners about the fundamental judgments and decisions delivered by the Court. This particular Guide analyses and sums up the case-law under different Articles of the European Convention on Human Rights (hereafter "the Convention" or "the European Convention") relating to prisoners' rights. It should be read in conjunction with the case-law guides by Article, to which it refers systematically.

The case-law cited has been selected among the leading, major, and/or recent judgments and decisions.*

The Court's judgments and decisions serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties (*Ireland v. the United Kingdom*, 18 January 1978, § 154, Series A no. 25, and, more recently, *Jeronovičs v. Latvia* [GC], no. 44898/10, § 109, 5 July 2016).

The mission of the system set up by the Convention is thus to determine, in the general interest, issues of public policy, thereby raising the standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (*Konstantin Markin v. Russia* [GC], 30078/06, § 89, ECHR 2012). Indeed, the Court has emphasised the Convention's role as a "constitutional instrument of European public order" in the field of human rights (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 156, ECHR 2005-VI, and, more recently, *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 110, 13 February 2020).

Protocol No. 15 to the Convention recently inserted the principle of subsidiarity into the Preamble to the Convention. This principle "imposes a shared responsibility between the States Parties and the Court" as regards human rights protection, and the national authorities and courts must interpret and apply domestic law in a manner that gives full effect to the rights and freedoms defined in the Convention and the Protocols thereto (*Grzęda v. Poland* [GC], § 324).

*. The case-law cited may be in either or both of the official languages (English or French) of the Court and the European Commission of Human Rights. Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber. Chamber judgments that were not final when this update was published are marked with an asterisk (*).

Introduction

1. The Court is frequently called upon to rule on complaints alleging a violation of different Articles of the Convention related to the treatment of prisoners as well as restrictions on or interferences with their rights. The Court has developed abundant case-law determining the nature and scope of prisoners' rights under the Convention and the duties of the domestic authorities as regards the treatment of prisoners.

2. The present Guide provides an overview of the Court's case-law related to prisoners' rights. Its structure reflects different phases of imprisonment and elaborates on different aspects of life in prison. The Guide contains a transversal analysis of the Court's case-law, taking into account all relevant provisions of the Convention related to prisoners' rights.

3. For the purpose of this Guide the term "prisoners" primarily covers persons who have been remanded in custody by a judicial authority or who have been deprived of their liberty following conviction but may also refer to all other persons detained for any other reason in a prison. Moreover, it should be noted that the principles related to prisoners' rights may apply to people held in waiting rooms or similar spaces intended to be used for short periods of time, such as police stations and immigration detention facilities (*Muršić v. Croatia* [GC], 2016, § 92; see, for instance, *Georgia v. Russia (I)* [GC], 2014, §§ 192-205; *Khlaifia and Others v. Italy* [GC], 2016, §§ 163-167; *Sakir v. Greece*, 2016, §§ 50-53). These principles may also apply to people held in psychiatric establishments (*Solcan v. Romania*, 2019, §§ 24-29).

I. General principles

Article 3 of the Convention

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 5 of the Convention

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

..."

Article 8 of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

4. According to the Court's case-law, the Convention does not stop at the prison gate (*Khodorkovskiy and Lebedev v. Russia*, 2013, § 836; *Klibisz v. Poland*, 2016, § 354). Prisoners in general continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention save for the right to liberty, where lawfully imposed detention expressly falls within the scope of Article 5 of the Convention. For example, prisoners may not be ill-treated, subjected to inhuman or degrading punishment or conditions contrary to Article 3 of the Convention; they continue to enjoy the right to respect for family life; the right to freedom of expression; the right to practise their religion; the right of effective access to a lawyer or to a court for the purposes of Article 6; the right to respect for correspondence (*Hirst v. the United Kingdom (no. 2)* [GC], 2005, § 69).

5. Any restrictions on these other rights must be justified, although such justification may well be found in the considerations of security, in particular the prevention of crime and disorder, which inevitably flow from the circumstances of imprisonment. However, there is no question, therefore, that a prisoner forfeits his Convention rights merely because of his status as a person detained following conviction (*Hirst v. the United Kingdom (no. 2)* [GC], 2005, §§ 69-70).

6. The key principle underpinning the Court's case-law related to prisoners' rights is the necessity of treatment of all persons deprived of liberty with respect for their dignity and human rights. Indeed, the very essence of the Convention system of protection of human rights is based on respect for human dignity (*Bouyid v. Belgium* [GC], 2015, §§ 89-90), which also extends to the treatment of prisoners (*Vinter and Others v. the United Kingdom* [GC], 2013, § 113).

7. There is in particular a strong link between the concepts of "degrading treatment" and respect for "dignity" (*Bouyid v. Belgium* [GC], 2015, § 90). Thus, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and fall within the prohibition of Article 3 (*Muršić v. Croatia* [GC], 2016, § 98; *Ananyev and Others v. Russia*, 2012, § 140; *Varga and Others v. Hungary*, 2015, § 70).

8. In the context of deprivation of liberty the Court has consistently stressed that, to fall within the scope of Article 3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with detention. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him or her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his or her health and well-being are adequately secured (*Kudła v. Poland* [GC], 2000, §§ 92-94; *Idalov v. Russia* [GC], 2012, § 93; *Muršić v. Croatia* [GC], 2016, § 99).

9. Even the absence of an intention to humiliate or debase a detainee by placing him or her in poor conditions, while being a factor to be taken into account, does not conclusively rule out a finding of a violation of Article 3 of the Convention (*Peers v. Greece*, 2001, § 74; *Mandić and Jović v. Slovenia*, 2011, § 80). Thus, a finding that the authorities subjected an applicant to hardship exceeding the unavoidable level of suffering inherent in detention in breach of Article 3 can in no way be altered by the absence of any indication that the authorities acted with the intention of humiliating or debasing the applicant (*Helhal v. France*, 2015, § 63). Indeed, the Court has emphasised that persons in custody are in a vulnerable position and that the authorities are under a duty to protect them (*Rooman v. Belgium* [GC], 2019, § 143).

10. In this connection, the Court has also held that it is incumbent on the respondent Government to organise its penitentiary system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties (*Muršić v. Croatia* [GC], 2016, § 99; *Neshkov and Others v. Bulgaria*, 2015, § 229).

11. In its case-law concerning prisoners' rights under various provisions of the Convention the Court places a particular emphasis on the principle of rehabilitation, that is, the reintegration into society of a convicted person (*Murray v. the Netherlands* [GC], 2016, § 101). It noted, however, that punishment remained one of the aims of imprisonment (*ibid.*) and that the essential functions of a prison sentence is to protect society, for example by preventing a criminal from re-offending and thus causing further harm (*Mastromatteo v. Italy* [GC], 2002, § 72). At the same time, the Court recognised the legitimate aim of a policy of progressive social reintegration of persons sentenced to imprisonment. From that perspective it acknowledged the merit of measures – such as temporary release – permitting the social reintegration of prisoners even where they have been convicted of violent crimes (*ibid.*).

12. More recently the Court noted that the emphasis in European penal policy was on the rehabilitative aim of imprisonment, even in the case of life prisoners. Thus, for instance, in circumstances where a Government seek to rely solely on the risk posed by offenders to the public in order to justify their continued detention, regard must be had to the need to encourage the rehabilitation of those offenders. Moreover, notwithstanding the fact that the Convention does not guarantee, as such, a right to rehabilitation, the Court's case-law presupposes that convicted persons, including life prisoners, should be allowed to rehabilitate themselves. Even though States are not responsible for achieving the rehabilitation of life prisoners, they nevertheless have a duty to make it

possible for such prisoners to rehabilitate themselves. This is to be seen as an obligation of means, not one of result. However, it entails a positive obligation to secure prison regimes to life prisoners which are compatible with the aim of rehabilitation and enable such prisoners to make progress towards their rehabilitation (*Murray v. the Netherlands* [GC], 2016, §§ 101-104).

II. Conditions of imprisonment

Article 3 of the Convention

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 5 of the Convention

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

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Article 8 of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

13. The various issues related to the conditions of imprisonment – in particular the issue of prison overcrowding – have been the subject of the pilot judgment procedures in respect of the following States: Bulgaria (*Neshkov and Others v. Bulgaria*, 2015); Hungary (*Varga and Others v. Hungary*, 2015); Italy (*Torreggiani and Others v. Italy*, 2013); Poland (*Orchowski v. Poland*, 2009; *Norbert Sikorski v. Poland*, 2009); Romania (*Rezmiveș and Others v. Romania*, 2017); Russia (*Ananyev and Others v. Russia*, 2012); and Ukraine (*Sukachov v. Ukraine*, 2020).

14. In this context, the Court has also indicated the necessity of improving conditions of detention in leading judgments with regard to the following States: Belgium (*Vasilescu v. Belgium*, 2014); France (*J.M.B. and Others v. France*, 2020); Greece (*Samaras and Others v. Greece*, 2012; *Tzamalis and Others v. Greece*, 2012; *Al. K. v. Greece*, 2014); Romania (*Iacov Stanciu v. Romania*, 2012); Slovenia (*Mandić*

and Jović v. Slovenia, 2011; *Štrucl and Others v. Slovenia*, 2011); the Republic of Moldova (*Shishanov v. the Republic of Moldova*, 2015); and Portugal (*Petrescu v. Portugal*, 2019).

A. Admission and record-keeping

15. As borne out by the Court's case-law, no person should be admitted or kept in detention without a valid committal order. A period of detention is, in principle, "lawful" and valid if it is based on a court order (*Mooren v. Germany* [GC], 2009, § 74). Every flaw in the detention order will not necessarily render the detention unlawful. The Court differentiates between the orders that are *ex facie* invalid, which will be the case if the flaw in the order amounted to a "gross and obvious irregularity", and those that are *prima facie* valid and effective unless and until they have been overturned by a higher court. Accordingly, unless they constitute a gross and obvious irregularity, defects in a detention order may be remedied in the course of judicial review proceedings (*ibid.*, § 75).[1]

16. In this connection, it should also be noted that the requirement of Article 5 § 1 (a) of the Convention that a person be lawfully detained after "conviction by a competent court" does not imply that the Court has to subject the proceedings leading to that conviction to a comprehensive scrutiny and verify whether they have fully complied with all the requirements of Article 6 of the Convention.[2] However, the Court has also held that if a "conviction" is the result of proceedings which were a "flagrant denial of justice", namely were manifestly contrary to the provisions of Article 6 or the principles embodied therein, the resulting deprivation of liberty would not be justified under Article 5 § 1 (a) (*Stoichkov v. Bulgaria*, 2005, § 51).

17. In any event, practice of keeping defendants in detention without a specific legal basis or clear rules governing their situation is incompatible with the principles of legal certainty and the protection from arbitrariness, which are common threads throughout the Convention and the rule of law (*Svershov v. Ukraine*, 2008, § 54). Indeed, any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (*Saadi v. the United Kingdom* [GC], 2008, § 67).

18. Any deprivation of liberty and admission to detention must be properly recorded. The Court has held that unacknowledged detention of an individual is a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention and discloses a most grave violation of that provision (*El-Masri v. the former Yugoslav Republic of Macedonia* [GC], 2012, § 233). The absence of a record of such matters as the date, time and location of detention, the name of the detainee, the reasons for the detention and the name of the person effecting it must be seen as incompatible with the requirement of lawfulness and with the very purpose of Article 5 of the Convention (*Fedotov v. Russia*, 2005, § 78; *Mushegh Saghatelyan v. Armenia*, 2018, § 165).

19. In some instances, upon detention, it may also be necessary to enquire into a detainees' family situation as an issue may arise with regard to the care of the detainee's child after he or she has been taken to custody (*Hadzhieva v. Bulgaria*, 2018, §§ 60-67). However, the prison staff have a duty to keep confidential family and other private data concerning prisoners (*Norman v. the United Kingdom*, 2021, §§ 87-90).

20. In the context of the admission procedures, the recording of information about the prisoner's health, including, if appropriate, medical examination, is also important. In this connection, the Court has held that that the nature of the requirements on a State with regard to detainees' health could differ depending on whether any relevant disease contracted was transmissible or non-transmissible. According to the Court, the spread of transmissible diseases and, in particular, of tuberculosis, hepatitis and HIV/Aids, should be a public health concern, especially in the prison environment. The Court thus considered it desirable that, with their consent, detainees can have access, within a

1. See further, Guide on Article 5 of the European Convention on Human Rights.
2. See further, Guide on Article 6 (criminal limb) of the European Convention on Human Rights.

reasonable time after their admission to prison, to free screening tests for hepatitis and HIV/Aids (*Cătălin Eugen Micu v. Romania*, 2016, § 56).

21. However, in this connection, it is important to bear in mind that personal medical data belongs to an individual's private life. Indeed, according to the Court's case-law, the protection of personal data, not least medical data, is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life as guaranteed by Article 8 of the Convention.[3] Respecting the confidentiality of health data is a vital principle in the legal systems of all the Contracting Parties to the Convention. It is crucial not only to respect the sense of privacy of a patient but also to preserve his or her confidence in the medical profession and in the health services in general. Without such protection, those in need of medical assistance may be deterred from revealing such information of a personal and intimate nature as may be necessary in order to receive appropriate treatment and, even, from seeking such assistance, thereby endangering their own health and, in the case of transmissible diseases, that of the community. The Court therefore requires that the domestic law afford appropriate safeguards to prevent any such communication or disclosure of personal health data as may be inconsistent with the guarantees in Article 8 of the Convention (*Mockutė v. Lithuania*, 2018, § 93).

22. Similar considerations apply to the retention and use of other personal data. The Court has stressed that the need for such safeguards is all the greater where the protection of personal data undergoing automatic processing is concerned. Domestic law should notably ensure that such data are relevant and not excessive in relation to the purposes for which they are stored and that they are preserved in a form which permits identification of the data subjects for no longer than is required for the purpose for which those data are stored. Domestic law must also afford adequate guarantees to ensure that retained personal data are efficiently protected from misuse and abuse (*S. and Marper v. the United Kingdom* [GC], 2008, § 103; *Gardel v. France*, 2009, § 62).

B. Placement

23. The Convention does not grant prisoners the right to choose their place of detention, and the fact that prisoners are separated from their families, and at some distance from them, is an inevitable consequence of their imprisonment. Nevertheless, detaining an individual in a prison which is so far away from his or her family that visits are made very difficult or even impossible may in some circumstances amount to interference with family life, as the opportunity for family members to visit the prisoner is vital to maintaining family life. It is therefore an essential part of prisoners' right to respect for family life that the prison authorities assist them in maintaining contact with their close family (*Vintman v. Ukraine*, 2014, § 78).[4]

24. Thus, for instance, in the case of *Khodorkovskiy and Lebedev v. Russia*, 2013, § 838, the Court concluded that the applicants' allocation to a remote prison (located several thousand kilometres from the city where their family lived) constituted an interference with their Article 8 rights. The Court had regard, in particular, to the long distances involved, the geographical situation of the colonies concerned and the realities of the Russian transport system, which rendered a trip from the applicants' home city to their colonies a long and exhausting endeavour, especially for their young children. As a result, the applicants received fewer visits from their families. Similarly, the Court found that there has been an interference with a prisoner's Article 8 right in a situation where he was allocated to a prison 700 kilometres away from his aging mother, who had medical problems and needed to travel some twelve to sixteen hours using the local train connection to see her son, all of which resulted in the applicant not seeing her for some ten years (*Vintman v. Ukraine*, 2014, §§ 80-83; see also *Rodzevillo v. Ukraine*, 2016, §§ 83-87).

3. See further, Guide on Article 8 of the European Convention on Human Rights.
4. See further, section "Family contacts and visits" of this Guide.

25. An interference with the prisoners' rights in this context must be justified in accordance with Article 8 § 2 of the Convention and the prisoner must have at his or her disposal an effective remedy to challenge the measures interfering with his rights (*Vintman v. Ukraine*, 2014, §§ 84, 99, 104 and 115-117).[5] Moreover, the domestic authorities must provide to the prisoner a realistic opportunity to advance reasons against his or her allocation to a particular penal facility, and to have them weighed against any other considerations in the light of the requirements of Article 8 of the Convention (*Polyakova and Others v. Russia*, 2017, § 100).

26. However, the Convention does not guarantee as such the right to an inter-state prison transfer (*Serce v. Romania*, 2015, §§ 53-55; *Palfreeman v. Bulgaria* (dec.), 2017, §§ 36-39). Moreover, in the context of terrorism, the Court has accepted various policy choices by the authorities designed to cut the links between the prisoners concerned and their original criminal environment, in order to minimise the risk that they would maintain contact with terrorist organisations. The important considerations in this respect are the existence of adequate safeguards to protect the prisoner concerned from abuse and the measures taken by the authorities to ensure contact between the prisoner and his family and friends (*Labaca Larrea and Others v. France* (dec.), 2017; *Fraile Iturralde v. Spain* (dec.), 2019).

27. Lastly, it should be noted that whereas the transfer of prisoners from one facility to another may be warranted by security concerns, unwarranted multiple transfers of prisoners may give rise to an issue under Article 3 (*Bamouhammad v. Belgium*, 2015, § 125-132) or under Article 8 of the Convention (*Stanislav Lutsenko v. Ukraine (no. 2)*, 2022, §§ 60-64).

C. Accommodation

28. The Court is frequently called upon to rule on complaints alleging a violation of Article 3 of the Convention on account of insufficient personal space allocated to prisoners, principally in relation to multi-occupancy cells. The Court has stressed on many occasions that under Article 3 it cannot determine, once and for all, a specific number of square metres that should be allocated to a detainee in order to comply with the Convention. Indeed, the Court has considered that a number of other relevant factors, such as the duration of detention, the possibilities for outdoor exercise and the physical and mental condition of the detainee, play an important part in deciding whether the detention conditions satisfied the guarantees of Article 3 (*Muršić v. Croatia* [GC], 2016, § 103; see also *Samaras and Others v. Greece*, 2012, § 57; *Varga and Others v. Hungary*, 2015, § 76). Nevertheless, extreme lack of space in prison cells weighs heavily as an aspect to be taken into account for the purpose of establishing whether the impugned detention conditions were "degrading" within the meaning of Article 3 of the Convention (*Orchowski v. Poland*, 2009, § 122; *Ananyev and Others v. Russia*, 2012, § 143).

29. In *Muršić v. Croatia* [GC], 2016, §§ 136-141, the Court clarified its approach to complaints of inadequate allocation of personal space in multi-occupancy accommodation of prisoners. It confirmed the standard predominant in its case-law of 3 sq. m of floor surface per detainee in multi-occupancy accommodation as the relevant minimum standard under Article 3 of the Convention. When the personal space available to a detainee falls below 3 sq. m of floor surface in multi-occupancy accommodation in prisons, the lack of personal space is considered so severe that a strong presumption of a violation of Article 3 arises. The burden of proof is on the respondent Government which could, however, rebut that presumption by demonstrating that there were factors capable of adequately compensating for the scarce allocation of personal space.

30. The strong presumption of a violation of Article 3 will normally be capable of being rebutted only if the following factors are cumulatively met:

5. See further, Guide on Article 8 of the European Convention on Human Rights.

- the reductions in the required minimum personal space of 3 sq. m are short, occasional and minor;
- such reductions are accompanied by sufficient freedom of movement outside the cell and adequate out-of-cell activities; and
- the applicant is confined in what is, when viewed generally, an appropriate detention facility, and there are no other aggravating aspects of the conditions of his or her detention (see *Clasens v. Belgium*, 2019, §§ 34-39, and *Leroy and Others v. France*, 2024, §§ 111-115, where the conditions of detention were aggravated due to industrial actions by prison staff).

31. In cases where a prison cell – measuring in the range of 3 to 4 sq. m of personal space per inmate – is at issue the space factor remains a weighty factor in the Court's assessment of the adequacy of conditions of detention. In such instances a violation of Article 3 will be found if the space factor is coupled with other aspects of inappropriate physical conditions of detention related to, in particular, access to outdoor exercise, natural light or air, availability of ventilation, adequacy of room temperature, the possibility of using the toilet in private, and compliance with basic sanitary and hygienic requirements.

32. Where a detainee disposes of more than 4 sq. m of personal space in multi-occupancy accommodation in prison and where therefore no issue with regard to the question of personal space arises, other aspects of physical conditions of detention remain relevant for the Court's assessment of adequacy of an applicant's conditions of detention under Article 3 of the Convention (see *Ribár v. Slovakia*, 2024, § 100).

33. In this context, the Court also emphasised the importance of the role of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ('CPT') in monitoring conditions of detention and of the standards which it develops in that connection. The Court stressed that when deciding cases concerning conditions of detention it remains attentive to those standards and to the Contracting States' observance of them. However, the Court also recalled that its role is conceptually distinct from that of the CPT: in assessing complaints under Article 3 related to material conditions of detention, the Court must consider the cumulative effects of the impugned conditions, the specific allegations raised by the applicant prisoner, and the duration of the detention in those conditions (see *Ribár v. Slovakia*, 2024, § 98).

34. As regards the methodology for the calculation of the minimum personal space allocated to a detainee in multi-occupancy accommodation, the Court relies on the CPT's methodology on the matter according to which the in-cell sanitary facility should not be counted in the overall surface area of the cell. On the other hand, calculation of the available surface area in the cell includes space occupied by furniture. What is important in this assessment is whether detainees had a possibility to move around within the cell normally (*Muršić v. Croatia*, 2016, § 114; see also *Lautaru and Seed v. Greece*, 2020, § 54, where a kitchenette is calculated in the overall surface area of the cell; and *İlerde and Others v. Türkiye*, 2023, §§ 173-175, individual outdoor yard annexed to each cell and available during daylight hours as well as the sanitary facilities, were excluded from calculation of floor space for each prisoner).

35. Moreover, in *Muršić*, §§ 127-128, the Court clarified the methodology for its assessment of conditions of detention cases. In particular, the Court stressed that it is particularly mindful of the objective difficulties experienced by applicants in collecting evidence to substantiate their claims about conditions of their detention. However, applicants must provide a detailed and consistent account of the facts complained of. In certain cases applicants are able to provide at least some evidence in support of their complaints. The Court has considered as evidence, for example, written statements by fellow inmates or if possible photographs provided by applicants in support of their allegations.

36. Once a credible and reasonably detailed description of the allegedly degrading conditions of detention, constituting a *prima facie* case of ill-treatment, has been made, the burden of proof shifts to the respondent Government who alone have access to information capable of corroborating or refuting these allegations. They are required, in particular, to collect and produce relevant documents and provide a detailed account of an applicant's conditions of detention. Relevant information from other international bodies, such as the CPT, on the conditions of detention, as well as the competent national authorities and institutions, also inform the Court's decision on the matter.

37. Another important aspect of the adequate accommodation of prisoners is unobstructed and sufficient access to natural light and fresh air within their cells. In many cases the Court has found that restrictions on access to natural light and air owing to the fitting of metal shutters seriously aggravated the situation of prisoners in an already overcrowded cell and weighed heavily in favour of a violation of Article 3. However, absent any indications of overcrowding or malfunctioning of the ventilation system and artificial lighting, the negative impact of shutters did not reach, on its own, the threshold of severity as would fall within the scope of Article 3 (*Ananyev and Others v. Russia*, 2012, §§ 153-154, with further references). In *Yakovenko v. Ukraine*, 2007, § 85, the Court noted that sleeping conditions may be aggravated by the constant lighting in the cell, which may result in a deprivation of sleep which constitutes a heavy physical and psychological burden on the prisoner.

38. The Court has also made it clear that the free flow of natural air should not be confused with inappropriate exposure to inclement outside conditions, including extreme heat in summer or freezing temperatures in winter. In some cases the applicants found themselves in particularly harsh conditions because the cell window was fitted with shutters but lacked glazing. As a result, they suffered both from inadequate access to natural light and air and from exposure to low winter temperatures, having no means to shield themselves from the cold penetrating into the cell from the outside (*Ananyev and Others v. Russia*, 2012, § 155).

D. Hygiene

39. The Court has held that access to properly equipped and hygienic sanitary facilities is of paramount importance for maintaining prisoners' sense of personal dignity. Not only are hygiene and cleanliness integral parts of the respect that individuals owe to their bodies and to their neighbours with whom they share premises for long periods of time, they also constitute a condition and at the same time a necessity for the conservation of health. A truly humane environment is not possible without ready access to toilet facilities or the possibility of keeping one's body clean (*Ananyev and Others v. Russia*, 2012, § 156). Moreover, absence of appropriate access to proper sanitary facilities raises an issue of the domestic authorities' positive obligation to ensure a minimum level of privacy for prisoners under Article 8 of the Convention (*Szafrański v. Poland*, 2015, §§ 37-41).

40. As regards access to toilets, many cases concerned a lavatory pan placed in the corner of the cell, lacking any separation from the living area or separated by a single partition approximately one to one a half metres high. Such close proximity and exposure was considered not only objectionable from a hygiene perspective but also deprived a detainee using the toilet of any privacy because he remained at all times in full view of other inmates sitting on the bunks and also of warders looking through the peephole (for instance, *Aleksandr Makarov v. Russia*, 2009, § 97; *Longin v. Croatia*, 2012, § 60). In some cases, the Court considered that the lack of privacy resulting from the openness of the toilet area or difficulties associated with the possibility to use the toilet in the cell due to overcrowding took a particularly heavy toll on the applicants, who suffered from a particular medical condition (*Moiseyev v. Russia*, 2008, § 124; *Lonić v. Croatia*, 2014, § 76).

41. Further, limited time for taking a shower also affects hygiene and may be considered to amount to a degrading treatment of prisoners. The Court, for instance, considered that a possibility to shower no more than once every ten days or fifteen to twenty minutes once a week has been manifestly

insufficient for maintaining proper personal hygiene. Moreover, in many cases, the manner in which the showering was organised did not afford the detainees any elementary privacy, for they were taken to shower halls as a group, one cell after another, and the number of functioning shower heads was occasionally too small to accommodate all of them (*Ananyev and Others v. Russia*, 2012, § 158, with further references).

42. Necessary sanitary precautions should also include measures against infestation with rodents, fleas, lice, bedbugs and other vermin. Such measures comprise sufficient and adequate disinfection facilities, provision of detergent products, and regular fumigation and checkups of the cells and in particular bed linen and mattresses as well as the areas used for keeping food. This is an indispensable element for the prevention of skin diseases, such as scabies, which appear to have been a common occurrence in Russian remand prisons (*Ananyev and Others v. Russia*, 2012, § 159; *Neshkov and Others v. Bulgaria*, 2015, § 243).

43. The Court has also held that hygiene or security requirements cannot justify rules providing for an absolute prohibition on prisoners growing a beard, irrespective of its length, tidiness, or any other considerations, when those rules do not explicitly provide for any exceptions to that prohibition (*Biržietis v. Lithuania*, 2016, §§ 55-58).

44. As regards the rules obliging prisoners to shave their heads, the Court stressed that a particular characteristic of the forced shaving off of a prisoner's hair is that it consists in a forced change of the person's appearance by the removal of his hair. The person undergoing that treatment is very likely to experience a feeling of inferiority as his physical appearance is changed against his will. Moreover, for at least a certain period of time a prisoner whose hair has been shaved off carries a mark of the treatment he has undergone. The mark is immediately visible to others, including prison staff, co-detainees and visitors or the public, if the prisoner is released or brought into a public place soon thereafter. The person concerned is very likely to feel hurt in his dignity by the fact that he carries a visible physical mark. The Court thus considered that the forced shaving off of detainees' hair is, in principle, an act which may have the effect of diminishing their human dignity or may arouse in them feelings of inferiority capable of humiliating and debasing them. However, whether or not the minimum threshold of severity is reached and, consequently, whether or not the treatment complained of constitutes degrading treatment contrary to Article 3 of the Convention will depend on the particular facts of the case, including the victim's personal circumstances, the context in which the impugned act was carried out and its aim (*Yankov v. Bulgaria*, 2003, §§ 112-114).

E. Clothing and bedding

45. An issue of inadequate bedding often arises in the context of a wider problem of prison overcrowding. The Court's case-law endorses the principle of one prisoner one bed. In many cases the Court has found a breach of Article 3 of the Convention where prisoners did not have an individual sleeping place and had to take turns to sleep (*Ananyev and Others v. Russia*, 2012, § 146, with further references). The Court therefore stressed that each detainee must have an individual sleeping place in the cell (*Ananyev and Others v. Russia*, 2012, § 148(a)). It also important to bear in mind the hygiene requirements related to adequate bedding.[6]

46. As regards clothing, the Court has held that although the requirement for prisoners to wear prison clothes may be seen as an interference with their personal integrity, it is undoubtedly based on the legitimate aim of protecting the interests of public safety and preventing public disorder and crime (*Nazarenko v. Ukraine*, 2003, § 139). Moreover, the Court did not consider that a request to wear

6. See further, section "Hygiene" of this Guide.

personal clothes in prison fell to be protected under Article 9 of the Convention[7] (*McFeeley and Others v. the United Kingdom*, 1980, Commission decision).

47. Nevertheless, obliging a prisoner to wear prison clothes during his visits to the clinics outside prison constitutes an interference with his right to respect for his private life guaranteed by Article 8 of the Convention (*T.V. v. Finland*, 1994, Commission decision). In *Giszczak v. Poland*, 2011, §§ 36-41), where a prisoner was not given timely and adequate information about the conditions of his prison leave, namely an obligation that he wear prison clothes and chains, which resulted in his refusing to attend a funeral, the Court found a violation of Article 8 of the Convention.

F. Nutrition

48. The Court has held that where food given to a prisoner is clearly insufficient, this in itself raises an issue under Article 3 of the Convention (*Dudchenko v. Russia*, 2017, § 130). That was the case, for instance, where an applicant was given only one meal per day (*Kadiķis v. Latvia (no. 2)*, 2006, § 55; *Stepuleac v. Moldova*, 2007, § 55). However, where food served to the prisoners was regularly inspected by the prison doctor and the competent State authorities, and where prisoners were served three meals per day which did not appear substandard or inadequate, the Court did not consider any issue to arise under Article 3 of the Convention irrespective of a prisoner's dissatisfaction with the food (*Muršić v. Croatia* [GC], 2016, § 166).

49. The issue of adequate nutrition becomes crucial in the case of a breastfeeding mother held in prison (*Korneykova and Korneykov v. Ukraine*, 2016, § 141).[8] It may also be relevant for the treatment of prisoners during their transport to the court (*Starokadomskiy v. Russia*, 2008, § 58)[9] or during the admission of a person to custody (*S.F. and Others v. Bulgaria*, 2017, § 87).

50. An issue related to nutrition may also arise when the prison authorities refuse to provide a prisoner with a particular diet. The Commission considered that the duty of the authorities to provide nutrition to prisoners could arguably be interpreted as requiring the taking into account of the special dietary requirements, namely food which prisoners are unable to consume having regard to religious or other impediments (*D and E.S. v. United Kingdom*, 1990, Commission decision). In this respect, the Court has also stressed that providing food to a prisoner compatible with his or her religious beliefs is important since observing dietary rules can be considered a direct expression of beliefs in the sense of Article 9 of the Convention (*Jakóbski v. Poland*, 2010, § 45; *Vartic v. Romania (no. 2)*, 2013, §§ 33-36).[10]

51. Thus, for instance, in *Jakóbski v. Poland*, 2010, §§ 48-55, the Court considered that the applicant's decision to adhere to a vegetarian diet could be regarded as motivated or inspired by a religion (Buddhism) and was not unreasonable. Consequently, the refusal of the prison authorities to provide him with such a diet fell within the scope of Article 9. While the Court was prepared to accept that a decision to make special arrangements for one prisoner within the system could have financial implications for the custodial institution, it had to consider whether the State had struck a fair balance between the different interests in play. The applicant had merely asked to be granted a diet without meat products. His meals did not have to be prepared, cooked and served in a prescribed manner, nor did he require any special products. He was not offered any alternative diet, and the Buddhist Mission was not consulted on the issue of the appropriate diet. The Court was not persuaded that the provision of a vegetarian diet would have entailed any disruption to the management of the prison or a decline

7. See further, Guide on Article 8 of the European Convention on Human Rights.
8. See section "Women with infants and minors" of this Guide.
9. See section "Transport of prisoners" of this Guide.
10. See section "Freedom of thought, conscience and religion" of this Guide. See also, Guide on Article 9 of the European Convention on Human Rights.

in the standards of meals served to other prisoners. It therefore concluded that the authorities had failed to strike a fair balance between the interests of the applicant and the prison authorities.

52. By contrast, in *Erlich and Kastro v. Romania*, 2020, as regards the request of Jewish prisoners to have kosher meals accepted on the basis of a domestic court's judgment, the Court noted that the kosher meals had to contain special ingredients obtained by following very specific rules, and had to be prepared separately, in separate containers and with separate utensils, in a particular manner and under the supervision of a representative of the religion in question. In the case at issue, the prison authorities co-operated with a Jewish religious foundation to provide a separate area in the prison kitchen and to have the Jewish prisoners help prepare the meals. Moreover, the foundation had subsequently been present in the prison during Jewish religious festivals, supplying the applicants with specific foodstuffs for the occasion. The domestic court had also permitted the applicants to obtain, by derogation from the applicable rules, foodstuffs which could be cooked and prepared on the spot. Although the applicants had obtained those products by their own means, it was open to them to seek reimbursement from the State. In these circumstances, the Court found that a whole set of appropriate measures had been put in place by the prison authorities, and that the domestic authorities had done all that could reasonably have been expected of them to respect the applicants' religious convictions, particularly since kosher meals had to be prepared under special, strict conditions. The Court thus found no violation of Article 9 of the Convention.

53. Moreover, as regards a special diet prescribed by doctors due to a prisoner's health issues, in *Ebedin Abi v. Turkey*, 2018, §§ 31-54, the Court did not accept that the lack of provision of such special diet could be justified on economic grounds. In addition, having regard to prisoners' inability to seek medical help at any time from a hospital of their choosing, the Court considered that it was incumbent on the domestic authorities to instruct a specialist to assess the standard menu offered by the prison in question, and at the same time to invite the applicant to undergo a medical examination specifically linked to his complaints. In the case at issue, in view of the domestic authorities' failure to take the requisite action to protect the applicant's health and well-being, the Court found a violation of Article 3 of the Convention.

G. Exercise and recreation

54. Exercise and recreation form part of a broader obligation to ensure that prisoners are able to spend a reasonable part of the day outside their cells, engaged in purposeful activity of a varied nature (work, recreation, education). Regimes in establishments for sentenced prisoners should be even more favourable (*Muršić v. Croatia* [GC], 2016, § 133). However, within the context of prisons, the Convention does not confer a right as such to mix socially with other prisoners at any particular time or place (*Bollan v. the United Kingdom* (dec.), 2000).[11]

55. In its assessment of the conditions of detention, the Court pays special attention to the availability and duration of outdoor exercise and the conditions in which prisoners could take it. In this respect, it refers to the CPT standards which make specific mention of outdoor exercise and considers it a basic safeguard of a prisoner's well-being that all, without exception, be allowed at least one hour of exercise in the open air every day and preferably as part of a broader programme of out-of-cell activities. Moreover, outdoor exercise facilities should be reasonably spacious and whenever possible offer shelter from inclement weather (*Ananyev and Others v. Russia*, 2012, § 150).

56. The Court has frequently observed that a short duration of outdoor exercise limited to one hour a day was a factor that further exacerbated the situation of the applicant, who was confined to his cell

11. This principle was adopted with reference to Article 11 (Freedom of assembly and association). See further, Guide on Article 11 of the European Convention on Human Rights.

for the rest of the time without any kind of freedom of movement (for instance, *Gladkiy v. Russia*, 2010, § 69; *Tunis v. Estonia*, 2013, § 46).

57. The physical characteristics of outdoor exercise facilities have also featured prominently in the Court's analysis (*Ananyev and Others v. Russia*, 2012, § 152). For instance, an exercise yard that is just two square metres larger than the cell, is surrounded by three-metre-high walls, and has an opening to the sky covered with metal bars and a thick net does not offer inmates proper opportunities for recreation and recuperation (*Moiseyev v. Russia*, 2008, § 125). Similarly, the Court found it hard to see how prisoners could use the yard in bad weather conditions in any meaningful way when there was no roof over the outdoor yard (*Mandić and Jović v. Slovenia*, 2011, § 78). By contrast, a spacious area for outdoor exercise which included a lawn and asphalted parts as well as protection from inclement weather and was equipped with various recreational facilities was found to be appropriate and a factor capable of significantly alleviating the impact of low personal space (*Muršić v. Croatia* [GC], 2016, §§ 161-163).

H. Searches and control

58. The Court has held that a search carried out in an appropriate manner with due respect for human dignity and for a legitimate purpose may be compatible with Article 3 (*Wainwright v. the United Kingdom*, 2006, § 42; *Dejnek v. Poland*, 2017, § 60). However, where the manner in which a search is carried out has debasing elements which significantly aggravate the inevitable humiliation of the procedure, Article 3 has been engaged. Similarly, where the search has no established connection with the preservation of prison security and the prevention of crime or disorder, issues may arise (*Wainwright v. the United Kingdom*, 2006, § 42).

59. Thus, body searches may be necessary on occasion to ensure prison security or to prevent disorder or crime (*Leroy and Others v. France*, 2024, §§ 95-98, concerning pat-down searches through the outer clothes by special forces exceptionally deployed to ensure the safety of a prison during a protest action by the prison staff after a knife attack on two prison officers). The same in principle applies to strip searches (*Iwańczuk v. Poland*, 2001, § 59; *Van der Ven v. the Netherlands*, 2003, § 60). However, repeated, random strip searches of a prisoner without a legitimate purpose will run counter to Article 3 (*Roth v. Germany*, 2020, §§ 70-72). Similarly, the imposition of disciplinary sanctions for refusing to undergo unnecessary strip searches involving an anal inspection may run counter to Article 8 of the Convention (*Syrianos v. Greece*, §§ 85-91). Even single instances of strip searching could amount to degrading treatment in view of the manner in which the strip search was carried out, the possibility that its aim was to humiliate and debase and where there was no justification for it (*Valašinas v. Lithuania*, 2001, § 117).

60. For instance, in *Van der Ven v. the Netherlands*, 2003, § 60, the Court did not consider that a systemic weekly strip-search was justified particularly since nothing untoward was found in the course of the search. In *Valašinas v. Lithuania*, 2001, § 117, the Court considered that obliging the applicant to strip naked in the presence of a woman, and then touching his sexual organs and food with bare hands showed a clear lack of respect for the applicant, and diminished his human dignity in breach of Article 3 of the Convention.

61. In *Adamčo v. Slovakia (no. 2)*, 2024, §§ 82-103, the applicant, while imprisoned, was repeatedly subjected to thorough strip searches (TSS) over an extended period on security grounds. In the absence of a compelling justification, the measure was found to constitute "degrading" treatment under Article 3, though not "inhuman," as it did not meet the requisite level of severity. While authorised under domestic law, the application of TSS in the instant case was indiscriminate, disregarding the applicant's specific circumstances and conduct, despite the presence of a complex set of other security measures in the prison. The cumulative impact of these searches resulted in excessive humiliation.

62. In *Iwańczuk v. Poland*, 2001, § 58, the Court considered it inacceptable that the applicant was ordered to strip naked in front of a group of prison guards. By contrast, in *S.J. v. Luxembourg (no. 2)*, 2013, §§ 55-62), where a prisoner was subjected to a body search by being obliged to undress in an open booth in the presence of a number of guards, the Court held that there had been no violation of Article 3. The Court noted, in particular, that the layout of the premises was not ideal but it did not consider that it could be concluded from this layout alone that the body searches conducted in that area implied a degree of suffering or humiliation that went beyond what was inevitable. In addition, and with particular regard to the body search in dispute in this case, there was no evidence in the case file that there had been any wish to humiliate, and indeed the applicant had not alleged that he had been the victim of disrespectful guards or that the latter had behaved in such a way as to indicate that they were seeking to humiliate him.

63. Similarly, in *Dejnek v. Poland*, 2017, §§ 61-66 and 75-76, where the strip search was conducted in compliance with the relevant domestic regulatory framework and did not include any element of debasing or humiliating treatment, the Court did not find a breach of Article 3. However, it found that a failure to provide a justification for body searches or strip searches at the domestic level ran counter to Article 8 of the Convention.

64. Indeed, in its case-law the Court has held that where a measure falls short of Article 3 treatment, it may, however, fall foul of Article 8 of the Convention which, *inter alia*, protects physical and moral integrity as part of respect for private life. The requirement to submit to a strip-search will generally constitute an interference under the first paragraph of Article 8, which must be justified in accordance with the second paragraph as being "in accordance with the law" and "necessary in a democratic society" for one or more of the legitimate aims listed therein. According to settled case-law, the notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued (*Wainwright v. the United Kingdom*, 2006, § 43).[12]

65. An issue with searches arises not only with regard to prisoners but also concerning searches of their visitors. In this respect, the Court has held that, where procedures are laid down for the proper conduct of searches of those external to the prison who may very well be innocent of any wrongdoing, it behoves the prison authorities to comply strictly with those safeguards and by rigorous precautions protect the dignity of those being searched from being assailed any further than is necessary (*Wainwright v. the United Kingdom*, 2006, § 48).

66. As regards the control of prisoners and the use of surveillance cameras, the Court has held that placing a person under permanent video surveillance whilst in detention – which already entails a considerable limitation on a person's privacy – has to be regarded as a serious interference with the individual's right to respect for his or her privacy, as an element of the notion of "private life", and thus brings Article 8 of the Convention into play (*Van der Graaf v. the Netherlands* (dec.), 2004; *Vasilică Mocanu v. Romania*, 2016, § 36).

67. In *Gorlov and Others v. Russia*, 2019, §§ 97-100) concerning permanent CCTV camera surveillance of the prisoners' cells, the Court laid emphasis on the necessity of putting in place an adequate legal framework regulating the use of such measures. It stressed that the law, whilst vesting in the administrations of pre-trial detention centres and penal institutions the right to use video surveillance, did not define with sufficient clarity the scope of those powers and the manner of their exercise so as to afford an individual adequate protection against arbitrariness. In the case at issue, the national legal framework, as interpreted by the domestic authorities, vests in the administrations of pre-trial detention centres and penal institutions an unrestricted power to place every individual in pre-trial or post-conviction detention under permanent – that is day and night – video surveillance, unconditionally, in any area of the institution, including cells, for an indefinite period of time, with no

12. See further, Guide on Article 8 of the European Convention on Human Rights.

periodic reviews. In these circumstances, in the Court's view, the national law offered virtually no safeguards against abuse by State officials in breach of Article 8 of the Convention.

68. Similarly, the Court has held that, while the surveillance of communication in the visitation area in prison may legitimately be done for security reasons, a systemic surveillance and recording of communication for other reasons represents an interference with the right to respect for private life and correspondence under Article 8 of the Convention. In this context, Court has placed particular emphasis on the requirement of lawfulness, including clarity and foreseeability of the relevant law (*Wisse v. France*, §§ 29-34; see also *Doerga v. the Netherlands*, §§ 44-54, concerning the tapping, recording and retention of telephone conversations).

I. Transport of prisoners

69. The Court has established a long line of case-law concerned with the conditions in which applicants are transferred in prison vans between remand centres and courthouses.[13] It has found a violation of Article 3 in many cases in which the applicants were transported in extremely cramped conditions. The applicants had at their disposal less than 0.5 square metres of floor space, with some of them having as little as 0.25 square metres (for instance, *Yakovenko v. Ukraine*, 2007, §§ 107-109; *Vlasov v. Russia*, 2008, §§ 92-99; *Starokadomskiy v. Russia*, 2008, §§ 55-60; *Retunscaia v. Romania*, 2013, § 78; *Radzhab Magomedov v. Russia*, 2016, § 61).

70. The Court also noted that the height of the prisoner cells – 1.6 metres – was insufficient for a man of normal stature to enter or stand up without stooping, which required detainees to remain in a seated position at all times inside the van (*Idalov v. Russia* [GC], 2012, § 103). In addition to limited floor space, prison vans were occasionally occupied by a total number of detainees exceeding their carrying capacity, which further aggravated the applicants' situation (*Vlasov v. Russia*, 2008, § 93; *Retunscaia v. Romania*, 2013, § 78). Insufficient ventilation on hot days and a lack of heating when the van was stationary with the engine turned off, were also noted as aggravating factors (*Yakovenko v. Ukraine*, 2007, § 109).

71. Account was taken of the frequency and number of trips in those conditions, as well as of their duration. The Court found a violation of Article 3 in cases where applicants had endured dozens or even hundreds of such trips. By contrast, the Court found that the minimum threshold of severity had not been attained in cases where the applicant's exposure to such conditions had been limited in time (*Seleznev v. Russia*, 2008, § 59, where the applicant had had just two thirty-minute transfers in an overcrowded prison van; *Jatsõšõn v. Estonia*, 2018, § 45, where the applicant had refused to continue the trip after an initial twenty-minute stay in the van).

72. As regards safety devices that reduce the risk of injury in a moving vehicle, the Court has found that the absence of seat belts cannot, of itself, lead to a violation of Article 3 (*Voicu v. Romania*, 2014, § 63, *Jatsõšõn v. Estonia*, 2018, §§ 42-43). It noted, however, that the lack of a seat belt or handles might give rise to an issue under Article 3 under certain circumstances and in combination with other factors (*Engel v. Hungary*, 2010, § 28, where the applicant was a paraplegic and his wheelchair had been left unsecured in a moving vehicle; *Tarariyeva v. Russia*, 2006, §§ 112-117, where a post-operative patient had been transported on a stretcher in an unadapted prison van).

73. As regards conditions of transfer by rail, such complaints were chiefly lodged by convicted prisoners who had been transported long distances to the place where they were to serve their custodial sentence. The total duration of transfers was between twelve hours and several days. The very cramped conditions, in which more than ten people had been placed in a three-square-metre compartment, was decisive for the Court's finding of a violation of Article 3 (*Yakovenko v. Ukraine*,

13. See also, Parliamentary Assembly of the Council of Europe, Resolution 2266 (2019) Protecting human rights during transfers of prisoners.

2007, §§ 110-13; *Sudarkov v. Russia*, 2008, §§ 63-69; *Dudchenko v. Russia*, 2017, § 131). In one case, the applicant had travelled alone in a smaller, two-square-metre compartment for sixty-five hours. However, in accordance with the regulations governing the transport of detainees, guards had checked up on him and forced him to change position every two hours. The Court considered that the resulting deprivation of sleep had constituted a heavy physical and psychological burden on the applicant (*Guliyev v. Russia*, 2008, §§ 61-65).

74. On the basis of the above outlined case-law, in *Tomov and Others v. Russia*, 2019, §§ 123-128, the Court established the following approach to be taken concerning transport of prisoners:

- nevertheless, a strong presumption of a violation arises when detainees are transported in conveyances offering less than 0.5 square metres of space per person. Whether such cramped conditions result from an excessive number of detainees being transported together or from the restrictive design of compartments is immaterial for the Court's analysis, which is focused on the objective conditions of transfer as they were and their effect on the applicants, rather than on their causes. The low height of the ceiling, especially of single-prisoner cubicles, which forces prisoners to stoop, may exacerbate physical suffering and fatigue. Inadequate protection from outside temperatures, when prisoner cells are not sufficiently heated or ventilated, will constitute an aggravating factor;
- the strong presumption of a violation of Article 3 is capable of being rebutted only in the case of a short or occasional transfer. By contrast, the pernicious effects of overcrowding must be taken to increase with longer duration and greater frequency of transfers, making the case for a violation stronger;
- as regards longer journeys, such as those involving overnight travel by rail, the Court's approach will be similar to that applicable to detention in stationary facilities for a period of a comparable duration. Even though a restricted floor space can be tolerated because of multi-tier bunk beds, it would be incompatible with Article 3 if prisoners forfeited a night's sleep on account of an insufficient number of sleeping places or otherwise inadequate sleeping arrangements. Factors such as a failure to arrange an individual sleeping place for each detainee or to secure an adequate supply of drinking water and food or access to the toilet seriously aggravate the situation of prisoners during transfers and are indicative of a violation of Article 3;
- when deciding cases concerning conditions of transfer, the Court will remain attentive to the CPT standards and to the Contracting States' compliance with them.
- the assessment of whether there has been a violation of Article 3 cannot be reduced to a purely numerical calculation of the space available to a detainee during the transfer. Only a comprehensive approach to the particular circumstances of the case can provide an accurate picture of the reality for the person being transported.

III. Contact with the outside world

Article 8 of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 10 of the Convention

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Article 12 of the Convention

"Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right."

A. Family contacts and visits

75. It is the Court's well-established case-law that detention, like any other measure depriving a person of his liberty, entails inherent limitations on his private and family life. However, it is an essential part of a prisoner's right to respect for family life that the authorities enable him or, if need be, assist him in maintaining contact with his close family (*Khoroshenko v. Russia* [GC], 2015, § 106, with further references). In this context, the Court also emphasises the principle of rehabilitation, that is, the reintegration into society of a convicted person (*ibid.*, §§ 121-122).

76. Any interference with the right to respect for private and family life must be justified within the meaning of Article 8 § 2 of the Convention.[14] In particular, any law on which restrictions on family visits are based must meet the "quality of law" requirement under Article 8. In a number of cases against Russia, the Court has found that this requirement was not met due to the fact that the law conferred on the authority, remaining in charge of the criminal case, unrestricted discretion to grant or refuse prison visits and provided nothing to limit the scope of the discretion and the manner of its exercise. The Court thus considered that such law deprived the detainee of the minimum degree of protection against arbitrariness or abuse to which citizens are entitled under the rule of law in a democratic society (*Kungurov v. Russia*, 2020, §§ 18-20).

77. However, the Court has accepted that some measure of control of prisoners' contacts with the outside world is called for and is not of itself incompatible with the Convention (*Aliev v. Ukraine*, 2003, § 187; *Kyriacou Tsiakkourmas and Others v. Turkey*, 2015, § 303). Such measures could include the limitations imposed on the number of family visits, supervision over those visits and, if so justified by

14. See further, Guide on Article 8 of the European Convention on Human Rights.

the nature of the offence and the specific individual characteristics of a detainee, the detainee can be subjected to a special prison regime or special visit arrangements (*Hagyó v. Hungary*, 2013, § 84). Moreover, the Court has also found no interference by the State with detainees' Article 8 rights in situations where they failed to provide sufficient evidence that they had solicited family visits or other means or modalities of communication with their families and friends which they claimed they had not received (*Kyriacou Tsiakkourmas and Others v. Turkey*, 2015, § 304).

78. In this context a distinction is to be drawn between the application of a special prison regime or special visiting arrangements during the criminal investigations, where the measures could reasonably be considered necessary in order to achieve the legitimate aim pursued, and the extended application of such regime. To that end, the necessity of extending the application of the special regime needs to be assessed with the greatest care by the relevant authorities (*Enea v. Italy* [GC], 2009, §§ 125-131; *Khoroshenko v. Russia* [GC], 2015, § 124). The Court has also stressed that Article 8 of the Convention requires the States to take into account the interests of the prisoner and his or her family members and to evaluate them not in terms of broad generalities but in relation to the specific situation (*Deltuva v. Lithuania*, 2023, § 42; see also, for instance, *Halit Kara v. Türkiye*, 2023, §§ 51-60).

79. In the context of high security prisons, the application of measures such as physical separation may be justified by the prison's security needs or the danger that a detainee would communicate with criminal organisations through family channels (*Lorsé and Others v. the Netherlands*, 2003, §§ 83-86). However, the extended prohibition of direct contact can be justified only where a genuine and continuing danger of that kind exists (*Piechowicz v. Poland*, 2012, §§ 205-222; *Khoroshenko v. Russia* [GC], 2015, § 125).[15]

80. In *Trosin v. Ukraine*, 2012, §§ 42-44, in which the domestic law introduced automatic restrictions on the frequency, duration and various modalities of family visits for all life-sentence prisoners for a fixed period of ten years, the Court found it inacceptable that the law did not offer any degree of flexibility for determining whether such severe limitations were appropriate or indeed necessary in each individual case even though they were applied to prisoners sentenced to the highest penalty under the criminal law. The Court considered that the regulation of such issues should not amount to inflexible restrictions and States are expected to develop proportionality assessment enabling the authorities to balance the competing individual and public interests and to take into account peculiarities of each individual case.

81. Similarly, in *Khoroshenko v. Russia* [GC], 2015, §§ 127-149, the Court dealt with a situation where for ten years the applicant had been able to maintain contact with the outside world through written correspondence, but all other forms of contact had been subject to restrictions: he was unable to make any telephone calls other than in an emergency; he could receive only one visit from two adult visitors every six months, and then for four hours; and he was separated from his relatives by a glass partition and a prison guard had been present and within hearing distance at all times. The restrictions, imposed directly by law, had been applied to the applicant solely on account of his life sentence, irrespective of any other factors. The regime had been applicable for a fixed period of ten years, which could be extended in the event of bad behaviour, but could not be shortened. The restrictions had been combined within the same regime for a fixed period and could not be altered. The Court considered that such a combination of various long-lasting and severe restrictions on the applicant's ability to receive prison visits, and the failure of the regime on prison visits to give due consideration to the principle of proportionality and to the need for rehabilitation and reintegration of long-sentence prisoners, was contrary to Article 8 of the Convention.

82. *Kučera v. Slovakia*, 2007, §§ 127-134 concerned restrictions on family visits to a detainee in pre-trial detention. The Court stressed that, whereas there was a legitimate need for preventing the applicant from hampering the investigation, for example by exchanging information with his

15. See section "Special high security and safety measures" of this Guide.

co-accused including his wife, it was not persuaded that it had been indispensable to refuse him visits from his wife for a period of thirteen months. The Court stressed that, for instance, special visiting arrangements with supervision by an official could have been arranged. It was also questionable whether relevant and sufficient grounds existed for preventing the applicant from meeting with his wife for such a long period in view of the suffering caused by such a lengthy separation and the fact that the investigation had practically ended. In these circumstances, the Court found a violation of Article 8 of the Convention.

83. In *Subaşı and Others v. Türkiye*, 2022, the applicants had been able to receive some visits from their children on weekdays but they had not been able to make full use of their entitlement to weekly visits from their children owing to conflicts with school schedules, which the Court found to amount to an interference with the right to respect for family life. As regards the proportionality of the interference, the Court stressed that Article 8 required States to take into account the interests of the prisoner and his or her family members and to evaluate them not in terms of broad generalities but in their application to the specific situation. The Court noted that the regulation of such issues may not amount to the one-size-fits-all approach, and States were expected to develop their proportionality assessment technique, enabling the authorities to balance the competing individual and public interests and to take into account the peculiarities of a case, such as the distance of a detainee's home from the prison, whether or not the detainee has school-age children and conflicts with school schedules when organising visits. In this context, the Court also referred to the Recommendation of the Committee of Ministers (CM/Rec(2018)5) concerning children with imprisoned parents which encourages authorities to facilitate communication between imprisoned parents and their children. On the facts of the case, the Court noted that, in using their discretionary power to determine the days of the weekly visits, the prison administrations had made their decisions solely on the basis of considerations relating to the capacity of the prisons rather than relating to the prisoners and their relationships with their children: the restriction of visits to weekdays and to working hours was intended to decrease the number of visitors so that it would be easier for the authorities to manage the visits. At the same time, the domestic courts had not weighed up the competing interests or carefully considered the applicants' arguments. The Court therefore found a violation of Article 8 of the Convention.

84. By contrast, in *Namık Yüksel v. Türkiye*, 2024, § 61, the Court found no violation of Article 8 regarding restrictions imposed on the applicant's contact with his four-year-old son staying with his wife in the same prison. The Court considered that the domestic authorities, by allowing the applicant to have one hour weekly non-contact visits with son and one hour monthly contact visits with wife and son, had taken all necessary steps that could have been reasonably expected of them to ensure the applicant's contact with the child.

85. As regards conjugal visits, in *Dickson v. the United Kingdom* [GC], 2007, § 81, the Court referred to the fact that more than half of the Contracting States allow for conjugal visits for prisoners, subject to a variety of different restrictions. However, while the Court has expressed its approval for the evolution in several European countries towards conjugal visits, it has not yet interpreted the Convention as requiring Contracting States to make provision for such visits (*Aliev v. Ukraine*, 2003, § 188). Accordingly, Contracting States could enjoy a wide margin of appreciation in determining the steps to be taken to ensure compliance with the Convention with due regard to the needs and resources of the community and of individuals. However, the issue of conjugal visits undoubtedly falls within the scope of Article 8 (for instance, *Epners-Gefners v. Latvia*, 2012, § 63, with further references) and different restrictions in this respect may raise an issue of discrimination under Article 14 of the Convention.[16]

86. In *Dickson*, the Court dealt with the question of the refusal of access to artificial insemination facilities to a couple: the husband was serving a prison sentence and his wife was at liberty. The Court

16. See section "Right to marry" of this Guide.

did not find that the grant of artificial insemination facilities would involve any security issues or impose any significant administrative or financial demands on the State. It also underlined the evolution in European penal policy towards the increasing relative importance of the rehabilitative aim of imprisonment, particularly towards the end of a long prison sentence. Although the grant of artificial insemination facilities was possible in exceptional cases, the threshold established by the official policy was set so high against them from the outset that it did not allow a balancing of the competing individual and public interests and prevented the required assessment of the proportionality of a restriction, as required by the Convention.

87. Similarly, in *Lesław Wójcik v. Poland*, 2021, §§ 118-135, the Court has found that a system of conjugal visits linked to the prisoner's conduct, containing also an inherent element of discretion, does not run counter to Article 8 of the Convention, provided that the decisions of the domestic authorities in this respect are not arbitrary or manifestly unreasonable.

88. In this connection, it should be noted that, in *Chocholáč v. Slovakia*, 2022, §§ 52-56 and 76, the Court considered that a restriction on access to pornographic material in prison, which affected the applicant's ability to lead a sexual life, should be viewed in the context of the absence of a right to conjugal visits. The Court also found that such a restriction was general and indiscriminate not permitting the required proportionality assessment in an individual case, which was contrary to Article 8 of the Convention.

89. The Court has also dealt with a number of cases concerning the rejection of a prisoner's request for permission to visit an ailing relative or attend a relatives' funeral under Article 8 of the Convention (*Płoski v. Poland*, 2002, §§ 26-39; *Schemkamper v. France*, 2005, §§ 19-36; see also *Spînu v. Romania (No. 2)* (dec.), 2024, §§ 33-40, where the Court left it open whether there was an interference with Article 8 regarding an unsubstantiated request for a family visit to an ailing relative by a prisoner). However, the Court has found that the refusal of leave to visit a sick relative does not attain a minimum level of severity as to fall within the scope of Article 3 (*Sannino v. Italy* (dec.), 2005).

90. In this connection, the Court has held that Article 8 of the Convention does not guarantee a detained person an unconditional right to leave to visit a sick relative or attend a relative's funeral. It is up to the domestic authorities to assess each request on its merits. The Court's scrutiny is limited to a consideration of the impugned measures in the context of the applicant's Convention rights, taking into account the margin of appreciation left to the Contracting States. At the same time the Court emphasised that even if a detainee, by the very nature of his situation, must be subjected to various limitations of his rights and freedoms, every such limitation must be nevertheless justifiable as necessary in a democratic society. It is the duty of the State to demonstrate that such necessity really existed, that is, to demonstrate the existence of a pressing social need (*Lind v. Russia*, 2007, § 94). Indeed, the Court lays a particular emphasis on the necessity of the domestic authorities to conduct a detailed assessment of each individual circumstances of a case (*Vetsev v. Bulgaria*, 2019, § 25).

91. In the cases of *Schemkamper*, *Sannino* and *Płoski* the Court had regard to certain factors to assess whether the refusals of leave to visit a sick relative or to attend a relative's funeral were "necessary in a democratic society" such as: the stage of the criminal proceedings against the applicant, the nature of the criminal offence, the applicant's character, the gravity of the relative's illness, the degree of kinship, the possibility of escorted leave, and so on. Thus, a violation of Article 8 was found in the *Płoski* case, where the applicant, who had not been convicted, was charged with a non-violent crime and sought leave to attend the funerals of his parents, who died within one month of each other, whereas the authorities did not give compelling reasons for the refusal and did not consider the possibility of escorted leave. By contrast, in the *Sannino* case, the refusal was justified because the applicant had been convicted of murder and had difficult personality. He sought leave to visit his grandfather who was not a close relative and whose state of health was not really precarious. In more recent case, *Schemkamper*, the Court also found the refusal justified because the applicant's father was not so unwell as to be unable to visit the applicant in prison.

92. In *Lind*, §§ 97-98, the Court did not find that, by refusing the applicant's request to travel aboard and visit his father on his deathbed and attend the farewell ceremony for him, the domestic authorities exceeded their margin of appreciation. However, it considered that, once his application for release had been rejected, he should have been provided with an alternative opportunity to bid farewell to his dying father. The Court did not consider that a telephone conversation which was interrupted after one minute provided a meaningful opportunity for the applicant to bid farewell to his dying father. The Court thus found a violation of Article 8 of the Convention.

93. In *Razvozzhayev v. Russia and Ukraine and Udaltsov v. Russia*, 2019, § 268, where the applicant's request to attend his mother's funeral had been denied apparently due to a short notice he had given, the Court stressed that the time constraints complicating the planning of his attendance at the funeral was not a sufficient reason for refusing it. In the Court's view, it was typical for funerals to be fixed at very short notice and they were generally regarded as a matter of urgency. In this case, it would have been physically possible for the applicant to arrive at the funeral, which was held on the following day in the same city. Thus, the Court found that the refusal to allow the applicant to attend the funeral run counter to Article 8 of the Convention.

94. By contrast, *Guimon v. France*, 2019, §§ 37-52, concerned a refusal to allow a prisoner convicted of terrorist offences to leave prison under escort to pay her respects to her late father. The Court found no violation of Article 8 of the Convention. The Court had regard to the following considerations: the applicant's criminal profile – she was serving several prison sentences for acts of terrorism and continued to assert her membership of ETA; escort would have had to have been organised for a distance of almost 650 km and the escort arrangements needed to be particularly robust; the time available for the examination of the request, once final permission to leave under escort had been granted, had been insufficient to arrange an escort comprising officers specially trained in the transfer and supervision of a prisoner convicted of terrorist offences and to organise the prior inspection of premises; the applicant had had regular visits from family members and friends; and the judicial authorities had carried out a balancing exercise between the interests at stake, namely the applicant's right to respect for her family life on the one hand and public safety and the prevention of disorder and crime on, the other.

95. In *Solcan v. Romania*, 2019, § 29, concerning the request for temporary release to attend a relative's funeral made by a detainee in the psychiatric facility, the Court stressed that perpetrators of criminal acts who suffer from mental disorders and are placed in psychiatric facilities are in a fundamentally different situation than other detainees, in terms of the nature and purpose of their detention. Consequently, there are different risks to be assessed by the authorities when the request for temporary release is made by a detainee from a psychiatric facility. On the facts of the case, the Court found, in particular, that an unconditional denial by the domestic courts of compassionate leave or another solution to enable the applicant to attend her mother's funeral was not compatible with the State's duty to assess each individual request on its merits and demonstrate that the restriction on the individual's right to attend a relative's funeral was "necessary in a democratic society" within the meaning of Article 8 § 2 of the Convention.

B. Right to marry

96. The Court has held that prisoners have the right to marry, as guaranteed under Article 12 of the Convention. It stressed that personal liberty is not a necessary pre-condition for the exercise of the right to marry. Imprisonment deprives a person of his liberty and also – unavoidably or by implication – of some civil rights and privileges. This does not, however, mean that persons in detention cannot, or can only very exceptionally, exercise their right to marry. As the Court has repeatedly held, a prisoner continues to enjoy fundamental human rights and freedoms that are not contrary to the sense of deprivation of liberty, and every additional limitation should be justified by the authorities. While such justification may well be found in considerations of security, in particular the prevention

of crime and disorder, which inevitably flow from the circumstances of imprisonment, detained persons do not forfeit their right guaranteed by Article 12 merely because of their status. Nor is there any place under the Convention system, where tolerance and broadmindedness are the acknowledged hallmarks of democratic society, for any automatic interference with prisoners' rights, including their right to establish a marital relationship with the person of their choice, based purely on such arguments as what – in the authorities' view – might be acceptable to or what might offend public opinion (*Frasik v. Poland*, 2010, §§ 91-93); see also *Chernetskiy v. Ukraine*, 2016, § 29, concerning registration of a divorce of a prisoner).

97. In this context, the Court also stressed that the choice of a partner and the decision to marry him or her, whether at liberty or in detention, is a strictly private and personal matter and there is no universal or commonly accepted pattern for such a choice or decision. Under Article 12 the authorities' role is to ensure that the right to marry is exercised "in accordance with the national laws", which must themselves be compatible with the Convention; but they are not allowed to interfere with a detainee's decision to establish a marital relationship with a person of his choice, especially on the grounds that the relationship is not acceptable to them or may offend public opinion. Moreover, it goes without saying that detention facilities are neither designed, nor freely and normally chosen for marriage. What needs to be solved in a situation where a detained person wishes to get married is not whether or not it is reasonable for him to marry in prison but the practical aspects of timing and making the necessary arrangements, which might, and usually will, be subject to certain conditions set by the authorities. Otherwise, they may not restrict the right to marry unless there are important considerations flowing from circumstances such as danger to prison security or prevention of crime and disorder (*Frasik v. Poland*, 2010, § 95).

C. Communication Protection of different means of communication

98. As a rule, prisoners' correspondence with the outside world is protected under Article 8 of the Convention, particularly his or her communication with a legal representative.[17] In its case-law, the Court has placed emphasis on the necessity to ensure protection from arbitrariness in the application of any measure monitoring prisoners' correspondence. In particular, the Court stressed the need to regulate the duration of measures monitoring prisoners' correspondence, the reasons capable of justifying such measures and the scope and manner of exercise of any discretion conferred on the authorities in this respect (*Enea v. Italy* [GC], 2009, § 143). Moreover, where measures interfering with prisoners' correspondence are taken, it is essential that reasons be given for the interference, such that the applicant and/or his advisers can satisfy themselves that the law has been correctly applied to him and that decisions taken in his case are not unreasonable or arbitrary (*Onoufriou v. Cyprus*, 2010, § 113).

99. Thus, for instance, in *Petrov v. Bulgaria*, 2008, §§ 39-45, the Court found a violation of Article 8 in relation to measures of indiscriminate monitoring of the entirety of the prisoners' correspondence, without drawing any distinction between the different categories of persons with whom the prisoners corresponded and in the absence of clear rules on time-limits governing the implementation of this monitoring. Moreover, in that case the authorities were not bound to give any reasons for the application of the measure of monitoring in a particular case. In such circumstances, the Court stressed that, even allowing for a certain margin of appreciation in this domain, the monitoring of the entirety of the applicant's correspondence addressed to and coming from the outside world could not be considered as corresponding to a pressing social need or proportionate to the legitimate aim pursued.

100. In *Nuh Uzun and Others v. Turkey*, 2022, the Court found that the scanning and registration of the detainees' private correspondence in a judicial electronic information system, for a considerable

17. See section "Access to legal advice" of this Guide. See further the case-law under Article 34 concerning prisoners' communication with the Court in section Article 34 "Communication with the Court" of this Guide.

period of time, irrespective of whether the correspondence contained sensitive data or not, amounted to an interference with the detainees' Article 8 rights. The Court also found that the interference in question had not been based on an appropriate (accessible and foreseeable) legal basis as required by the "prescribed by law" requirement of Article 8 § 2 of the Convention.

101. In a case of *Uygun v. Türkiye**, 2025, §§ 65-70, the prison authorities refused to send the applicant's letter to his fiancée since a paragraph in that letter had been interpreted as evidence of his continued involvement in a terrorist organisation of which he had been charged membership. The Court, pointing out that written correspondence was the only means of communication between the applicant and his fiancée, found that the reasons provided for withholding the entire ten-page letter had been relevant but not sufficient and that no balancing exercise had been made between the competing interests.

102. The case of *Gullotti v. Italy*, 2025, §§ 36-44, concerned an additional limitation, imposed by a judicial order, on the applicant's right to correspondence while he was already subject to a special detention regime limiting communication with the outside world. The Court noted the lack of any explicit reference to specific circumstances justifying the additional restriction and the Government's failure to provide supporting documents: it was thus difficult to ascertain which circumstances were weighed up, and in what manner and to what extent, when deciding to impose the restriction.

103. As for telephone calls, Article 8 does not in itself guarantee such a right, especially if there exist adequate possibilities for written correspondence. If telephone facilities are, however, made available, they may, again in view of the ordinary and reasonable requirements of imprisonment, also be subject to restrictions (*A.B. v. the Netherlands*, 2002, §§ 92-93; *Davison v. the United Kingdom* (dec.), 2010; *Nusret Kaya and Others v. Turkey*, 2014, § 36). However, any such restrictions must meet the requirements of its second paragraph of Article 8. In this context, the above-mentioned considerations related to the restrictions on a prisoner's correspondence are factors to be taken into account in assessing whether the interference was "necessary in a democratic society" (*Lebois v. Bulgaria*, § 62).

104. For instance, in *Nusret Kaya and Others v. Turkey*, 2014, the Court found a violation of Article 8 of the Convention on account of the prison authorities' practice of restricting the prisoners' telephone conversations in Kurdish without providing relevant or sufficient reasons for such a restriction. In *Lebois v. Bulgaria*, the Court found a violation of Article 8 because the restrictions on the use of the telephone in pre-trial detention were based on internal orders, which were not sufficiently accessible to the applicant. *Danilevich v. Russia*, §§ 51-65 concerned a life prisoner who was subject to a strict prison regime. The Court found that, where maintaining family contact by written correspondence and/or visits is deemed insufficient, a complete ban on telephone calls except in emergency situations amounted to a disproportionate interference with the applicant's right to respect for private and family life in breach of Article 8 (for further examples in the Court's case-law, *ibid*, §§ 49-50).

105. By contrast, in *Davison v. the United Kingdom* (dec.), 2010, the Court declared inadmissible as manifestly ill-founded the complaint of a prisoner that the cost of a telephone call from a prison telephone was higher than the cost of a call from a public payphone if the call lasted more than a certain period of time. While acknowledging the limited financial means available to the applicant and the drawbacks associated with written correspondence, the Court nevertheless observed that the applicant was able to enjoy regular telephone contact with his family, albeit not as freely or as economically as he might have preferred. Moreover, even if the State authorities' policy of applying a higher rate for longer telephone calls from prison in order to subsidise the cost of shorter calls could be said to have given rise to an interference with the applicant's Article 8 rights, the Court considered that this policy pursued a "legitimate aim" and was "necessary in a democratic society." In *Bădulescu v. Portugal*, 2020, § 36, the Court found that the limitation of the length of telephone conversations of an inmate to five minutes per day was not disproportionate within the meaning of Article 8 § 2

given, in particular, the need to allow all other inmates of the same prison to make daily calls to their families.

106. Similar to the contacts *via* telephone, the Court has held that Article 8 cannot be interpreted as guaranteeing prisoners the right to communicate with the outside world by way of online devices, particularly where facilities for contact *via* alternative means are available and adequate. Thus, in *Ciupercescu v. Romania (no. 3)*, 2020, §§ 104-111, in the circumstances of a temporary absence of an adequate legal and infrastructural framework allowing the applicant to communicate online with his wife (which was provided as a right under the domestic law), the Court found no issue under Article 8 on the grounds that the restriction in question lasted for a relatively short period of time (approximately a year) and that during that period the applicant had a possibility of receiving visits and communicating *via* telephone with his wife.

107. The Court has also examined prisoners' access to the Internet, under Article 10 of the Convention.[18]

108. In *Kalda v. Estonia*, 2016, § 43, the applicant complained that he, as a prisoner, wished to be granted access – specifically, via the Internet – to information published on certain websites. When examining this complaint, the Court laid emphasis on the fact that in the light of its accessibility and its capacity to store and communicate vast amounts of information, the Internet plays an important role in enhancing the public's access to news and facilitating the dissemination of information in general. Nevertheless, imprisonment inevitably involves a number of restrictions on prisoners' communications with the outside world, including on their ability to receive information. The Court thus considered that Article 10 cannot be interpreted as imposing a general obligation to provide access to the Internet, or to specific Internet sites, for prisoners. However, the Court found that if access to certain sites that contain legal information is granted under national law, as in that case, the restriction on access to other sites that also contain legal information constitutes an interference with the right to receive information (*ibid.*, §§ 44-45).

109. On the facts of the case, the Court found that the websites to which the applicant had requested access predominantly contained legal information and information related to fundamental rights, including the rights of prisoners. The accessibility of such information promoted public awareness and respect for human rights. The national courts used such information and the applicant therefore also needed access to it for the protection of his rights in the court proceedings. Moreover, the Court noted that, in a number of Council of Europe and other international instruments, Internet access had increasingly been understood as a right, and calls had been made to develop effective policies to attain universal access to the Internet and to overcome the "digital divide". The Court also noted that an increasing amount of services and information was only available on the Internet. Lastly, the Court laid emphasis on the fact that the necessary technical equipment and facilities were already available to allow prisoners access the Internet (*Kalda v. Estonia*, 2016, §§ 48-54; see also *Ramazan Demir v. Turkey*, 2021, §§ 30-48).

110. Similarly, in *Jankovskis v. Lithuania*, 2017, §§ 59-64, where an applicant complained about restricted access to the website of the Ministry of Education and Science preventing him from receiving education-related information, the Court found a violation of Article 10 of the Convention. It referred to the principles elaborated in *Kalda* and placed emphasis, in particular, on the nature of the information which the applicant sought to obtain, which was also relevant for his social reintegration.

18. See further, Guide on Article 8 of the European Convention on Human Rights.

IV. Health care in prison

Article 2 of the Convention

"1. Everyone's right to life shall be protected by law. ..."

Article 3 of the Convention

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 8 of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. General principles

111. In the Court's case-law, issues related to medical treatment of prisoners principally arise under Article 3 of the Convention. In some instances, in cases of suspicious death of a prisoner, an issue may also arise under Article 2 of the Convention.[19] Issues may also arise under Article 8 of the Convention.[20]

112. Under Article 2, the Court has stressed that this provision enjoins the States not only to refrain from the intentional and unlawful taking of life, but also lays down a positive obligation on the States to take appropriate steps to safeguard the lives of those within their jurisdiction. In the context of prisoners, the Court has previously had occasion to emphasise that persons in custody are in a vulnerable position and that the authorities are under a duty to protect them (*Mustafayev v. Azerbaijan*, 2017, § 53). The obligation to protect the life of individuals in custody implies an obligation for the authorities to provide them with the medical care necessary to safeguard their life (*Jasinskis v. Latvia*, 2010, § 60; *Hilmioğlu v. Turkey* (dec.), 2020, § 70), which, in the circumstances of a case, may also include adequate mental health care and treatment (*Pintus v. Italy*, 2024, §§ 46-54).

113. As a general rule, the mere fact that an individual dies in suspicious circumstances while in custody should raise an issue as to whether the State has complied with its obligation to protect that person's right to life (*Karsakova v. Russia*, 2014, § 48). It is incumbent on the State to account for any injuries suffered in custody, an obligation which is particularly stringent when an individual dies (*Mustafayev v. Azerbaijan*, 2017, § 54).

114. Further, Article 3 imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty by, among other things, providing them with the requisite medical care (*Kudła v. Poland* [GC], 2000, § 94; *Paladi v. Moldova* [GC], 2009, § 71; *Blokhin v. Russia* [GC], 2016, § 136). Thus, the Court has held on many occasions that lack of appropriate medical care may amount to treatment contrary to Article 3 (*ibid.*; *Wenerski v. Poland*, 2009, §§ 56-65). This may also concern restrictions imposed on an applicant's access to healthcare in the context of house arrest (*Narbutas v. Lithuania*, 2023, §§ 170-177).

115. However, an unsubstantiated allegation that medical care has been non-existent, delayed or otherwise unsatisfactory is normally insufficient to disclose an issue under Article 3 of the Convention.

19. See further, Guide on Article 2 of the European Convention on Human Rights.
20. See further, Guide on Article 8 of the European Convention on Human Rights.

A credible complaint should normally include, among other things, sufficient reference to the medical condition in question; medical treatment that was sought, provided, or refused; and some evidence – such as expert reports – which is capable of disclosing serious failings in the applicant's medical care (*Krivolapov v. Ukraine*, 2018, § 76, with further references).

116. The "adequacy" of medical assistance remains the most difficult element to determine. In its assessment of this issue, the Court is guided by the due diligence test, since the State's obligation to cure a seriously ill detainee is one of means, not of result. In particular, the mere fact of a deterioration of the applicant's state of health, albeit capable of raising at an initial stage certain doubts concerning the adequacy of the treatment in prison, could not suffice, as such, for a finding of a violation of the State's positive obligations under Article 3 of the Convention, if it can be established that the relevant domestic authorities have in timely fashion resorted to all reasonably possible medical measures in a conscientious effort to hinder development of the disease in question (*Goginashvili v. Georgia*, 2011, § 71). The mere fact that a detainee is seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance was adequate (*Hummatov v. Azerbaijan*, 2007, § 116). The authorities must also ensure that a comprehensive medical record is kept concerning the detainee's state of health and his or her treatment while in detention (*Khudobin v. Russia*, 2006, § 83; *Eldar Hasanov v. Azerbaijan*, 2024, § 104), that diagnosis and care are prompt and accurate (*Melnik v. Ukraine*, 2006, §§ 104-106), and that where necessitated by the nature of a medical condition supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at adequately treating the detainee's health problems or preventing their aggravation, rather than addressing them on a symptomatic basis (*Amirov v. Russia*, 2014, § 93).

117. The authorities must also show that the necessary conditions were created for the prescribed treatment to be actually followed through (*Holomiov v. Moldova*, 2006, § 117). The prison authorities must offer the prisoner the treatment corresponding to the disease(s) with which the prisoner was diagnosed. In the event of diverging medical opinions on the treatment necessary to ensure adequately a prisoner's health, it may be necessary for the prison authorities and the domestic courts, in order to comply with their positive obligation under Article 3, to obtain additional advice from a specialised medical expert. The authorities' refusal to allow independent specialised medical assistance to be given to a prisoner suffering from a serious medical condition on his request is an element the Court has taken into account in its assessment of the State's compliance with Article 3 (*Wenner v. Germany*, 2016, § 57).

118. Furthermore, medical treatment provided within prison facilities must be appropriate, that is, at a level comparable to that which the State authorities have committed themselves to provide to the population as a whole. This does not mean that every detainee must be guaranteed the same level of medical treatment that is available in the best health establishments outside prison facilities (*Blokhin v. Russia* [GC], 2016, § 137; *Cara-Damiani v. Italy*, 2012, § 66).

119. On the whole, as the Court explained, it reserves sufficient flexibility in defining the required standard of health care, deciding it on a case-by-case basis. That standard should be "compatible with the human dignity" of a detainee, but should also take into account "the practical demands of imprisonment" (*Blokhin v. Russia* [GC], 2016, § 137; *Aleksanyan v. Russia*, 2008, § 140; *Patranin v. Russia*, 2015, § 69).

120. In the context of health care in prison, the Court also attaches particular importance to the protection of the medical data of prisoners. Indeed, the protection of personal data, not least medical data, is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life as guaranteed by Article 8 of the Convention. Respecting the confidentiality of health data is a vital principle in the legal systems of all the Contracting Parties to the Convention. It is crucial not only to respect the sense of privacy of a patient but also to preserve his or her confidence in the medical profession and in the health services in general. Without such protection, those in need of medical assistance may be deterred from revealing such information of a personal and intimate nature

as may be necessary in order to receive appropriate treatment and, even, from seeking such assistance, thereby endangering their own health (*Szuluk v. the United Kingdom*, 2009, § 47). Thus, the monitoring of a prisoner's medical correspondence may raise an issue under Article 8 of the Convention (*ibid.*, §§ 49-55). Similarly, disclosure of a detainee's medical data in the context of judicial proceedings concerning the decision on his pre-trial detention may raise an issue under Article 8 (*Frâncu v. Romania*, 2020, §§ 57-61).

B. Physical illnesses, disabilities and old age

121. It cannot be ruled out that the detention of a person who is ill may raise issues under Article 3 of the Convention. Health, age and severe physical disability are among the factors to be taken into account under this Article (*Mouisel v. France*, 2002, § 38).

122. Article 3 of the Convention cannot be construed as laying down a general obligation to release a detainee on health grounds or to transfer him to a public hospital, even if he is suffering from an illness that is particularly difficult to treat. However, this provision does require the State to ensure that prisoners are detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured, for instance by providing them with the requisite medical assistance (*Grimailovs v. Latvia*, 2013, § 150; *Yunusova and Yunusov v. Azerbaijan*, 2016, § 138). Thus, in particularly serious cases, situations may arise where the proper administration of criminal justice requires remedies to be taken in the form of humanitarian measures (*Enea v. Italy* [GC], 2009, § 58).

123. Thus, for instance, in *Serifis v. Greece*, 2006, §§ 34-36) the Court found that despite the seriousness of the disease from which the applicant suffered (paralysis and multiple sclerosis), the authorities had procrastinated in providing him with medical assistance during his detention which would correspond to his actual needs, which had subjected him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention contrary to Article 3 of the Convention. Similarly, in *Holomiov v. Moldova*, 2006, §§ 117-122, the Court stressed that the key issue for its assessment was not the lack of medical care in general but rather the lack of adequate medical care for the applicant's particular condition. In the case at issue, the Court observed in particular that, while suffering from serious kidney diseases entailing serious risks for his health, the applicant had been detained for almost four years without appropriate medical care. It therefore found that the applicant's suffering has constituted inhuman and degrading treatment within the meaning of Article 3 of the Convention. Similar conclusion was reached concerning several cases related to various heart conditions (see, for instance, *Ashot Harutyunyan v. Armenia*, 2010, §§ 105-116; *Kolesnikovich v. Russia*, 2016, §§ 72-81).

124. In *V.D. v. Romania*, 2010, §§ 94-100 the Court dealt with the complaint of a prisoner with serious dental problems (he had virtually no teeth), who was unable to obtain a dental prosthesis as he did not have the means to pay for it. The Court held that there had been a violation of Article 3 of the Convention. It observed in particular that medical diagnoses had been available to the authorities stating the need for the applicant to be fitted with dentures, but none had been provided. As a prisoner, the applicant could obtain them only by paying the full cost himself. As his insurance scheme did not cover the cost and he lacked the necessary financial resources – a fact known to and accepted by the authorities – he had been unable to obtain the dentures. These facts were sufficient for the Court to conclude that the rules on social cover for prisoners, which laid down the proportion of the cost of dentures which they were required to pay, were rendered ineffective by administrative obstacles. There was also no satisfactory explanation as to why the applicant had not been provided with dentures after it became possible for the full cost to be met by the State.

125. The Court also found a violation of Article 3 of the Convention in relation to deficiencies in the provision of medical treatment concerning various other diagnoses and/or lack of access to the relevant medical aids, such as eyesight problems and the confiscation of a prisoner's glasses (*Slyusarev v. Russia*, 2010, §§ 34-44; see also *Xiros v. Greece*, 2010, §§ 84-90) or a lack of orthopaedic footwear (*Vladimir Vasilyev v. Russia*, 2012, §§ 67-68) or wheelchair (*Shirkhanyan v. Armenia*, 2022, §§ 164-165). In this connection, it should also be noted that undue delays in the establishment of a diagnosis or in the provision of medical treatment can lead to a violation of Article 3 of the Convention (*Nogin v. Russia*, 2015, § 97, concerning delays in the provision of a diabetic eye surgery; *Kondrulin v. Russia*, 2016, § 59, concerning delays in the establishment of diagnosis; see, by contrast, *Normantowicz v. Poland*, 2022, §§ 84-95, where the authorities made consistent and serious efforts to ensure that the applicant could receive the specialist treatment (surgery) but the procedure had to be continually postponed over the years owing to a series of independent developments and the applicant's own attitude).

126. In some instances, unjustified refusal to transfer a prisoner to a civilian hospital for treatment, where the specialists and equipment required to treat him are lacking in prison, may amount to a breach of Article 3 (*Mozer v. the Republic of Moldova and Russia* [GC], 2016, § 183). Moreover, in *Dorneanu v. Romania*, 2017, §§ 93-100, concerning a prisoner who at the time of his admission to prison had already been suffering from a disease with a fatal short-term prognosis, the Court noted that as the applicant's disease had progressed, it had become impossible for him to endure it in a prison environment. The Court thus considered that it had been the responsibility of the national authorities to take special measures in this respect on the basis of humanitarian considerations. However, as the domestic authorities had failed to give proper consideration to the appropriateness and necessity of the applicant's continued detention, the Court found a violation of Article 3 (see also *Gülay Çetin v. Turkey*, 2013, §§ 114-125, and *Cosovan v. the Republic of Moldova*, 2022, §§ 79-90).

127. It should also be noted that the Court places emphasis on proper record-keeping of health care in detention. In *Iacov Stanciu v. Romania*, 2012, §§ 180-186, where the applicant complained that he had developed a number of chronic and serious diseases in the course of his detention, the Court found that the prison conditions to which the applicant had been exposed had amounted to inhuman and degrading treatment in violation of Article 3 of the Convention. The Court was, in particular, not satisfied that the applicant had received adequate medical care during his detention. No comprehensive record had been kept of his health condition or the treatment prescribed and followed. Therefore, no regular and systematic supervision of his state of health had been possible. No comprehensive therapeutic strategy had been set up to cure his diseases or to prevent their aggravation. As a result, the applicant's health had seriously deteriorated over the years.

128. As regards the treatment of persons with disabilities, the Court has considered that, when the authorities decide to place and keep a disabled person in continued detention, they should demonstrate special care in guaranteeing conditions corresponding to the special needs resulting from his or her disability (*Z.H. v. Hungary*, 2012, § 29; *Grimailovs v. Latvia*, 2013, § 151, with further references).

129. Thus, for instance, in *Price v. the United Kingdom*, 2001, §§ 25-30, the Court found that to detain a severely disabled person in conditions where she was dangerously cold, risked developing sores because her bed was too hard or unreachable, and was unable to go to the toilet or keep clean without the greatest of difficulty, constituted degrading treatment contrary to Article 3 of the Convention. Similarly, in *D.G. v. Poland*, 2013, § 177, the Court found that to detain a person who was confined to a wheelchair and suffering from paraplegia and a number of other health problems in conditions where he did not have an unlimited and continuous supply of incontinence pads and catheters and unrestricted access to a shower, where he was left in the hands of his cellmates for the necessary assistance, and where he was unable to keep clean without the greatest difficulty, amounted to a violation of Article 3.

130. By contrast, in *Zarzycki v. Poland*, 2013, § 125, concerning a disabled prisoner who had both his forearms amputated, the Court noted in particular the pro-active attitude of the prison administration vis-à-vis the applicant (basic mechanical prostheses had been available free of charge to him and a small refund of the cost of bio-mechanic prostheses had also been available). The Court thus considered that the authorities had provided the applicant with the regular and adequate assistance his special needs warranted. Therefore, the Court found that even though a prisoner with amputated forearms was more vulnerable to the hardships of detention, the treatment of the applicant in the present case had not reached the threshold of severity which would constitute degrading treatment contrary to Article 3 of the Convention. Similarly, in *Laniauskas v. Lithuania*, 2022, the Court found that the continued detention of a person with a serious visual impairment was not incompatible with Article 3 given the fact that he had been provided with the necessary medical care and treatment in detention and had never complained to the prison authorities of having difficulties in his daily life, nor had he asked for any additional assistance.

131. Further, the Court has held that detaining a disabled person in a prison where he could not move around and, in particular, could not leave his cell independently, amounted to degrading treatment (*Vincent v. France*, 2006, § 103; see also *Grimailovs v. Latvia*, 2013, §§ 157-162). In *Arutyunyan v. Russia*, 2012, § 77, when finding a violation of Article 3, the Court observed, in particular, that for a period of almost fifteen months, the applicant, who was disabled and depended on a wheelchair for mobility, had been forced at least four times a week to go up and down four flights of stairs on his way to and from lengthy, complicated and tiring medical procedures that were vital to his health, which undoubtedly caused him unnecessary pain and exposed him to an unreasonable risk of serious damage to his health.

132. The Court has also found that leaving a person with a serious physical disability to rely on his cellmates for assistance with using the toilet, bathing and getting dressed or undressed, contributed to the finding that the conditions of detention had amounted to degrading treatment (*Engel v. Hungary*, 2010, §§ 27 and 30; see also *Helhal v. France*, 2015, § 62; *Topekhin v. Russia*, 2016, § 86). In general, the Court has voiced doubts as to the adequacy of assigning unqualified people responsibility for looking after an individual suffering from a serious illness (*Potoroc v. Romania*, 2020, § 77). Moreover, in *Hüseyin Yıldırım v. Turkey*, 2007, § 84, the Court found that the transfer of a disabled prisoner amounted to degrading treatment since the responsibility for him had been placed in the hands of gendarmes who were certainly not qualified to foresee the medical risks involved in moving a disabled person.

133. Lastly, it should be noted that an issue under the Convention may arise with regard to the prolonged detention of elderly prisoners, particularly those with health problems. In this connection, the Court has noted that advanced age is not a bar to pre-trial detention or a prison sentence in any of the Council of Europe's member States. However, age in conjunction with other factors, such as health, may be taken into account either when the sentence is passed or while the sentence is being served (for instance when a sentence is suspended or replaced by house arrest). Regard is to be had to the particular circumstances of each specific case (*Papon v. France (no. 1)* (dec.), 2001).

134. In *Papon*, concerning a prisoner who was ninety years of age, the Court noted that while the applicant had heart problems, his overall condition had been described as "good" by an expert report. In these circumstances, his general state of health and the generally adequate conditions of detention, meant that his treatment had not reached the level of severity which would bring it within the scope of Article 3 of the Convention.

135. By contrast, in *Farbtuhs v. Latvia*, 2004, §§ 56-61, the Court noted that the applicant was eighty-four years of age when he had been sent to prison, paraplegic and disabled to the point of being unable to attend to most daily tasks unaided. The Court considered that when national authorities decided to imprison such a person, they had to be particularly careful to ensure that the conditions of detention were consistent with the specific needs arising out of the prisoner's infirmity.

Having regard to the circumstances of the case, the Court found that, in view of his age, infirmity and condition, the applicant's continued detention had not been appropriate. Moreover, by delaying his release from prison for more than a year in spite of the fact that the prison governor had made a formal application for his release supported by medical evidence, the domestic authorities had failed to treat the applicant in a manner that was consistent with the provisions of Article 3 of the Convention. Similarly, in *Contrada v. Italy (no. 2)*, 2014, §§ 83-85, the Court found a breach of Article 3 concerning, in particular, a delay of some nine months in granting an elderly applicant's request for his transfer to house arrest.

C. Infectious diseases

136. The principles of the Court's case-law concerning the need to provide appropriate medical treatment to detainees with physical illnesses are accordingly applicable to infectious diseases. However, in this connection the authorities must take care to assess what tests should be carried out in order to diagnose the prisoner's condition, enabling them to identify the therapeutic treatment to be given and to evaluate the prospects for recovery (*Testa v. Croatia*, 2007, § 10; *Poghossian v. Georgia*, 2009, § 57; *Cătălin Eugen Micu v. Romania*, 2016, § 58).

137. Thus, for instance, in *Kotsaftis v. Greece*, 2008, §§ 51-61, concerning a prisoner who was suffering from cirrhosis of the liver caused by chronic hepatitis B, the Court found a violation of Article 3 because, contrary to the findings of the expert reports drawn up, the applicant had been kept in detention for some nine months without being given a special diet or treatment with the appropriate drugs, and had not undergone tests in a specialist medical centre. Moreover, an operation scheduled for a particular date had not been performed until one year later. The Court also deplored the fact that the applicant, who was suffering from a serious and highly infectious disease, had been detained along with ten other prisoners in an overcrowded cell.

138. Similarly, in a case concerning the lack of specialised medical assistance to a HIV-positive detainee, the Court noted that there was no information that the anti-retroviral therapy had ever been administered to the applicant within the prison hospital, or that the medical staff working there had the necessary experience and practical skills for administering it. The Court thus found that the prison hospital had not been an appropriate institution for these purposes. Moreover, the Court did not detect any serious practical obstacles for the immediate transfer of the applicant to a specialised medical institution. It thus found a violation of Article 3 in this respect (*Aleksanyan v. Russia*, 2008, §§ 156-158). By contrast, the Court did not consider that the absence of drugs for the anti-retroviral treatment in the prison pharmacy had been, as such, contrary to Article 3 of the Convention. In particular, given that the Contracting States were bound to provide all medical care that their resources might permit, the Court did not consider that the authorities had been under an unqualified obligation to administer to the applicant the anti-retroviral treatment, which was very expensive, free of charge. In fact, the applicant could receive the necessary medication from his relatives and had not alleged that procuring those medicines had imposed an excessive financial burden on him or his relatives (*ibid.*, §§ 145-150).

139. Moreover, in *Fedosejevs v. Latvia* (dec.), 2013, §§ 48-53, concerning a prisoner who suffered from HIV and Hepatitis C infections contracted prior to his detention, the Court noted, as regards the applicant's HIV infection, that a specific blood test was carried out every two to six months. According to the relevant World Health Organisation (WHO) recommendations, this test was required in order to identify whether a HIV positive patient needed antiretroviral treatment. The Court observed that throughout the period complained of the applicant's cell count had never dropped below the relevant threshold, which the WHO regarded as decisive for starting the treatment in question. The Court further noted that, as regards his Hepatitis C infection, the applicant received the relevant symptomatic therapy and his other medical issues were also appropriately attended. The Court therefore declared the applicant's complaints inadmissible as manifestly ill-founded.

140. A specific issue concerning infectious diseases arises in cases where such a disease has been contracted in prison. In *Cătălin Eugen Micu v. Romania*, 2016, § 56, the Court explained that, according its case-law, the requirements on a State with regard to detainees' health could differ depending on whether the disease contracted was transmissible (for example, *Ghavtadze v. Georgia*, 2009, § 86; *Fűlöp v. Romania*, 2012, § 34, in which the applicants alleged that they had contracted tuberculosis in prison) or non-transmissible (*Iamandi v. Romania*, 2010, § 65, in which the applicant suffered from diabetes).

141. The Court stressed that the spread of transmissible diseases and, in particular, of tuberculosis, hepatitis and HIV/Aids, should be a public health concern, especially in the prison environment. On this matter, the Court considered it desirable that, with their consent, detainees can have access, within a reasonable time after their admission to prison, to free screening tests for hepatitis and HIV/Aids (*Cătălin Eugen Micu v. Romania*, 2016, § 56; see, for instance, *Jeladze v. Georgia*, 2012, § 44, where the Court held that a three-year delay before submitting the applicant to screening for hepatitis C amounted to negligence on the part of the State in respect of its general obligations to take effective measures to prevent the transmission of hepatitis C or other transmissible diseases in prison; by contrast, *Salakhov and Islyamova v. Ukraine*, 2013, §§ 124-125, concerning HIV, where the confidentiality requirements inherent in the medical monitoring of persons with the HIV-positive status have to be taken into account). The Court also did not consider that the placement of HIV-positive detainees together in the same cell but in an ordinary prison wing housing non-HIV positive prisoners amounted to an inacceptable segregation contrary to Article 3 of the Convention (*Dikaiou and Others v. Greece*, 2020, § 52-55; by contrast, *Martzaklis and Others v. Greece*, 2015, where the HIV-positive prisoners were placed in the same cell in a psychiatric hospital of the prison).

142. Irrespective of whether an applicant became infected while in detention, the State does have a responsibility to ensure treatment for prisoners in its charge, and a lack of adequate medical assistance for serious health problems, from which the applicant had not suffered prior to detention, may amount to a violation of Article 3. Absent or inadequate medical treatment, especially when the disease has been contracted in detention, is a particular subject of concern for the Court. It is therefore bound to assess the quality of medical services with which the applicant was provided in a particular case and to determine whether he or she was deprived of adequate medical assistance, and, if so, whether this amounted to inhuman and degrading treatment contrary to Article 3 of the Convention (*Shchebetov v. Russia*, 2012, § 71).

143. In *Cătălin Eugen Micu v. Romania*, 2016, §§ 56-62, the Court did not find, on the basis of the available evidence, that the applicant had contracted hepatitis C in prison. The Court also found that he had been provided with adequate medical treatment concerning his diagnosis. Similarly, in *Shchebetov v. Russia*, 2012, §§ 46-58, the Court did not find, contrary to the applicant's arguments, that he had contracted HIV in prison through a blood test. However, the Court considered that the applicant's allegations gave rise to a procedural obligation under Article 2 of the Convention to investigate the circumstances in which he had contracted the HIV infection. In the particular circumstances of the case, the Court found that the investigation conducted by the domestic authorities was effective for the purposes of Article 2 of the Convention.

144. By contrast, in *Machina v. the Republic of Moldova*, 2023, §§ 39-45, where the domestic authorities did not carry out any investigation – internal, disciplinary or criminal – in order to assess the risk of HCV infection in prison, where they also failed to investigate effectively the applicant's allegations of infection in prison and where there was no relevant screening on arrival at the prison, the Court stressed that, in all cases where it was unable to establish the exact circumstances of a case for reasons objectively attributable to the State authorities, it was for the respondent Government to provide an explanation, in a satisfactory and convincing manner. Moreover, the Court, drew an analogy with its well-established case-law under Articles 2 and 3 according to which strong presumptions of fact can be accepted and inferences can be drawn so that the burden of proof can shift onto the Government where the events leading to a person's injury lie wholly, or in large part,

within the exclusive knowledge of the authorities. It noted that the domestic authorities had made no real attempt to find out what had happened and that the delay in carrying out screening (one year after incarceration) undermined any possibility to assess whether the applicant was infected with HCV after her incarceration. For this reason, the Court was unable to determine whether the contamination had occurred in prison and, therefore, concluded that the failure by the relevant prison authorities to carry out an investigation and screening without delay on entry to prison was incompatible with the respondent State's general obligation to take effective measures aimed at preventing the transmission of HCV and other contagious diseases in prisons. The Court accordingly found a violation of Article 3 on account of the failure to prevent the transmission of HCV in prison.

145. It should also be noted that, according to the Court's case-law, the mere fact that HIV-positive detainees use the same medical, sanitary, catering and other facilities as all other prisoners does not in itself raise an issue under Article 3 of the Convention (*Korobov and Others v. Russia* (dec.), 2006). In this connection, in *Artyomov v. Russia*, 2010, § 190, when declaring the applicant's complaint concerning his placement together with HIV-positive detainees in a penal colony inadmissible as manifestly ill-founded, the Court laid emphasis on the fact that the applicant had not argued that he had been unlawfully exposed to a real risk of infection. Moreover, the applicant did not dispute that the colony administration had taken the necessary steps to prevent sexual contact between inmates and that it had forbidden drug use and tattooing. The Court also does not overlook the fact that the colony administration employed harm-reduction techniques and, with accurate and objective information about HIV infection and AIDS, clearly identified ways in which HIV could be transmitted. The Court attributed particular importance to the HIV risk-reduction counselling which was performed by the colony administration.

146. Moreover, in *Shelley v. the United Kingdom* (dec.), 2008, concerning a complaint about the authorities' decision not to implement a needle-exchange programme for drug users in prisons to help prevent the spread of viruses, the Court stressed that irrespective of the higher levels of infection of HIV and HCV within prison populations, it is not satisfied that the general unspecified risk, or fear, of infection as a prisoner was sufficiently severe as to raise issues under Articles 2 or 3 of the Convention. However, the Court was prepared to accept that the applicant, detained in prison where there was a significantly higher risk of infection of HIV and HCV, could claim to be affected by the health policy implemented in that regard by the prison authorities, within the meaning of Article 8 of the Convention.

147. Under Article 8 the Court noted that there was no authority in the case-law that placed any obligation on a Contracting State to pursue any particular preventive health policy in prison. While it was not excluded that a positive obligation might arise to eradicate or prevent the spread of a particular disease or infection, the Court was not persuaded that any potential threat to health that fell short of the standards of Articles 2 or 3 would necessarily impose a duty on the State to take specific preventive steps. Matters of health care policy, in particular as regards general preventive measures, were in principle within the margin of appreciation of the domestic authorities. In the case at issue, the applicant could not point to any directly negative effect on his private life. Nor was he being denied any information or assistance concerning a threat to his health for which the authorities were directly or indirectly responsible. Giving due leeway to decisions about resources and priorities and to a legitimate policy to try to reduce drug use in prisons, and noting that some preventive steps had been taken (the provision of disinfecting tablets) and that the authorities were monitoring developments elsewhere, the Court concluded that the applicant's complaint was manifestly ill-founded.

148. In *Feilazoo v. Malta*, 2021, § 92, albeit in the context of immigration detention, the Court examined an issue of automatic placement of new arrivals in Covid-19 quarantine. In that case, the applicant had already spent some seventy-five days in isolation before being moved to other living quarters where new arrivals were being kept in Covid-19 quarantine. The Court stressed that there was no indication that the applicant was in need of such quarantine – particularly after an isolation

period – which moreover lasted for nearly seven weeks. Thus, the Court found that the measure of placing him, for several weeks, with other persons who could have posed a risk to his health in the absence of any relevant consideration to this effect, could not be considered as a measure complying with basic sanitary requirements (see also *Fenech v. Malta* (dec.), 2021, §§ 87-96, concerning postponement of an appearance before a judge of a detainee due to the measures taken by the courts to address the Covid pandemic, which was found to be lawful and justified in the interests of public health).

149. In *Fenech v. Malta*, 2022, the Court examined the complaint of a detainee who alleged that the State had failed to preserve his health and well-being in view of the Covid-19 pandemic. The Court rejected the applicant's Article 2 complaint on the grounds that he had failed to substantiate that his life was at real and imminent risk due to a risk of Covid infection. Under Article 3, the Court stressed that, in order to protect the physical well-being of prisoners, the authorities had the obligation to put certain measures in place aimed at avoiding infection, limiting the spread once it reached the prison, and providing adequate medical care in the case of contamination. The Court also held that preventive measures had to be proportionate to the risk at issue, however they should not pose an excessive burden on the authorities in view of the practical demands of imprisonment, particularly when the authorities were confronted with a novel situation such as a global pandemic to which they had to react in a timely manner. On the facts, the Court found that the authorities had put in place adequate and proportionate measures in order to prevent and limit the spread of the virus and had not failed to secure the protection of the applicant's health (see also *Gözütok v. Türkiye* (dec.), 2025, §§ 46-52, where, in the context of the applicant's transfer to a hospital and subsequent placement in the quarantine ward of a prison, the Court acknowledged the applicant's fears of contracting Covid-19 and his heightened anxiety due to his heart-related medical condition, but found that it had not amounted to degrading treatment).

150. Lastly, the domestic authorities have a procedural obligation to elucidate the circumstances in which infectious diseases were contracted in prison and, where a prisoner died, open an official probe in order to establish whether medical negligence might have been at stake. This obligation does not mean that recourse to the criminal law is always required: under certain circumstances, an investigation conducted in the course of disciplinary or civil proceedings might suffice (*Ismatullayev v. Russia* (dec.), 2012, § 27; *Kekelashvili v. Georgia* (dec.), 2020, §§ 45-54).

D. Mental health care

151. As regards the treatment of prisoners with mental health problems, the Court has consistently held that Article 3 of the Convention requires States to ensure that the health and well-being of prisoners are adequately secured by, among other things, providing them with the requisite medical assistance (*Sławomir Musiał v. Poland*, 2009, § 87; *Tarricone v. Italy*, 2024, §§ 71-80). In this context, obligations under Article 3 may go so far as to impose an obligation on the State to transfer mentally ill prisoners to special facilities in order to receive adequate treatment (*Murray v. the Netherlands* [GC], 2016, § 105; *Raffray Taddei v. France*, 2010, § 63).

152. In determining whether the detention of an ill person is compatible with Article 3 of the Convention, the Court takes into consideration the individual's health and the effect of the manner of execution of his or her detention on him or her. It has held that the conditions of detention must under no circumstances arouse in the person deprived of his liberty feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical and moral resistance. On this point, the Court has recognised that detainees with mental disorders are more vulnerable than ordinary detainees, and that certain requirements of prison life pose a greater risk that their health will suffer, exacerbating the risk that they suffer from a feeling of inferiority, and are necessarily a source of stress and anxiety. Such a situation calls for an increased vigilance in reviewing whether the Convention has been complied with (*Rooman v. Belgium* [GC], 2019, § 145). The

assessment of the situation of these particular individuals also has to take into consideration the vulnerability of those persons and, in some cases, their inability to complain coherently or at all about how they are affected by any particular treatment (*Murray v. the Netherlands* [GC], 2016, § 106; *Herczegfalvy v. Austria*, 1992, § 82; *Aerts v. Belgium*, 1998, § 66). Moreover, if the domestic authorities decide to place an individual suffering from serious health problems, including mental disorders, in detention, they have a duty of special care to ensure that the conditions of detention correspond to the specific needs of the person concerned (*Temporale v. Italy*, 2024, § 79).

153. In addition, it is not enough for such detainees to be examined and a diagnosis made; instead, it is essential that proper treatment for the problem diagnosed and suitable medical supervision should be provided (*Murray v. the Netherlands* [GC], 2016, § 106). In this respect, the Court takes account of the adequacy of the medical assistance and care provided in detention (*Rooman v. Belgium* [GC], 2019, §§ 146-147). An absence of a comprehensive therapeutic strategy aimed at treating a prisoner with mental health issues may amount to a "therapeutic abandonment" in breach of Article 3 (*Strazimiri v. Albania*, 2020, §§ 108-112).

154. The Court has applied the above principles in respect of the treatment of various mental health issues suffered by prisoners, such as: chronic depression (*Kudła v. Poland* [GC], 2000); psychiatric disorders involving suicidal tendencies and self-harm (*Rivière v. France*, 2006; *Jeanty v. Belgium*, 2020, §§ 101-114; *Niort v. Italy*, 2025); post-traumatic stress disorder (*Novak v. Croatia*, 2007); chronic paranoid schizophrenia (*Dybeku v. Albania*, 2007; see also *Sławomir Musiał v. Poland*, 2009); acute psychotic disorders (*Renolde v. France*, 2008); various neurological disorders (*Kaprykowski v. Poland*, 2009); Munchausen's syndrome (a psychiatric disorder characterised by the need to simulate an illness) (*Raffray Taddei v. France*, 2010); and disorders suffered by mentally-ill sexual offenders (*Claes v. Belgium*, 2013). In this context, issues related to the necessity to prevent suicide in custody under Article 2 of the Convention also may arise.[21]

155. Furthermore, the conditions in which a person suffering from a mental disorder receives treatment are also relevant in assessing the lawfulness of his or her detention within the meaning of Article 5 of the Convention (*Rooman v. Belgium* [GC], 2019, §§ 194 and 208).[22]

156. In this connection, the Court has accepted that the mere fact that an individual was not placed in an appropriate facility did not automatically render his or her detention unlawful, a certain delay in admission to a clinic or hospital being acceptable if it is related to a disparity between the available and required capacity of mental institutions. Nevertheless, a significant delay in admission to such institutions and thus in treatment of the person concerned will obviously affect the prospects of the treatment's success, and may entail a breach of Article 5 (*Pankiewicz v. Poland*, 2008, § 45, where the Court held that a delay of two months and twenty-five days was excessive, given the harmful effects on the applicant's health of his compulsory confinement in an ordinary detention centre; see also *Sy v. Italy*, 2022, §§ 82-89 and 134-135, concerning the detention for two years in an ordinary prison of a person suffering from personality disorder and bipolar disorder, in poor conditions and without any overall therapeutic strategy to treat his condition; see further *Miranda Magro v. Portugal*, 2024, §§ 75-82 and 91-96).

157. Moreover, the Court has held, in the context of "retroactive" preventive detention, that a person's conditions of detention can change in the course of his or her deprivation of liberty, even though it is based on one and the same detention order. The detention of a person of unsound mind on the basis of the same detention order may, in the Court's view, become lawful and thus comply with Article 5 § 1 once that person is transferred to a suitable institution. Under this interpretation of the term "lawfulness", there is indeed an intrinsic link between the lawfulness of a deprivation of liberty and its conditions of execution. It follows that the point in time, or period, for assessing whether

21. See further, Guide on Article 2 of the European Convention on Human Rights.
22. See further, Guide on Article 5 of the European Convention on Human Rights.

a person was detained in a suitable institution for mental‑health patients is the period of detention at issue in the proceedings before the Court, and not the time when the detention order was made (*Ilnseher v. Germany* [GC], 2018, §§ 139 and 141).

158. Thus, where it has examined cases concerning the detention of perpetrators of criminal acts who suffer from mental disorders, in assessing the appropriateness of the institution in question the Court has not taken account so much of the facility's primary aim, but rather the specific conditions of the detention and the possibility for the individuals concerned to receive suitable treatment therein (*Bergmann v. Germany*, 2016, § 124; *Kadusic v. Switzerland*, 2018, §§ 56 and 59; see also *W.A. v. Switzerland*, § 46). Furthermore, although psychiatric hospitals are by definition appropriate institutions for the detention of mentally ill individuals, the Court has stressed the need to accompany any such placement by efficient and consistent therapy measures, in order not to deprive the individuals in question of a prospect of release (*Frank v. Germany* (dec.), 2010).

159. In assessing whether the applicant has been provided with appropriate psychiatric care, the Court takes into account the opinions of health professionals and the decisions reached by the domestic authorities in the individual case, as well as more general findings at national and international level on the unsuitability of prison psychiatric wings for the detention of persons with mental health problems (for instance, *Hadžić and Suljić v. Bosnia and Herzegovina*, 2011, § 41, where the Court held, on the basis of the findings by the Constitutional Court and the CPT, that the psychiatric annex of a prison was not an appropriate institution for the detention of mental health patients).

160. In the context of the concept of "appropriate treatment" for the purposes of Article 5, the Court verifies, on the basis of the information available in the case file, whether an individualised and specialised approach has been adopted for the treatment of the psychological disorders in question. It considers that information indicating that applicants had access to health professionals and to medication may show that they were not clearly abandoned, but that this does not suffice to allow it to assess the therapeutic arrangements that have been put in place. Moreover, although the persistent attitude of a person deprived of his or her liberty may contribute to preventing a change in their detention regime, this does not dispense the authorities from taking the appropriate initiatives with a view to providing this person with treatment that is suitable for his or her condition and that would help him or her to regain liberty (*Rooman v. Belgium* [GC], 2019, § 203).

161. The Court has also stated that when dealing with mentally ill offenders, the authorities are under an obligation to work towards the goal of preparing the persons concerned for their release, for example by providing incentives for further therapy, such as transfer to an institution where they can actually receive the necessary treatment, or by granting certain privileges if the situation permits (*Rooman v. Belgium* [GC], 2019, § 204).

162. In sum, in *Rooman v. Belgium* [GC], 2019, §§ 208-211, the Court stressed that any detention of mentally ill persons must have a therapeutic purpose, aimed specifically, and in so far as possible, at curing or alleviating their mental-health condition, including, where appropriate, bringing about a reduction in or control over their dangerousness. Irrespective of the facility in which those persons are placed, they are entitled to be provided with a suitable medical environment accompanied by real therapeutic measures, with a view to preparing them for their eventual release (see also *Murray v. the Netherlands* [GC], 2016, § 107-112, concerning life prisoners with mental health issues; and *Venken and Others v. Belgium*, 2021, §§ 166-171, concerning a systemic issue in Belgium, addressed in the pilot judgment *W.D. v. Belgium*, 2016, of placement of prisoners with mental health issues in the psychiatric wings of ordinary prisons without the provision of appropriate treatment).

163. As to the scope of the treatment provided, the level of care required for this category of detainees must go beyond basic care. Mere access to health professionals, consultations and the provision of medication cannot suffice for treatment to be considered appropriate and thus satisfactory under Article 5. However, the Court's role is not to analyse the content of the treatment that is offered and administered. What is important is that the Court is able to verify whether an

individualised programme has been put in place, taking account of the specific details of the detainee's mental health with a view to preparing him or her for possible future reintegration into society. In this area, the Court affords the authorities a certain latitude with regard both to the form and the content of the therapeutic care or of the medical programme in question (*Rooman v. Belgium* [GC], 2019, § 209).

164. The assessment of whether a specific facility is "appropriate" must include an examination of the specific conditions of detention prevailing in it, and particularly of the treatment provided to individuals suffering from psychological disorders. Thus, it is possible that an institution which is *a priori* inappropriate, such as a prison structure, may nevertheless be considered satisfactory if it provides adequate care, and conversely, that a specialised psychiatric institution which, by definition, ought to be appropriate may prove incapable of providing the necessary treatment. Indeed, appropriate and individualised treatment is an essential part of the notion of "appropriate institution". In addition, potential negative consequences for the prospects of change in an applicant's personal situation would not necessarily lead to a finding of a breach of Article 5 § 1, provided that the authorities have taken sufficient steps to overcome any problem that was hampering the applicant's treatment (*Rooman v. Belgium* [GC], 2019, §§ 210-211).

E. Drug addiction

165. The Court has dealt in a few cases, with the specific issues of drug abuse and the medical treatment of drug addiction in prisons.

166. As regards medical treatment for drug addiction, the case of *McGlinchey and Others v. the United Kingdom*, 2003, §§ 52-58, concerned the adequacy of medical care provided by prison authorities to a heroin addict suffering withdrawal symptoms. The Court found that the fact that she had lost a lot of weight and become dehydrated were sufficient indications to the domestic authorities that measures had to be taken to address her heroin-withdrawal symptoms, However, as the prison authorities had failed to comply with their duty to provide her with the requisite medical care, the Court found a violation of Article 3 of the Convention.

167. Similarly, in *Wenner v. Germany*, 2016, § 80, concerning the complaint by a long-term heroin addict that he had been denied drug substitution therapy in prison, the Court held that there had been a violation of Article 3 on the grounds that the authorities, despite their obligation to adequately assess his state of health and the appropriate treatment, had failed to examine with the help of independent and specialist medical expert advice, which therapy was to be considered appropriate.

168. As regards drug abuse in prison, *Marro and Others v. Italy* (dec.), 2014, § 45, concerned the death of a drug addict in prison as a result of an overdose. The Court stressed that it cannot be concluded that the mere objective fact that a prisoner might have had access to narcotic substances constitutes a breach by the State of its positive obligations under Article 2 of the Convention. The Court acknowledged that while the authorities, in order to protect the health and the lives of citizens, have a duty to adopt anti-drug-trafficking measures, especially where this problem (potentially) affects a secure place such as a prison, they cannot guarantee this absolutely and have broad discretion in the choice of the means to be used. In this context, they are bound by an obligation as to measures to be taken and not as to results to be achieved.

169. On the facts of the case, the Court noted, in particular, that there was nothing to suggest that the authorities were aware of information which could have led them to believe that the prisoner in question was in a particularly dangerous position compared to any other prisoner suffering from drug addiction. Moreover, no failing could be identified on the part of the prison staff. Indeed, they had taken numerous measures (searches, inspection of parcels, etc.) to prevent drugs being brought into prisons. The Court thus declared the complaint to be inadmissible as manifestly ill-founded (*Marro and Others v. Italy* (dec.), 2014, §§ 46-51).

170. Similarly, in *Sahraoui and Others v. France*, 2024, §§ 70-74, the Court found that the death of a drug addict as a result of his serious chronic health conditions, which had first manifested themselves even prior to the applicant's imprisonment, and the misuse by the applicant of prescribed psychotropic medication in prison, which he had spontaneously and clandestinely procured (by either smuggling or stealing) from another inmate , did not suggest that there had been an omission in his supervision by the authorities within the meaning of Article 2 of the Convention.

171. In *Patsaki and Others v. Greece*, 2019, §§ 90-97, also concerning the death of a drug addict in prison, the Court did not find it established that there had been sufficient indications to the authorities that the prisoner in question was in a particularly dangerous position compared to any other prisoner suffering from drug addiction. It thus found no violation of Article 2 in its substantive limb. However, the Court found a violation of the procedural limb of Article 2 on the grounds that the authorities had neither closely examined the deceased's case nor conducted an effective investigation into the circumstances of the death (*ibid.*, §§ 70-77).

F. Other health-related issues

1. Passive smoking

172. In its case-law the Court has observed that there is no consensus among the member States of the Council of Europe with regard to the protection against passive smoking in prisons. It has also noted that in some member States smokers were placed together in the cell with non-smokers while in some States they were kept separately. Moreover, in some States smoking was allowed only in designated common areas while in some States such limitations do not exist (*Aparicio Benito v. Spain* (dec.), 2006).

173. Thus, in a case where a prisoner non-smoker was placed in an individual cell and where smoking was allowed only in a common TV area, the Court did not consider that a health issue related to passive smoking arose (*Aparicio Benito v. Spain* (dec.), 2006). By contrast, in a case where a prisoner non-smoker had never had an individual cell and had had to tolerate his fellow prisoners' smoking even in the prison infirmary and the prison hospital, against his doctor's advice, the Court found a violation of Article 3 of the Convention (*Florea v. Romania*, 2010, §§ 60-62). However, where the domestic authorities took the necessary measures to address a prisoner's complaints by transferring him to a cell with non-smokers, the Court did not consider that an issue arose under the Convention (*Stoine Hristov v. Bulgaria (no. 2)*, 2008, §§ 43-46).

174. Further, in *Elefteriadis v. Romania*, 2011, §§ 49-55, the Court held that the State was required to take measures to protect a prisoner suffering from chronic pulmonary disease from the harmful effects of passive smoking where, as in the applicant's case, medical examinations and the advice of doctors indicated that this was necessary for health reasons. The authorities had therefore been obliged to take steps to safeguard the applicant's health, in particular by separating him from prisoners who smoked, as he had requested on numerous occasions. That appeared to have been not only desirable but also possible, given that there was a cell in the prison in which none of the prisoners smoked. The fact that the prison in question had been overcrowded at the relevant time in no way dispensed the authorities from their obligation to safeguard the applicant's health. Moreover, the Court found that even the short periods in which the applicant had been held in court waiting rooms with prisoners who smoked had been inacceptable from the perspective of Article 3 of the Convention.

175. It should also be noted that passive smoking, although perhaps not in itself conducive to the finding of a violation of Article 3 of the Convention, may be a further aggravating factor to otherwise inadequate conditions of detention (*Sylla and Nollomont v. Belgium*, 2017, § 41).

2. Hunger strike

176. Prisoners' hunger strike and the authorities' reaction to it may raise issues under different provisions of the Convention and from different perspectives of the Court's case-law under those provisions. In general, where detainees voluntarily put their lives at risk, facts prompted by acts of pressure on the authorities cannot lead to a violation of the Convention, provided that those authorities have duly examined and managed the situation. This is the case, in particular, where a detainee on hunger strike clearly refuses any intervention, even though his or her state of health would threaten his or her life (*Ünsal and Timtik v. Turkey* (dec.), 2021, § 37).

177. For instance, in *Horoz v. Turkey*, 2009, §§ 22-31, concerning the death of a prisoner following a hunger strike, the Court found under Article 2 of the Convention that it had been impossible to establish a causal link between the authorities' refusal to release the prisoner and his death. The Court considered that the authorities had amply satisfied their obligation to protect his physical integrity, specifically through the administration of appropriate medical treatment, and that they could not be criticised for having accepted his clear refusal to allow any intervention, even though his state of health had been life-threatening.

178. As regards the forced feeding of prisoners staging a hunger strike, the Court relies on the Commission's case-law according to which forced-feeding of a person does involve degrading elements which in certain circumstances may be regarded as prohibited by Article 3 of the Convention. When, however, a detained person maintains a hunger-strike this may inevitably lead to a conflict between an individual's right to physical integrity and the State's positive obligation under Article 2 of the Convention – a conflict which is not solved by the Convention itself (*Nevmerzhitsky v. Ukraine*, 2005, § 93).

179. According to the Court's case-law, a measure which is a therapeutic necessity from the point of view of established principles of medicine cannot in principle be regarded as inhuman and degrading. The same can be said of force-feeding that is aimed at saving the life of a particular detainee who consciously refuses to take food. The Court must nevertheless satisfy itself that the medical necessity has been convincingly shown to exist. Furthermore, the Court must ascertain that the procedural guarantees for the decision to force-feed are complied with. Moreover, the manner in which the applicant is subjected to force-feeding during the hunger-strike must not trespass the threshold of the minimum level of severity envisaged by the Court's case law under Article 3 of the Convention (*Nevmerzhitsky v. Ukraine*, 2005, § 94; *Ciorap v. Moldova*, 2007, § 77).

180. The Court has also stated that, if a deterioration in a detainee's health condition is caused by his going on hunger strike and/or refusing to accept treatment, this deterioration cannot then automatically be held imputable to the authorities. However, the prison authorities may not be totally absolved of their positive obligations in such difficult situations, passively contemplating the fasting detainee's demise. In particular, since a detainee's decision regarding a hunger strike can be momentous, the prison clinicians must ensure the patient's full understanding of the medical consequences, verifying, *inter alia*, that the decision to fast is truly voluntary and does not result from a mental impairment of the detainee or any other outside pressure. No less important is continuing communication between the clinicians and the patient during the strike, when the former verify on a daily basis the validity of the detainee's wish to abstain from taking food. It is also crucial to ascertain the true intention of, and real reasons for, the detainee's protest and if those reasons are not purely whimsical but, on the contrary, denounce serious medical mismanagement, the competent authorities must show due diligence by immediately starting negotiations with the striker with the aim of finding a suitable arrangement, subject, of course, to the restrictions that the legitimate demands of imprisonment may impose (*Yakovlyev v. Ukraine*, 2022, § 43).

181. In *Nevmerzhitsky v. Ukraine*, 2005, §§ 95-99, the Court held that there had been a violation of Article 3 of the Convention in respect of the force-feeding of the applicant. The Court found that it had not been demonstrated that there had been a medical necessity to force-feed the applicant and

that therefore his force-feeding had been arbitrary. Procedural safeguards had also not been respected in the face of the applicant's conscious refusal to take food. Moreover, the manner in which the force-feeding was administered, namely with the use of force and despite the applicants' resistance, had constituted treatment of such a severe character warranting the characterisation of torture.

182. Similarly, in *Ciorap v. Moldova*, 2007, §§ 78-89, the Court found, in particular, that there was no medical evidence that the applicant's life or health had been in serious danger and there were sufficient grounds to suggest that his force-feeding had in fact been aimed at discouraging him from continuing his protest. Furthermore, basic procedural safeguards prescribed by domestic law, such as clarifying the reasons for starting and ending force-feeding and noting the composition and quantity of food administered, had not been respected. Lastly, the Court was struck by the manner of the force-feeding, including the unchallenged, mandatory handcuffing of the applicant regardless of any resistance and the severe pain caused by metal instruments to force him to open his mouth and pull out his tongue. The Court therefore found that the manner in which the applicant had been repeatedly force-fed had unnecessarily exposed him to great physical pain and humiliation, and, accordingly, could only be considered as torture contrary to Article 3 of the Convention.

183. In *Yakovlyev*, §§ 45-51, the Court found that a lack of any explanation in the relevant medical report as regards the nature and imminence of the risk of the applicant's continued fasting to his life (especially given the relatively short time passed since the beginning of the hunger-strike), the absence of any need for his hospitalisation, and his satisfactory health condition allowing him to attend the court hearing, indicated that the medical necessity for the applicant's force-feeding had not convincingly been shown to exist. The Court also expressed doubts as to the effectiveness of the judicial control as a procedural safeguard against abuse and noted that the applicant's force-feeding had been carried out in the absence of any legal regulations on the procedures to be followed in such cases. Lastly, the Court noted that the hunger strike started by the applicant, together with other inmates, could have been regarded as a form of protest prompted by the lack of other means to ensure that their grievances about the situation in the prison were heard. Thus, the Court considered that launching an investigation aimed at ascertaining the true intention of and real reasons for the inmates' protest, as well as ensuring a meaningful response to their complaints and demands, would have been essential for the proper examination and management of the situation by the State. Since no such investigation was carried out and since the only response to the inmates' hunger strike was their force-feeding, the Court was unable to rule out that, as submitted by the applicant, his force-feeding had, in fact, been aimed at suppressing the protests in the prison. The Court therefore found that the State had not properly managed the situation in relation to the applicant's hunger strike and subjected him to ill-treatment in breach of Article 3 of the Convention.

184. By contrast, the Court did not consider that an issue arose under the Convention in cases where a decision to force-feed a prisoner had reflected a medical necessity, had been attended by sufficient procedural safeguards, and had not been implemented in a manner contravening Article 3 of the Convention (for instance, *Özgül v. Turkey* (dec.), 2007; *Rappaz v. Switzerland* (dec.), 2013).

185. It should also be noted that in some cases the Court invited applicants, under Rule 39 of the Rules of Court,[23] to end their hunger strike (*Ilaşcu and Others v. Moldova and Russia* [GC], 2004, § 11; *Rodić and Others v. Bosnia and Herzegovina*, 2008, § 4).

186. Further, an issue under Article 3 may arise in the case of the re-imprisonment of convicted persons suffering from the Wernicke-Korsakoff syndrome (brain disorder involving loss of specific brain functions caused by thiamine deficiency) as a result of going on prolonged hunger strike while in prison (for instance, *Tekin Yıldız v. Turkey*, 2005, § 83; by contrast, *Sinan Eren v. Turkey*, 2005, § 50).

23. These are measures adopted as part of the procedure concerning interim measures before the Court, under Rule 39 of the Rules of Court.

187. An issue under Article 3 may also arise where the authorities use force to interrupt mass hunger strikes of prisoners protesting about their conditions of detention. In *Karabet and Others v. Ukraine*, 2013, §§ 330-332, concerning a violent action by the authorities to interrupt a mass hunger strike, the Court considered that the authorities' unexpected and brutal action had been grossly disproportionate and gratuitous, taken with the aim of crushing the protest movement, punishing the prisoners for their peaceful hunger strike and nipping in the bud any intention of their raising complaints. For the Court, this amounted to torture contrary to Article 3 of the Convention (by contrast, *Leyla Alp and Others v. Turkey*, 2013, §§ 88-93).

V. Good order in prison

Article 3 of the Convention

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 6 of the Convention

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

Article 8 of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Use of force

188. The Court has emphasised that it is mindful of the potential for violence that exists in penal institutions and of the fact that disobedience by detainees may quickly cause a situation to degenerate (*Gömi and Others v. Turkey*, 2006, § 77). The Court accepts that the use of force may be necessary on occasion to ensure prison security, and to maintain order or prevent crime in detention facilities. Nevertheless, such force may be used only if indispensable and must not be excessive (*Tali v. Estonia*, 2014, § 59). Accordingly, in respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is an infringement of the right set forth in Article 3 of the Convention (*Artyomov v. Russia*, 2010, § 145; *Bouyid v. Belgium* [GC], 2015, § 101).

189. Furthermore, the Court has held that the general prohibition of torture and inhuman or degrading treatment or punishment by agents of the State in particular would be ineffective in practice if no procedure existed for the investigation of allegations of ill-treatment of persons held by them. Thus, Article 3 requires that there should be some form of effective official investigation where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands, *inter alia*, of the police or other similar authorities (*Bouyid v. Belgium* [GC], 2015, §§ 115-116; *Ostroveņecs v. Latvia*, 2017, § 71).

190. The Court has, for instance, found a violation of Article 3 in its substantive and procedural limb on account of the systematic, indiscriminate and unlawful use of rubber truncheons by members of a special prison security unit on convicted prisoners, by way of retaliation or punishment, and lack of an effective investigation into the matter (*Dedovskiy and Others v. Russia*, 2008, §§ 85 and 94). Similarly, in *Artyomov v. Russia*, 2010, §§ 169-173 and 184, the Court found a violation of Article 3 in relation to the use of rubber truncheons against the applicant for his refusal to leave his cell. The Court considered it to be disproportionate to the applicant's conduct and retaliatory in nature. The Court also found that the investigation carried out into the applicant's allegations of ill-treatment had not been thorough, expedient and effective (see also, *Gladović v. Croatia*, 2011; *Milić and Nikezić v. Montenegro*, 2015). In *Ochigava v. Georgia*, 2023, the Court found a violation of the substantive and procedural limbs of Article 3 in relation to repeated ill-treatment of the applicant by prison officers as part of the systematic and systemic abuse of inmates in the prison in question.

191. In *Davydov and Others v. Ukraine*, 2010, §§ 264-272, the Court examined a situation where special forces had conducted training exercises in a prison during which the applicants had been injured and humiliated. The Court found that excessive force had been used against the prisoners, without any justification or lawful grounds in breach of Article 3 of the Convention. The Court accepted as legitimate the need to train and keep staff prepared for the possible unexpected conduct of prisoners, including conduct related to mass riots or taking of hostages, for which the special forces were being trained. However, the Court stressed that there was a positive obligation on the State to train its law enforcement officials in such a manner as to ensure a high level of competence in their professional conduct so that no-one is subjected to torture or treatment that runs contrary to Article 3 of the Convention. This also presupposes that the training activities of law enforcement officials, including officials of the penitentiary institutions, are not only in line with that absolute prohibition, but also aim at the prevention of any possible treatment or conduct of a State official, which might run contrary to the absolute prohibition of torture, inhuman or degrading treatment or punishment.

192. Moreover, the Court has found a violation of Article 3 of the Convention in relation to ill-treatment of a prisoner by escorting officers during his transfer to the court to attend court hearings (*Balajevs v. Latvia*, 2016; *Ostroveņecs v. Latvia*, 2017).

193. In the context of the use of special equipment to restrain a prisoner, it should be noted that in *Tali v. Estonia*, 2014, concerning the use of pepper spray against an aggressive prisoner and his confinement to a restraint bed for more than three hours, the Court found a violation of Article 3 of the Convention. As regards the use of the pepper spray, the Court noted that it was a potentially dangerous substance that should not be used in confined spaces. If exceptionally it needed to be used in open spaces, there should be clearly defined safeguards in place. Pepper spray should never be deployed against a prisoner who had already been brought under control. Although pepper spray was not considered a chemical weapon and its use was authorised for the purpose of law enforcement, it could produce different adverse effects on a prisoner's health. In the case at issue, having regard to those potentially serious effects, on the one hand, and the alternative equipment at the disposal of the prison guards, on the other, the Court found that the circumstances had not justified the use of the spray. The Court also did not consider that the applicant's restraint on the bed for a significant period of time to be justified. In *El-Asmar v. Denmark*, 2023, §§ 75-80, the Court considered that the use of pepper spray was not justified as being strictly necessary, in particular, due to the absence of any prior warning.

194. Similar substantive and procedural obligations as those elaborated above under Article 3 arise under Article 2 of the Convention[24] concerning the use of lethal force or other suspicious deaths in prisons (see, for instance, *Lapshin v. Azerbaijan*, 2021, §§ 92-101, concerning an incident putting the applicant's life at risk). Moreover, where the CPT is involved in the monitoring of such an incident in prison, the Court has laid emphasis on the authorities' duty to cooperate with the CPT by providing it

[24] See Guide on Article 2 of the European Convention on Human Rights.

with accurate information about the domestic investigation (*Shuriyya Zeynalov v. Azerbaijan*, 2020, §§ 73-74).

195. The case of *Kalkan v. Denmark*, 2025 concerned Article 2 and the restraining of the applicant in a prone position leg lock for about thirteen minutes, following which he suffered a heart attack and died. The Court found a violation on account of the domestic authorities' failure to transmit to the prison authorities the most recent available information on the risks associated with the prone position, to issue clear and adequate instructions for prison guards and to train them on how to use the technique (§§ 105-129).

196. In a case concerning the use of lethal force to suppress a prison riot, the Court has held that any such use of force must be justified on one of the grounds under Article 2 § 2 of the Convention and must be absolutely necessary within the meaning of that provision. Moreover, the use of force cannot be indiscriminate and conducted in an uncontrolled and unsystematic manner. The Court has also held that the authorities have a duty to investigate the circumstances of the use of lethal force in accordance with their procedural obligation under Article 2 (*Kukhalashvili and others v. Georgia*, 2020, §§ 129-136 and 147-157).

B. Use of instruments of restraint

197. Measures of restraint such as handcuffing do not normally give rise to an issue under Article 3 of the Convention where they have been imposed in connection with lawful arrest or detention and do not entail the use of force, or public exposure, exceeding what is reasonably considered necessary in the circumstances. In this regard, it is of importance, for instance, whether there is reason to believe that the person concerned would resist arrest or try to abscond or cause injury or damage or suppress evidence (*Svinarenko and Slyadnev v. Russia* [GC], 2014, § 117, with further references). The Court has also held on many occasions that handcuffing or shackling of an ill or otherwise weak person is disproportionate to the requirements of security and implies an unjustifiable humiliation, whether or not intentional (*Korneykova and Korneykov v. Ukraine*, 2016, § 111, with further references).

198. Furthermore, the Court has recognised that the aspects of moral and physical integrity of a person, as part of the concept of private life under Article 8 of the Convention, extend to situations of deprivation of liberty, including the use of measures of restraint. However, the use of measures of restraint such as the handcuffing must affect a prisoner physically or mentally or must be aimed at humiliating him or her in order for an issue to arise under Article 8 (*Raninen v. Finland*, 1997, §§ 63-64).

199. In view of the above principles, the Court has found, for instance, that no justification for the use of handcuffs or shackles existed in the following circumstances: handcuffing of a mentally ill prisoner for a period of seven days around the clock during his solitary confinement without any psychiatric opinion or justification (*Kucheruk v. Ukraine*, 2007, §§ 140-146); mandatory handcuffing during force feeding, regardless of any resistance (*Nevmerzhitsky v. Ukraine*, 2005, § 97; *Ciorap v. Moldova*, 2007, § 85); prolonged systematic handcuffing of life prisoners without regular and individualised review of specific security concerns (*Shlykov and Others v. Russia*, 2021, §§ 77-93); handcuffing of a sick prisoner in a hospital while waiting for his operation (*Henaf v. France*, 2003, §§ 52-60; *Istratii and Others v. Moldova*, 2007, §§ 55-58); handcuffing of a prisoner suffering from cancer to his bed in a hospital (*Okhrimenko v. Ukraine*, 2009, § 98); handcuffing during court hearings (*Gorodnichev v. Russia*, 2007, §§ 103-109); shackling of a pregnant woman to a gynaecological examination chair in the hospital admissions unit (*Korneykova and Korneykov v. Ukraine*, 2016, §§ 112-115); handcuffing a physically weakened sick prisoner while taking him to a hospital (*Mouisel v. France*, 2002, § 47); handcuffs during an examination by a gynaecologist (*Filiz Uyan v. Turkey*, 2009, §§ 32-35); and unjustified handcuffing during various other medical examinations (*Duval v. France*, 2011, §§ 50-53; contrast *A.T. v. Estonia*, 2018, § 64, concerning handcuffing during medical examinations of a dangerous prisoner with history

of self-harm). Similarly, the Court found that strapping a mentally ill offender to a restraint bed for almost twenty-three hours in a psychiatric hospital was not strictly necessary and thus not respectful of his human dignity. In particular, the extended duration of the measure of physical restraint in respect of the mentally ill applicant was not the only means available to prevent immediate or imminent harm himself or others (*Aggerholm v. Denmark*, 2020, §§ 105 and 114).

200. It should also be noted that the Court has found that holding a person in a metal cage during a trial – having regard to its objectively degrading nature, which is incompatible with the standards of civilised behaviour that are the hallmark of a democratic society – constitutes in itself an affront to human dignity in breach of Article 3 of the Convention (*Svinarenko and Slyadnev v. Russia* [GC], 2014, § 138; *Korban v. Ukraine*, 2019, § 134).

C. Disciplinary measures and punishment

201. The Court has held that disciplinary proceedings in prison may give rise to a "criminal charge" within the autonomous meaning of Article 6 of the Convention, which triggers the application of relevant procedural protections of that provision.[25]

202. In particular, in *Campbell and Fell v. the United Kingdom*, 1984, §§ 70-73, the Court stressed that some unlawful acts in prison may also constitute an offence under the criminal law, such as doing gross personal violence to a prison officer. What was decisive for the Court to find that there was a criminal charge in the case at issue is the sanction which the applicant risked incurring – and which he in fact incurred –, namely forfeiture of remission of the sanction. In the Court's view, by causing detention to continue for substantially longer than would otherwise have been the case, the sanction came close to, even if it did not technically constitute, deprivation of liberty and the object and purpose of the Convention require that the imposition of a measure of such gravity should be accompanied by the guarantees of Article 6 of the Convention.

203. Similarly, in *Ezeh and Connors v. the United Kingdom*, [GC], 2003, §§ 128-129, the Court found, in particular, that the potential awards of additional days of imprisonment (forty two days for disciplinary offence) could not be regarded as sufficiently unimportant or inconsequential and thus amounted to a "criminal charge" against the applicants within the meaning of Article 6 of the Convention.

204. By contrast, in *Štitić v. Croatia*, 2007, §§ 51-62, the Court found that a suspended sentence of seven-day solitary confinement for one disciplinary offence and a sentence of restricting the applicant's free movement inside the prison and his contact with the outside world for a period of three months for another offence did not amount to a "criminal charge" within the meaning of Article 6 of the Convention. The Court noted, in particular, that there was no extension of the applicant's prison term nor were the conditions of his imprisonment seriously aggravated by the sanctions.

205. However, the inapplicability of the criminal limb of Article 6 of the Convention does not exclude the applicability of its civil limb of that provision. This is particularly true where domestic law gives the right to a prisoner to challenge the disciplinary sanctions before the domestic courts (*Gülmez v. Turkey*, 2008, §§ 29-30). Thus, in such cases the guarantees of the civil limb of Article 6 of the Convention apply.[26]

206. In *Enea v. Italy* [GC], 2009, § 106, the Court held that any restriction affecting individual civil rights of a prisoner must be open to challenge in judicial proceedings, on account of the nature of the restrictions (for instance, a prohibition on receiving more than a certain number of visits from family members each month or the ongoing monitoring of correspondence and telephone calls) and of their

25. See further, Guide on Article 6 (criminal limb) of the European Convention on Human Rights.
26. See further, Guide on Article 6 (civil limb) of the European Convention on Human Rights.

possible repercussions (for instance, any difficulty in maintaining family ties or relationships with non-family members, exclusion from outdoor exercise). By this means it is possible to achieve the fair balance which must be struck between the constraints facing the State in the prison context, on the one hand, and the protection of prisoners' rights, on the other (see also, *Stegarescu and Bahrin v. Portugal*, 2010, §§ 35-39; by contrast *Boulois v. Luxembourg* [GC], 2012, §§ 90-105, concerning requests for prison leave).

207. In this context, it should also be noted that solitary confinement imposed as a disciplinary punishment may bring Article 5 into play if it amounts to a "further deprivation of liberty". The relevant criteria for that assessment include the prisoner's concrete situation and the type, duration, effects and manner of implementation of the measure in question. In practice, a significant change in the manner of implementation of the detention, resulting in a major difference between the residual liberties available to the prisoner during his initial confinement and his subsequent detention, are determinative for the applicability of Article 5 (*Stoyan Krastev v. Bulgaria*, 2020, §§ 48-54).

208. As regards the nature of disciplinary punishments, the Court has held that such punishments must be compatible with the requirements of Article 3 of the Convention. In particular, a measure of disciplinary confinement may not in itself be in breach of those requirements. It is rather the proportionality of its imposition and the conditions of the confinement which may be questionable under that provision (*Ramishvili and Kokhreidze v. Georgia*, 2009, § 82).

209. Moreover, consideration should be given to facts such as the nature of the prisoner's wrongdoing, his personality and whether that was his first or repeated breach of discipline. Indeed, the proportionality of an additional punitive measure imposed upon a prisoner is of importance when assessing whether or not the unavoidable level of suffering inherent in detention has been exceeded (*Ramishvili and Kokhreidze v. Georgia*, 2009, § 83).

210. Thus, in *Ramishvili and Kokhreidze*, 2009, §§ 82-83, the Court criticised the fact that amongst the several available disciplinary sanctions envisaged for a breach of prison regulations, the prison administration had chosen the most severe one – confinement in a punishment cell – without conducting a proper assessment of all the circumstances of the case.

211. In *Vukušić v. Croatia*, 2023, §§ 32-42, the Court found a breach of Article 3 in relation to an unjustified prolonged placement of a prisoner, without clothing, in a specially secured padded cell and with lights continuously on, which also included restraining his hands and ankles for four days, applied in order to prevent him from harming himself or others.

212. Further, the Court has found that the imposition of a disciplinary punishment by segregation of prisoners who suffer from serious mental disturbances runs counter to the requirements of Article 3 (*Keenan v. the United Kingdom*, 2001, § 116; *Renolde v. France*, 2008, § 129).

213. The Court has also considered that solitary confinement should not be applied as a punishment for sending complaints to various authorities (*Rzakhanov v. Azerbaijan*, 2013, § 74). In *Yankov v. Bulgaria*, 2003, § 120) the Court considered that the shaving off of the applicant's hair in the context of his punishment by confinement in an isolation cell for writing critical and offensive remarks about prison warders and State organs constituted an unjustified treatment of sufficient severity to be characterised as degrading within the meaning of Article 3 of the Convention.

D. Inter-prisoner violence

214. Under the Convention, the authorities have a duty to take measures of good order in prison in order to protect prisoners from the acts of intimidation and violence from other prisoners. They also have a duty adequately to respond to any arguable claim of such ill-treatment by conducting an effective investigation and, if appropriate, criminal proceedings. Although it goes without saying that the obligation on States cannot be interpreted as requiring a State to guarantee through its legal

system that inhuman or degrading treatment is never inflicted by one individual on another or, if it has been, that criminal proceedings should necessarily lead to a particular punishment. However, it has been the Court's constant approach that Article 3 of the Convention[27] imposes on States a duty to protect the physical well-being of persons who find themselves in a vulnerable position by virtue of being within the control of the authorities, such as, for instance, detainees (*Premininy v. Russia*, 2011, § 73).

215. As regards the protection from violence by other prisoners, having regard to the absolute character of the protection guaranteed by Article 3 of the Convention and given its fundamental importance in the Convention system, the Court has developed a test for cases concerning a State's positive obligation under that Convention provision. In particular, it has held that to successfully argue a violation of his Article 3 right it would be sufficient for an applicant to demonstrate that the authorities had not taken all steps which could have been reasonably expected of them to prevent real and immediate risks to the applicant's physical integrity, of which the authorities had or ought to have had knowledge. The test does not, however, require it to be shown that "but for" the failing or omission of the public authority the ill-treatment would not have occurred. The answer to the question whether the authorities fulfilled their positive obligation under Article 3 will depend on all the circumstances of the case under examination (*Pantea v. Romania*, 2003, §§ 191-196; *Premininy v. Russia*, 2011, § 84).

216. In cases of inter-prisoners violence, the Court has to establish whether, in the particular circumstances of a case, the authorities knew or ought to have known that a prisoner was suffering or at risk of being subjected to ill-treatment at the hands of his or her cellmates, and if so, whether the administration of the detention facility, within the limits of their official powers, took reasonable steps to eliminate those risks and to protect the first applicant from that abuse (*Premininy v. Russia*, 2011).[28]

217. In *Premininy*, §§ 85-91, the Court noted that there was uncontroverted evidence that the applicant had suffered systematic abuse for at least a week at the hands of fellow inmates. That abuse had resulted in serious bodily injuries and deterioration in his mental health. The authorities had been aware of the situation and could reasonably have foreseen that his particular behaviour rendered him more vulnerable than the average detainee to the risk of violence. Nor could they have failed to notice the signs of abuse, given that at least part of his injuries were visible. These factors should have alerted them to the need to introduce specific security and surveillance measures to protect the applicant from the continual verbal and physical aggression. However, there was no evidence that the authorities had any clear policy on the classification and housing of detainees, or had attempted to monitor violent or vulnerable inmates or taken disciplinary measures against the offenders. The Court thus found that the authorities had not fulfilled their positive obligation to adequately secure the applicant's physical and psychological integrity and well-being as required by Article 3. It also found that they had failed effectively to investigate the applicant's complaints concerning his ill-treatment by other prisoners (see also, in the context of Article 2, *Yuri Illarionovitch Shchokin v. Ukraine*, 2013, § 38).

218. Similarly, in *Gjini v. Serbia*, 2019, §§ 84-88 and 96-103, the Court accepted as established that the applicant had suffered ill-treatment at the hands of his cellmates. Although he had never lodged an official complaint, the Court noted that the CPT had reported inter-prisoner violence in the prison in question and had repeatedly pointed that out as a serious problem, both before and after the events in the applicant's case. It had noted a high number of cases concerning inter-prisoner violence and had observed that no action whatsoever had been taken by the prison or State authorities to correct such behaviour or reduce it. Moreover, in the Court's view, the prison staff must have noticed the applicant's ill-treatment. However, they had failed to react to any of the signs of violence and had

27. For the requirements under Article 2 of the Convention, see Guide on Article 2 of the European Convention on Human Rights.
28. See section "Use of force" of this Guide.

failed to secure a safe environment for the applicant and to detect, prevent or monitor the violence to which he had been subjected. The Court therefore found a breach of Article 3 of the Convention. On a separate note, the Court found that, despite the applicant's failure to lodge an official criminal complaint, the prison administration should have informed the relevant authorities, which were required to conduct an official effective investigation.

219. Further, in *D.F. v. Latvia*, 2013, §§ 81-95, concerning a risk of ill-treatment by fellow prisoners of a former paid police informant and a sex offender, the Court found a violation of Article 3 of the Convention on the grounds that the authorities' failure to coordinate effectively their activities resulted in the applicant's fear of imminent risk of ill-treatment for over a year, despite the authorities being aware that such a risk existed (see also, *Rodić and Others v. Bosnia and Herzegovina*, 2008, §§ 68-73, concerning a risk of ethnically-motivated violence).

220. By contrast, in *Stasi v. France*, 2011, §§ 90-101, concerning the alleged failure of the authorities to protect a prisoner from the violence of other prisoners due to his homosexuality, the Court considered that, in the circumstances of the case, and taking into account the facts that had been brought to their attention, the authorities had taken all the measures that could reasonably be expected of them to protect the applicant from physical harm. It thus found no violation of Article 3 of the Convention.

221. In *S.P. and Others v. Russia*, 2023, §§ 90-109, the Court dealt with the issue of segregation, humiliation and abuse of prisoners by fellow inmates on account of their 'inferior status' in an informal prisoner hierarchy tolerated by prison staff. In the informal prison hierarchy at issue, the applicants were considered to be "outcast" prisoners by other prisoners. That classification entailed their physical and sexual abuse as well as degrading treatment given the tasks assigned to them (such as cleaning latrines or shower cubicles) and given their lack of access to prison facilities (shower, medical care, dormitory, canteen) and they were also forbidden from coming into proximity with, let alone touching, other prisoners under threat that that person would become "contaminated". For the Court, even if not all applicants had been subjected to physical or sexual violence, their placement in the group of "outcast" prisoners for a considerable period of time had amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention. The Court further found that the phenomenon of an informal prisoner hierarchy was a widespread and well-known problem in Russian penal facilities and that prison staff and the authorities in general ought to have been aware both of its existence and the applicants' status within it. However, the prison staff had not deployed any specific and prompt security or surveillance measures to prevent the informal code of conduct from being enforced on the applicants and they allowed other detainees to act with impunity to the detriment of the applicants. Moreover, the authorities did nothing to acknowledge, let alone to address in a comprehensive manner, the problem of an informal prison hierarchy. The Court considered that, in view of the extent of the problem, the authorities' failure to take action could be seen as a form of complicity in the abuses inflicted upon the prisoners under their protection.

222. In *D v. Latvia*, 2024, §§ 49-52, even in the absence of physical ill-treatment, the Court found Article 3 to be applicable in relation to the existence of an informal prison hierarchy and the applicant's position in the lowest caste of that hierarchy. The Court had regard, in particular, to the physical and symbolic separation faced by prisoners in the category to which the applicant belong. They faced many arbitrary restrictions on using shared resources, had separate benches, toilets, and dining areas and were not allowed to queue with other prisoners for the shop or medical care, they were also banned from joining in sports or using common showers, their beds were less comfortable and located towards the periphery of shared spaces, and they were tasked with performing menial jobs, such as cleaning and doing laundry for the other inmates. The Court found that such physical and symbolic separation had the effect of sending a potent message of inferiority, thereby undermining the human dignity of prisoners in the applicant's situation, and thus constituted degrading treatment within the meaning of Article 3 of the Convention.

VI. Special high security and safety measures

Article 3 of the Convention

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 8 of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Special prison regimes

223. The Court has held in its case-law that measures depriving a person of his liberty often involve an element of suffering or humiliation. However, it cannot be said that detention in a high-security prison facility, be it on remand or following a criminal conviction, in itself raises an issue under Article 3 of the Convention. Public-order considerations may lead the State to introduce high-security prison regimes for particular categories of detainees and, indeed, in many State Parties to the Convention more stringent security rules apply to dangerous detainees. These arrangements, intended to prevent the risk of escape, attack or disturbance of the prison community, are based on separation of such detainees from the prison community together with tighter controls (*Piechowicz v. Poland*, 2012, § 161, with further references).

224. However, when such regimes are put in place, Article 3 requires that the State ensures that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding that unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (*Piechowicz v. Poland*, 2012, § 162). Thus, for instance, placement of a prisoner with serious mental health issues under a maximum security prison regime, without the provision of a coherent and appropriate therapeutic strategy capable of responding adequately to his medical needs, may run counter to Article 3 of the Convention (*Epure v. Romania*, 2021, §§ 72-87).

225. The placement of a detainee in a special prison regime may also give rise to an issue under Article 8 of the Convention. While subjecting a detainee to a special high-security regime is not, by itself, in breach of Article 8, for it to be compatible with the requirements of that provision it must be applied "in accordance with the law", pursue one or more of the legitimate aims listed in paragraph 2 and, in addition, be justified as being "necessary in a democratic society". In the context of the "in accordance with the law" requirement, the Court has emphasised, in particular, the necessity of ensuring the protection from abuse and the detainees' effective participation in the proceedings concerning his or her placement in the special regime, including the effectiveness of any review procedures concerning the matter (*Maslák v. Slovakia (no. 2)*, 2022, §§ 137-177).

226. In several cases concerning Italy the Court was called upon to examine the restrictions arising out of the application of the section 41 *bis* regime, which is a special prison regime entailing many limitations on prisoners' rights aimed at cutting the links between the prisoners concerned and their original criminal environment, in order to minimise the risk that they will make use of their personal

contacts with criminal organisations. Such cases gave rise to issues under Articles 3 and 8 of the Convention.

227. From the perspective of Article 3, the Court has held that the imposition of the 41 *bis* regime does not give rise of itself to an issue under Article 3, even when it has been imposed for lengthy periods of time. When assessing whether or not the extended application of certain restrictions under the section 41 *bis* regime attains the minimum threshold of severity required to fall within the scope of Article 3, the length of time must be examined in the light of the circumstances of each case, which entails, *inter alia*, ascertaining whether the renewal or extension of the impugned restrictions was justified or not (*Provenzano v. Italy*, 2018, § 147, with further references).

228. Thus, for instance, in *Enea v. Italy* [GC], 2009, §§ 60-67, the Court considered that that the restrictions imposed as a result of the special prison regime were necessary to prevent the applicant, who posed a danger to society, from maintaining contacts with the criminal organisation to which he belonged. The Court also noted that there was no evidence showing that the extension of those restrictions was patently unjustified. Thus, irrespective of the health issues from which the applicant suffered, the Court found no violation of Article 3 of the Convention. By contrast, in *Provenzano v. Italy*, 2018, §§ 149-158, the Court considered that the extension of the application of the 41 *bis* regime in respect of the applicant had not been sufficiently justified, particularly having regard to his critical cognitive decline. Likewise in *Morabito v. Italy*, 2025, §§ 137-146, the Court questioned whether an 88-year-old applicant – who had been subjected to the 41 *bis* regime for almost twenty years and presented signs of progressive cognitive deterioration – still represented a danger or was capable of maintaining meaningful contacts with his criminal organisation. It further noted that the domestic courts had failed to address the applicant's allegations that severely reduced human interactions could harm his mental state.

229. As regards Article 8 of the Convention, the Court noted that before the introduction of the 41 *bis* special regime, many dangerous prisoners had been able to maintain their positions within the criminal organisations to which they belonged, to exchange information with other prisoners and with the outside world and to organise and procure the commission of criminal offences. In that context the Court considered that, given the specific nature of the phenomenon of organised crime, particularly of the mafia type, and the fact that family visits have frequently served as a means of conveying orders and instructions to the outside, the – admittedly substantial – restrictions on visits, and the accompanying controls, could not be said to be disproportionate to the legitimate aims pursued under Article 8 of the Convention (*Enea v. Italy* [GC], 2009, § 126, with further references).

230. In *Enea*, §§ 128-131, the Court found that the domestic authorities had convincingly established the applicant's dangerousness when extending the special regime. Moreover, the applicant had had a possibility to receive visits from his family and his other complaints of inadequate conditions of detention had been unsubstantiated. The Court thus found that the restrictions on the applicant's right to respect for his private and family life did not go beyond what, within the meaning of Article 8 § 2 of the Convention, was necessary in a democratic society in the interests of public safety and for the prevention of disorder and crime.

231. Further, in a number of *Polish* cases the Court dealt with the placement of dangerous offenders in special high security regimes. In *Piechowicz v. Poland*, 2012, §§ 166-178, the Court found that the continued, routine and indiscriminate application of the full range of measures that the authorities were obliged to apply under the relevant regime for two years and nine months had been necessary for maintaining prison security. In particular, the applicant was subjected to only limited social isolation, since he shared his cell at times, maintained daily contact with the prison staff, was entitled to receive family visits, and had access to television and the prison library. However, the authorities had failed to provide him with appropriate stimulation and adequate human contact. They denied the applicant's requests to take part in the training, workshops, courses and sports activities organised for ordinary inmates and refused to allow him to have his own sports equipment, computer games or a

CD player in his cell. In addition, the negative psychological and emotional effects of his social isolation were further aggravated by the routine application of other special security measures, in particular the shackling and intrusive strip searches. The Court was not convinced that systematic shackling every time the applicant left his cell had been necessary. Likewise, the strip-searches involving an anal inspection were carried out routinely and were not linked to any concrete security needs or specific suspicions and notwithstanding the other security measures the applicant was constantly subject to such as supervision *via* CCTV and prison guards. The Court also considered that, while the gravity of the applicant's alleged crimes could justify his initial classification as a "dangerous detainee" and the imposition of the special regime, it could not serve as the sole justification for its prolonged continuation. In view of the cumulative effect of these measures, the Court found a violation of Article 3 of the Convention (see also, *Horych v. Poland*, 2012, §§ 93-103; *Paluch v. Poland*, 2016, §§ 37-48; *Karwowski v. Poland*, 2016, §§ 33-43).

232. The Court also found in *Piechowicz v. Poland*, 2012, §§ 219-222 and 238-240, that blanket and systemic restrictions on the applicant's visiting rights by his family (see also *Horych v. Poland*, 2012, §§ 127-132), as well as the censorship of his correspondence with various public authorities and his legal-aid counsel, applied as a result of his placement in the special regime, amounted to a violation of Article 8 of the Convention.

233. The Court also dealt in *Bulgarian* cases with strict prison regime of life prisoners, which entailed the keeping of prisoners in permanently locked cells and isolation from the rest of the prison community. In *Harakchiev and Tolumov v. Bulgaria*, 2014, §§ 203-214, the Court found, in particular, that the cumulative effect of the conditions endured by the applicants which included isolation, inadequate ventilation, lighting, heating, hygiene, food and medical care had been inhuman and degrading. The Court also criticised the fact that the applicants' isolation appeared to be the result of the automatic application of the domestic legal provisions regulating the prison regime rather than of any particular security concerns relating to their behaviour (see also *Halil Adem Hasan v. Bulgaria*, 2015, §§ 49-60).

234. As regards terrorist prisoners, in *Öcalan v. Turkey* [GC], 2005, §§ 192-196, and *Öcalan v. Turkey (no. 2)*, 2014, §§ 146-149, the Court examined a special regime under which the applicant, considered as one of the most dangerous terrorists in the country, was held. Whereas in the former case the Court did not find that the special regime ran counter to the Convention, in the latter case it found that for a certain period of time his detention regime had amounted to a violation of Article 3. In particular, the Court had regard to the following circumstances of the case: for nineteen years and nine months the applicant was the only inmate in a prison located on an island; there was a lack of communication media to prevent the applicant's social isolation (protracted absence of a television set in the cell and of telephone calls); excessive restrictions on access to news information; the persistent major problems with access by visitors to the prison (for family members and lawyers) and the insufficiency of the means of marine transport in coping with weather conditions; the restriction of staff communication with the applicant to the bare minimum required for their work; the lack of any constructive doctor/patient relationship with the applicant; the deterioration in the applicant's mental state resulting from a state of chronic stress and social and affective isolation combined with a feeling of abandonment and disillusionment; and the fact that no alternatives were sought to the applicant's solitary confinement at the relevant time.

B. Solitary confinement

235. Solitary confinement is not, in itself, in breach of Article 3. Whilst extended removal from association with others is undesirable, whether such a measure falls within the ambit of Article 3 of the Convention depends on the particular conditions, the stringency of the measure, its duration, the objective pursued and its effects on the person concerned (*Rohde v. Denmark*, 2005, § 93; *Rzakhanov v. Azerbaijan*, 2013, § 64). A prohibition of contact with other prisoners for security, disciplinary or

protective reasons does not in itself amount to inhuman treatment or punishment (*Ramirez Sanchez v. France* [GC], 2006, § 123). On the other hand, complete sensory isolation, coupled with total social isolation, can destroy the personality and constitutes a form of inhuman treatment which cannot be justified by the requirements of security or any other reason (*ibid.*, § 120).

236. Solitary confinement, even in cases entailing only relative isolation, cannot be imposed on a prisoner indefinitely and should be based on genuine grounds, ordered only exceptionally with the necessary procedural safeguards and after every precaution has been taken (*A.T. v. Estonia (no. 2)*, 2018, § 73). In order to avoid any risk of arbitrariness, substantive reasons must be given when a protracted period of solitary confinement is extended. The decision should thus make it possible to establish that the authorities have carried out a reassessment that takes into account any changes in the prisoner's circumstances, situation or behaviour (*Csüllög v. Hungary*, 2011, § 31).

237. In this connection it should be noted that the confinement of prisoners in a double cell may have similar negative effects as solitary confinement if both detainees have to spend years locked up in one cell without any purposeful activity, adequate access to outdoor exercise or contacts with the outside world. Therefore, even if the isolation is not absolute – as two prisoners are detained together – the intensity and prolonged duration of that measure may raise an issue under Article 3 of the Convention on account of the considerable negative impact which it has on the prisoners' well-being and social skills. Thus, adequate justification is required for the prolonged detention of prisoners in double cells if the intensity and duration of their segregation are so significant that the effect is comparable to solitary detention (*N.T. v. Russia*, 2020, § 45).

238. Similarly, in *Ivan Karpenko v. Ukraine*, 2021, §§ 58-65, the Court found that a ban on a life prisoner's communication with other prisoners during out-of-cell activities (the regime described as systemic segregation) – which was further exacerbated by such additional factors as the applicant's permanent confinement to his cell with one or two prisoners, with only a brief outdoor walk and without any purposeful activities; the automatic application of that ban on the sole ground of the applicant's being sentenced to life imprisonment, without any possibility of review or safeguards against arbitrariness; the long duration of the measure in question (at least ten years); as well as the proven deterioration of the applicant's health on that account and the absence of any adequate response to his related complaints and requests for assistance – amounted "without any doubt" to inhuman and degrading treatment prohibited by Article 3 of the Convention.

239. The imposition of solitary confinement must take into account the state of health of the person concerned (*Jeanty v. Belgium*, 2020, § 117). Furthermore, a system of regular monitoring of the prisoner's physical and mental condition should also be set up in order to ensure its compatibility with continued solitary confinement. The Court also underlined that it is essential that the prisoner should be able to have an independent judicial authority review the merits of, and reasons for, a prolonged measure of solitary confinement. Moreover, it would also be desirable for alternative solutions to solitary confinement to be sought for persons considered dangerous and for whom detention in an ordinary prison under the ordinary regime is considered inappropriate (*Ramirez Sanchez v. France* [GC], 2006, §§ 139 and 145-146).

240. In *Ramirez Sanchez*, §§ 131-150, a terrorist prisoner was held in solitary confinement for some eight years. The Court did not consider that there was a particular issue with the applicant's solitary confinement, which had involved only partial and relative social isolation. For the Court, the main issue in this case was the length of such confinement. Although the Court found no violation of Article 3 – having regard to the physical conditions of the applicant's detention, the fact that his isolation was relative, the authorities' willingness to hold him under the ordinary regime, his character and the danger he posed – it did voice concern about the particularly lengthy period the applicant has spent in solitary confinement and considered that the applicant, who had by then been held under the ordinary prison regime, should not in principle confined to a solitary cell in the future.

241. In *Onoufriou v. Cyprus*, 2010, §§ 71-81, the Court further expanded on the requirement of procedural safeguards which must accompany a decision to place a prisoner in solitary confinement in order to guarantee the prisoner's welfare and the proportionality of the measure. The Court pointed to a lacuna in the relevant domestic law as regards the guarantees to be afforded to those placed in solitary confinement. In particular, it noted the lack of an adequate justification for the applicant's detention in solitary confinement, the uncertainty concerning its duration, the failure to put in place a reliable system to record solitary confinement measures and to ensure that the applicant was not confined beyond the authorised period, the absence of any evidence that the authorities carried out an assessment of the relevant factors before ordering his confinement and the lack of any possibility to challenge the nature of his detention or its conditions.

242. Similarly, in *Csüllög v. Hungary*, 2011, §§ 37-38, the Court found that no substantive reasons had been given by the authorities when the solitary confinement was applied or extended. The Court thus found that in the absence of reasoning, the impugned restriction must have been perceived as arbitrary. Arbitrary restrictive measures applied to vulnerable individuals like prisoners inevitably contribute to the feeling of subordination, total dependence, powerlessness and, consequently, humiliation (by contrast, *A.T. v. Estonia (no. 2)*, 2018, §§ 84-85). Moreover, the authorities did not apply any measures to counter the negative effects of protracted solitary confinement on the applicant's physical and mental condition. In this connection, open air stays or sport opportunities, of limited availability, cannot under the present circumstances be considered as capable of remedying those negative effects, especially since all the movements of the applicant entailed handcuffing in an otherwise secure environment. The Court thus found a violation of Article 3 of the Convention.

243. By contrast, in *Rohde v. Denmark*, 2005, §§ 97-98, concerning some eleven months of the applicant's solitary confinement, the Court found no violation of Article 3 having regard to the following conditions: the overall conditions of the applicant's detention were adequate; he had access to newspapers and was not totally excluded from association with other inmates; he made use of the outdoor exercise option or the fitness room; he borrowed books in the library or bought goods in the shop; he received weekly language courses; he was visited by the prison chaplain, his counsel, a welfare worker and members of his family and friends; and he was attended regularly by a physiotherapist, doctor and a nurse.

244. In *Schmidt and Šmigol v. Estonia*, 2023, §§ 133, 140 and 149-163, the Court expressed strong concerns about the use of solitary confinement, as a disciplinary measure, for long and consecutive periods of time. It noted that prolonged solitary confinement entailed an inherent risk of harmful effect on any person's mental health, irrespective of the material or other conditions surrounding it. The Court therefore considered that the practice of long consecutive periods of solitary confinement was, in principle, incompatible with Article 3, save for the Government being able to present compelling reasons as to the existence of exceptional circumstances that would justify such a practice and to show that such disciplinary punishment was indeed used as a last resort. In the case at hand, the Court found that the prolonged periods of solitary confinement (the first applicant 566 days uninterruptedly and the second applicant spending 482 practically uninterruptedly), without alternating it with adequate periods of regular prison regime, subjected the applicants to hardship going beyond the unavoidable level of suffering inherent in detention. The Court therefore found a violation of Article 3 of the Convention.

245. Lastly, it should be noted that the above principles apply when solitary confinement is imposed as a disciplinary sanction on a prisoner (*Rzakhanov v. Azerbaijan*, 2013, §§ 74-76).[29] These principles also apply when solitary confinement is used as a measure to protect a prisoner from possible violence in prison. In *X v. Turkey*, 2012, §§ 41-45, the Court found that the fact that the applicant was placed in solitary confinement for protective purposes without any justification for his lack of outdoor exercise or contact with other prisoners, coupled with a lack of an appropriate judicial review of the measure,

29. See further section "Disciplinary measures and punishment" of this Guide.

amounted to a violation of Article 3 of the Convention (by contrast, *Peňaranda Soto v. Malta*, 2017, §§ 76-77).

VII. Special categories of detainees

Article 3 of the Convention

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 8 of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Women with infants and minors

246. The Court has recognised in its case-law that it is a particularly problematic issue whether it should be possible for babies and young children to remain in prison with their mothers. In this connection, the Court has noted the CPT's recognition that on the one hand, prisons clearly do not provide an appropriate environment for babies and young children while, on the other, the forcible separation of mothers and infants is highly undesirable. The Court has also noted that the UN Rules for the Treatment of Women Prisoners[30] state that decisions to allow children to stay with their mothers in prison shall be based on the best interests of the children (*Korneykova and Korneykov v. Ukraine*, 2016, § 129), a principle which is enshrined in the Court's child care case-law (*X v. Latvia* [GC], 2013, § 95).

247. The Court has also taken note of the World Health Organisation recommendations, according to which a healthy new-born must remain with its mother, which imposes on the authorities an obligation to create adequate conditions for those requirements to be implemented in practice, including in detention facilities. Accordingly, in a situation in which the mother is detained and where the new-born child remains with her under the full control of the authorities, an obligation arises for the authorities to secure adequately the child's health and well-being (*Korneykova and Korneykov v. Ukraine*, 2016, § 131).

248. The latter case concerned an applicant placed in pre-trial detention in her fifth month of pregnancy and who subsequently gave birth to a boy in detention. The Court found a breach of Article 3 in relation to the conduct of the authorities: shackling of the mother in the maternity hospital (§§ 110-116);[31] inadequate conditions of detention; and lack of an appropriate medical care for the baby.

249. As regards the material conditions of detention, in particular, the Court noted that the cumulative effect of malnutrition of the mother, inadequate sanitary and hygiene arrangements for her and her new-born son, as well as insufficient outdoor walks, were of such an intensity as to induce

30. United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), A/C.3/65/L.5, 6 October 2010.
31. See Section "Use of instruments of restraint" of this Guide.

in the mother physical suffering and mental anguish amounting to inhuman and degrading treatment of the mother and of the child (*Korneykova and Korneykov v. Ukraine*, 2016, §§ 140-148).

250. With regard to the medical care for the baby, the Court stressed that the authorities were under an obligation to provide adequate medical supervision and care for the second applicant as a new-born child staying with his mother in a detention facility. He was particularly vulnerable and required close medical monitoring by a specialist. The material in the case file provided a sufficient basis for the Court to establish that the second applicant had remained without any monitoring by a paediatrician for almost three months. Having particular regard to his young age, this circumstance alone was sufficient to conclude that adequate health-care standards had not been met in the present case (*Korneykova and Korneykov v. Ukraine*, 2016, §§ 152-158).

251. Concerning the detention of children[32], in *Güveç v. Turkey*, 2009, §§ 91-98, the Court found for the first time that the imprisonment of a minor in an adult prison amounted to inhuman and degrading treatment in breach of Article 3 of the Convention. The detention of the fifteen-year-old adolescent, in breach of domestic law, had lasted more than five years and had caused him severe physical and psychological problems resulting in three suicide attempts, without appropriate medical care being provided by the authorities.

252. In this connection, it should also be noted that in several judgments concerning Turkey, the Court has expressed its concern about the practice of detaining children in pre-trial detention (see *Selçuk v. Turkey*, 2006, § 35; *Koşti and Others v. Turkey*, 2007, § 30; *Nart v. Turkey*, 2008, § 34) and found violations of Article 5 § 3 of the Convention. For example, in *Selçuk* the applicant had spent some four months in pre-trial detention when he was sixteen years old and in *Nart* the applicant had spent forty-eight days in detention when he was seventeen years old.

253. However, as regards Article 3 of the Convention, the Court has held that it cannot be interpreted as laying down a general obligation to release a detainee and that the Convention does not prohibit the States from subjecting convicted juveniles to imprisonment. Moreover, the domestic authorities have a certain degree of latitude relating to the manner in which the separation of juvenile and adult offenders is to be effectuated, including the placement of juvenile offenders in separate parts of institutions normally designed for adult inmates. In this connection, a minor's placement in the section for juvenile offenders does not, in and of itself, raise an issue under Article 3 of the Convention (*Kuparadze v. Georgia*, 2017, § 60). Nevertheless, in some instances, placement of a minor with adult detainees even for a short period of time can be capable of leaving a strong impression on him which, when coupled with other inadequate conditions of imprisonment, may lead to a violation of Article 3 of the Convention (*Zherdev v. Ukraine*, 2017, §§ 92-93). Similarly, the placement of a minor remand prisoner together with sentenced prisoners could raise an issue under Article 3 (*I.E. v. the Republic of Moldova*, 2020, § 43).

254. In any event, the health of minors deprived of their liberty shall be safeguarded according to recognised medical standards applicable to minors in the wider community. The authorities should always be guided by the child's best interests and the child should be guaranteed proper care and protection. Moreover, if the authorities are considering depriving a child of his or her liberty, a medical

32. See further:
- Convention on the Rights of the Child, 20 November 1989;
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") (Resolution 40/33, 29 November 1985);
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Resolution 45/113, 14 December 1990);
- Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures.

assessment should be made of the child's state of health to determine whether or not he or she can be placed in a juvenile detention centre (*Blokhin v. Russia* [GC], 2016, § 138).

255. It should also be noted that in the context of the detention of immigrant minors, the Court has held that such detention, irrespective of whether it concerned accompanied or unaccompanied minors, raises particular issues under Article 3 of the Convention since children, accompanied or not, are extremely vulnerable and have specific needs (*Abdullahi Elmi and Aweys Abubakar v. Malta*, 2016, § 103). Indeed, the child's extreme vulnerability is the decisive factor and takes precedence over considerations relating to the legal status of the immigrant minor. The 1989 Convention on the Rights of the Child (1577 UNTS 3) encourages States to take appropriate measures to ensure that children seeking refugee status, whether or not accompanied, receive appropriate protection and humanitarian assistance (*Popov v. France*, 2012, § 91). In recent years, the Court has in several cases examined the conditions in which accompanied immigrant minors were detained.

256. The applicants in *Muskhadzhiyeva and Others v. Belgium*, 2010, §§ 57-63, were respectively seven months, three and a half years, five years and seven years of age, and had been detained for one month. Noting their age, the length of their detention, the fact that the detention facility had not been adapted for minors, and the medical evidence that they had undergone serious psychological problems while in custody, the Court found a breach of Article 3 of the Convention.

257. The applicants in *Kanagaratnam v. Belgium*, 2011, §§ 64-69, had been respectively thirteen, eleven, and eight years of age, and had been detained for about four months. The Court noted that they had been older than those in the above-mentioned case and that there was no medical evidence of mental distress having been experienced by them in custody. Even so the Court found a breach of Article 3, noting that: (i) the detention facility had not been adapted to minors; (ii) the applicants had been particularly vulnerable owing to the fact, that before arriving in Belgium, they had been separated from their father on account of his arrest in Sri Lanka and had fled the civil war there; (iii) their mother, although with them in the facility, had been unable to take proper care of them; and (iv) their detention had lasted much longer than that in the case of *Muskhadzhiyeva*.

258. The applicants in *Popov v. France*, 2012, §§ 92-103, had been respectively five months and three years of age, and had been detained for fifteen days. Although designated for receiving families, the detention facility had been, according to several reports and domestic judicial decisions, not properly suited for that purpose, either in terms of material conditions or in terms of the lack of privacy and the hostile psychological environment prevailing there. That led the Court to find that: (i) despite the lack of medical evidence to that effect, the applicants, who had been very young, had suffered stress and anxiety; and that (ii) in spite of the relatively short period of detention, there had been a breach of Article 3 of the Convention.

259. The applicants in five later cases against France – *R.M. and Others v. France*, 2016, §§ 72-76, *A.B. and Others v. France*, 2016, §§ 111-115, *A.M. and Others v. France*, 2016, §§ 48-53, *R.K. and Others v. France*, 2016, §§ 68-72, and *R.C. and V.C. v. France*, 2016, §§ 36-40 – had been between four months and four years of age, and had been detained for periods ranging between seven and eighteen days. The Court noted that unlike the detention facility at issue in *Popov*, the material conditions in the two detention facilities concerned in those five cases had not been problematic. They had been adapted for families that had been kept apart from other detainees and provided with specially fitted rooms and child-care materials. However, one of the facilities had been situated right next to the runways of an airport, and so had exposed the applicants to particularly high noise levels. In the other facility, the internal yard had been separated from the zone for male detainees by only a net, and the noise levels had also been significant. That had affected the children considerably. Another source of anxiety had been the constraints inherent in a place of detention and the conditions in which the facilities had been organised. Although over a short period of time those factors had not been sufficient to attain the threshold of severity engaging Article 3 of the Convention, over a longer period their effects would necessarily have affected a young child to the point of exceeding that threshold. Since the periods of

detention had been, in the Court's view, long enough in all five cases, it found a breach of Article 3 in each of them.

260. In *S.F. and Others v. Bulgaria*, 2017, §§ 84-93, the Court found that, although the detention of migrant minors had been shorter than in some previous cases, the conditions in the detention facility were considerably worse. The cell in which the applicants had been kept, though relatively well ventilated and lit, was extremely run-down. It was dirty and contained worn out bunk beds, mattresses and bed linen, and there was litter and damp cardboard on the floor. There had been limited possibilities for accessing the toilet which had forced them to urinate onto the floor of the cell in which they were kept. The authorities had allegedly failed to provide the applicants with food and drink for more than twenty-four hours after taking them into custody and the Government did not dispute the allegation that the applicants' mother had only been given access to the baby bottle and the milk for the youngest applicant, who was one-and-a-half years old, about nineteen hours after they had been taken into custody. The combination of these factors must have considerably affected the applicants, both physically and psychologically, and must have had particularly nefarious effects on the youngest applicant, who was still an infant. The Court also noted that, while it was true that in recent years the States on the European Union's external borders had had difficulties in coping with the massive influx of migrants, it could not be said that at the relevant time Bulgaria was facing an emergency of such proportions that it was practically impossible for its authorities to ensure minimally decent conditions in the short-term holding facilities in which they decided to place minor migrants immediately after their interception and arrest. In any event, in view of the absolute character of Article 3, an increasing influx of migrants could not absolve a High Contracting State of its obligations under that provision. The Court found a violation of Article 3 of the Convention.

261. In *G.B. and Others v. Turkey*, 2019, §§ 101-117 and 151, concerning the detention of an immigrant mother and her three children, the Court found a violation of Article 3 of the Convention mainly on the grounds of the inadequacy of the relevant detention facilities to accommodate children in view of their extreme vulnerability, and because of the incompatibility of such detention with the widely recognised international principles on the protection of children. The Court also found that the detention of young children in unsuitable conditions may on its own lead to a finding of a violation of Article 5 § 1, regardless of whether the children were accompanied by an adult or not. It thereby referred to various international bodies, including the Council of Europe, which were increasingly calling on States to expeditiously and completely cease or eradicate the detention of immigrant children. In this connection, the Court has also stressed that the presence in a detention centre of a child accompanying its parents will comply with Article 5 § 1 (f) only where the national authorities can establish that such a measure of last resort was taken after verification that no other measure involving a lesser restriction of their freedom could be implemented.

B. Foreign nationals and minorities[33]

262. An important procedural aspect related to the application of measures of deprivation of liberty of foreign nationals is the necessity promptly to provide the person concerned information, in a language which he or she understands, with the essential legal and factual grounds for his or her deprivation of liberty, as required by Article 5 § 2 of the Convention.[34]

263. Information must be given in the language which an individual understands, which does not necessarily have to be his or her native language (*Suso Musa v. Malta*, 2013, § 117). However, the domestic authorities must act diligently when there are indications that the individual concerned does not understand the language (*Ladent v. Poland*, 2008, §§ 64-65). Where translations are used for informing an individual of the reasons for the deprivation of liberty, it is incumbent on the authorities

33. See further, Practical Guide in Admissibility Criteria
34. See further, Guide on Article 5 of the European Convention on Human Rights.

to ensure that requests for translation are formulated with meticulousness and precision (*Shamayev and Others v. Georgia and Russia*, 2005, § 425). Information may also be provided through an interpreter (*A.H. and J.K. v. Cyprus*, 2015, § 224).

264. As the Convention does not guarantee as such the right to an inter-state transfer or the right of a detainee to be allocated to a particular prison,[35] it is important to ensure that foreign prisoners maintain some contact with their families, at least through telephone conversations or occasional visits (*Labaca Larrea and Others v. France* (dec.), 2017, § 44). Moreover, the authorities may be required under Article 8 to make concessions for allowing a prisoner to contact and speak to his or her family members in their own language (*Nusret Kaya and Others v. Turkey*, 2014, §§ 60-61).

265. In *Rooman v. Belgium* [GC], 2019, §§ 149-159 and 228-243, the Court dealt with the question of the provision of psychiatric treatment in detention to linguistic minorities. The Court emphasised that the Convention did not guarantee a detainee the right to treatment in his or her own language. As regards Article 3, the question was whether, "in parallel with other factors, necessary and reasonable steps were taken to guarantee communication that would facilitate the effective administration of appropriate treatment". However, it was accepted that as regards psychiatric treatment "the purely linguistic element could prove to be decisive as to the availability or the administration of appropriate treatment, but only where other factors do not make it possible to offset the lack of communication". In the context of Article 5, the Court recalled that in the present case, the Social Protection Board (which had committed the applicant to compulsory confinement) had confirmed his right to speak, be understood and to receive treatment in German, a national language in Belgium.

266. The authorities must also ensure that foreign prisoners and minorities are protected from violence or intimidation by other prisoners. In *Rodić and Others v. Bosnia and Herzegovina*, 2008, §§ 69-73, the Court found a violation of Article 3 of the Convention due to the fact that the applicants' physical well-being was not adequately secured from inter-ethnic motivated violence and persecution by other prisoners, which could have been achieved, for instance by placing them in separate accommodation.

C. Life prisoners

267. On the basis of a comprehensive overview and assessment of its earlier case-law on life imprisonment (see, in particular, *Kafkaris v. Cyprus* [GC], 2008, §§ 95-108), in *Vinter and Others v. the United Kingdom* [GC], 2013, §§ 119-122, the Court found that, in the context of a life sentence, Article 3 must be interpreted as requiring the *de facto* and the *de jure* reducibility of the sentence, in the sense of a review which allows the domestic authorities to consider whether any changes in the life prisoner are so significant, and such progress towards rehabilitation has been made in the course of the sentence, as to mean that continued detention can no longer be justified on legitimate penological grounds.

268. However, the Court emphasised that, having regard to the margin of appreciation of the Contracting States in the matters of criminal justice and sentencing, it is not its task to prescribe the form (executive or judicial) which that review should take. For the same reason, it is not for the Court to determine when that review should take place. Nevertheless, the Court noted that the comparative and international law materials before it showed clear support for the institution of a dedicated mechanism guaranteeing a review no later than twenty-five years after the imposition of a life sentence, with further periodic reviews thereafter. Accordingly, where domestic law does not provide for the possibility of such a review, a whole life sentence will not measure up to the standards of Article 3 of the Convention.

35. See section "Placement" of this Guide.

269. Furthermore, the Court stressed that although the requisite review is a prospective event necessarily subsequent to the passing of the sentence, a whole life prisoner should not be obliged to wait and serve an indeterminate number of years of his sentence before he can raise the complaint that the legal conditions attaching to his sentence fail to comply with the requirements of Article 3 in this regard. This would be contrary both to legal certainty and to the general principles on victim status within the meaning of that term in Article 34 of the Convention. Furthermore, in cases where the sentence, on imposition, is irreducible under domestic law, it would be capricious to expect the prisoner to work towards his own rehabilitation without knowing whether, at an unspecified, future date, a mechanism might be introduced which would allow him, on the basis of that rehabilitation, to be considered for release. A whole life prisoner is entitled to know, at the outset of his sentence, what he must do to be considered for release and under what conditions, including when a review of his sentence will take place or may be sought. Consequently, where domestic law does not provide any mechanism or possibility for review of a whole life sentence, the incompatibility with Article 3 on this ground already arises at the moment of the imposition of the whole life sentence and not at a later stage of incarceration.

270. On the facts of the case in *Vinter and Others v. the United Kingdom* [GC], 2013, §§ 123-131, the Court found that there had been a violation of Article 3 of the Convention, finding that the requirements of that provision had not been met in relation to any of the three applicants. In the applicants' case, the Court noted that domestic law concerning the power of the executive to release a person subject to a whole life order was unclear. In addition, at the relevant time, there was no review mechanism in place. In finding a violation in this case, however, the Court did not intend to give the applicants any prospect of imminent release. Whether or not they should be released would depend, for example, on whether there were still legitimate penological grounds for their continued detention and whether they should continue to be detained on grounds of dangerousness.

271. Subsequently, in *Hutchinson v. the United Kingdom* [GC], 2017, §§ 46-73, following developments at the domestic level related, which were considered to have been done in a Convention compliant manner, the Court found no violation of Article 3 of the Convention.

272. The Court has consistently applied its *Vinter and Others* case-law in a number of other cases concerning different countries.

273. In *Öcalan v. Turkey (no. 2)*, 2014, §§ 199-207, the Court held that there had been a violation of Article 3 of the Convention as regards the applicant's sentence to life imprisonment without any possibility of conditional release, finding that, in the absence of any review mechanism, the life prison sentence imposed on the applicant constituted an irreducible sentence that amounted to inhuman treatment. The Court observed in particular that, on account of his status as a convicted person sentenced to aggravated life imprisonment for a crime against State security, it was clearly prohibited for him to apply for release throughout the duration of his sentence. Moreover, whilst it was true that under Turkish law the President of the Republic was entitled to order the release of a person imprisoned for life who was elderly or ill, that release on compassionate grounds, was different from the notion of a "prospect of release" within the meaning of the Court's case-law (see also, for instance, *Boltan v. Turkey*, 2019, §§ 41-43).

274. In *László Magyar v. Hungary*, 2014, §§ 54-59 the Court held that there had been a violation of Article 3 of the Convention as regards the applicant's life sentence without eligibility for parole. It was, in particular, not persuaded that Hungarian law allowed life prisoners to know what they had to do to be considered for release and under what conditions. In addition, the law did not guarantee a proper consideration of the changes in the life of prisoners and their progress towards rehabilitation.

275. In response to the *László Magyar* judgment, certain legislative changes were made, which the Court later examined in *T.P. and A.T. v. Hungary*, 2016, §§ 39-50. In particular, the Court found that making a prisoner wait forty years before the whole of his or her life sentence became reviewed for the first time under a mandatory clemency procedure was too long and that, in any case, there was a

lack of sufficient safeguards in the remainder of the procedure provided by the new legislation. The Court was not therefore persuaded that, at the time of its judgment in the case, the applicants' life sentences could be regarded as providing them with the prospect of release or a possibility of review and the legislation was not therefore compatible with Article 3 of the Convention (see also *Sándor Varga and Others v. Hungary*, 2021, §§ 48-50, and *Bancsók and László Magyar (no.2) v. Hungary*, §§ 42-48, where life sentences were deemed to be irreducible within the meaning of Article 3 because of the lapse of forty years required before life prisoners could for the first time be considered for release on parole, despite such prisoners' right to seek presidential clemency in ordinary pardon proceedings without limitation).

276. In *Harakchiev and Tolumov v. Bulgaria*, 2014, §§ 243-268, concerning the first applicant's sentence of life imprisonment the Court found a breach of Article 3. It noted that from the time when the first applicant's sentence had become final – November 2004 – to the beginning of 2012, his sentence of life imprisonment without commutation had amounted to inhuman and degrading treatment as he had neither had a real prospect of release nor a possibility of review of his life sentence, this being aggravated by the strict regime and conditions of his detention limiting his rehabilitation or self-reform. During that time, the presidential power of clemency that could have made the applicant's sentence reducible and the way in which it was exercised was indeed opaque, lacking formal or even informal safeguards. Nor were there any concrete examples of a person serving a sentence of life imprisonment without commutation being able to obtain an adjustment of that sentence. However, the Court noted that, following reforms in 2012, the manner in which presidential power of clemency was being exercised was now clear, allowing for the prospect of release or commutation. Since that time, therefore, the applicant's imprisonment without commutation could, at least formally, be regarded as reducible (see also *Manolov v. Bulgaria*, 2014, §§ 51-52).

277. By contrast, in *Čačko v. Slovakia*, 2014, §§ 76-81, the Court found no violation of Article 3 of the Convention. It noted, in particular, that a judicial review mechanism rendering possible a conditional release of whole-life prisoners in the applicant's position after twenty-five years of imprisonment was introduced relatively shortly after the applicant's conviction and the introduction of the application before the Court. Moreover, during a substantial part of that period the applicant continued his attempts to obtain redress before the national courts.

278. Similarly, in *Bodein v. France*, 2014, §§ 53-62, the Court found no violation of Article 3 of the Convention considering that domestic law provided a facility for reviewing life sentences which was sufficient, in the light of the margin of appreciation left to States in the criminal justice and sentencing fields. The Court noted, in particular, that French law provided for judicial review of the convicted person's situation and for a possible sentence adjustment after thirty years' incarceration. The Court took the view that such review, which was geared to assessing the prisoner's dangerousness and to considering how his conduct had changed while he served his sentence, left no uncertainty as to the existence of a "prospect of release" from the outset of the sentence. In the applicant's case, after deducting the period of pre-trial detention, he would become eligible for a review of his sentence twenty-six years after his conviction, and if appropriate, could be released on parole.

279. In *Murray v. the Netherlands* [GC], 2016, §§ 113-127, the Court dealt with a complaint of a life prisoner who argued that, although a legal mechanism for reviewing life sentences had been introduced shortly after he lodged his application with the Court, *de facto*, he had no prospect of being released since he had never been provided with any psychiatric treatment and therefore the risk of his reoffending would continue to be considered too high to be eligible for release. The Court held that there had been a violation of Article 3 of the Convention. It underlined in particular that, under its case-law, States had a wide margin of appreciation in determining what measures were required in order to give a life prisoner the possibility of rehabilitating himself or herself. However, although the applicant had been assessed, prior to being sentenced to life imprisonment, as requiring treatment, no further assessments had been carried out of the kind of treatment that might be required and could be made available. Consequently, at the time he lodged his application with the

Court, any request by him for a pardon was in practice incapable of leading to his release. Therefore, his life sentence had not *de facto* been reducible, as required by the Court's case-law under Article 3 of the Convention.

280. Similarly, in *Horion v. Belgium*, 2023, §§ 65-76, the Court found a violation of Article 3 of the Convention in relation to a complaint by a life-prisoner whose detention in prison had no longer been considered necessary by the authorities, but where arrangements had not been made to place him in a special psychiatric unit, which was the precondition for his reintegration in the society.

281. In *Matiošaitis and Others v. Lithuania*, 2017, §§ 157-183, the Court held that there had been a violation of Article 3 of the Convention in respect of six of the applicants, finding that, at the time of the judgment, the applicants' life sentences could not be regarded as reducible for the purposes of Article 3. In particular, the Court stressed that commutation of life imprisonment because of terminal illness could not be considered a "prospect of release". Likewise, amnesty could not be regarded as a measure giving life prisoners a prospect of mitigation of their sentence or release. The Court also did not consider presidential pardon as a mechanism ensuring that life sentences were reducible *de facto* for the following reasons: there was no duty to provide reasons for refusing a request for a pardon; pardon decrees were not subject to judicial review and could not be challenged by the prisoners directly; and the work of the relevant pardon commission was not transparent and its recommendations were not legally binding on the President. In addition, the Court found that prison conditions for life prisoners were not conducive to rehabilitation.

282. In *Petukhov v. Ukraine (no. 2)*, 2019, §§ 169-187 the Court held that there had been a violation of Article 3 of the Convention because the applicant had no prospect of release from or possibility of review of his life sentence. In particular, presidential clemency, the only procedure for mitigating life sentences in Ukraine, was not clearly formulated, nor did it have adequate procedural guarantees against abuse. Furthermore, the conditions of detention of life prisoners in Ukraine made it impossible for them to progress towards rehabilitation and for the authorities to therefore carry out a genuine review of their sentence (see also *Kupinskyy v. Ukraine*, 2023, §§ 47-56, where the Court found a violation of Article 7 of the Convention with respect to the conversion of a foreign reducible life sentence into an irreducible one due to unavailability of parole for life prisoners in Ukraine).

283. In *Marcello Viola v. Italy (no. 2)*, 2019, §§ 103-138, the Court found a violation of Article 3 of the Convention. It considered that the sentence of life imprisonment imposed on the applicant under the relevant provision for mafia-related offences restricted his prospects of release and the possibility of review of his sentence to an excessive degree. In particular, access to the possibility of release on licence or other adjustments of sentence was contingent on the applicant's "cooperation with the judicial authorities". The Court had doubts as to the free nature of a prisoner's choice to cooperate with the authorities and the appropriateness of equating a lack of cooperation with the prisoner's dangerousness to society. In fact, the lack of "cooperation with the judicial authorities" gave rise to an irrebuttable presumption of dangerousness which deprived the applicant of any realistic prospect of release. It was thus impossible for the applicant to demonstrate that his detention was no longer justified on legitimate penological grounds: by continuing to equate a lack of cooperation with an irrebuttable presumption of dangerousness to society, the regime in place effectively assessed the person's dangerousness by reference to the time when the offence had been committed, instead of taking account of the reintegration process and any progress the person had made since being convicted. This irrebuttable presumption effectively prevented the competent court from examining the application for release on licence and from ascertaining whether the person concerned had, in the course of his her detention, changed and made progress towards rehabilitation to such an extent that his or her detention was no longer justified on penological grounds. The court's involvement was limited to finding that the conditions of cooperation had not been met, and it could not assess the prisoner's individual history and his or her progress towards rehabilitation.

284. In this case, the Court also indicated under Article 46 of the Convention that the State should undertake a reform of the life imprisonment regime, preferably by introducing legislation, in order to guarantee the possibility to review the sentence. This should allow the authorities to determine whether, in the course of his or her sentence, the prisoner had changed and made progress towards rehabilitation, to the extent that his or her detention was no longer justified on legitimate penological grounds, while enabling the convicted prison to know what he or she had to do in order to be considered for release and what conditions were attached. The Court noted that the severing of ties with Mafia circles could be expressed in ways other than cooperation with the judicial authorities and the automatic mechanism provided for under the current legislation. Nevertheless, the Court specified that the possibility of applying for release did not necessarily prevent the authorities from rejecting the application if the person concerned continued to pose a danger to society.

285. In *Medvid v. Ukraine*, 2024, §§ 51-61, the Court examined a two-stage review mechanism for life sentences. Under this mechanism, a life sentence became eligible for review after 15 years, with the possibility of commutation to a fixed-term sentence ranging from 15 to 20 years, commencing from the date of commutation. Additionally, prisoners could qualify for early release after serving at least 26 years and 3 months. The Court found this framework consistent with its established Article 3 case-law, as it provided a genuine prospect of release and review from the date of sentencing. However, it distinguished between imprisonment served before and after the enactment of the new legislation introducing this Article 3-compliant mechanism, finding that the earlier period violated Article 3 due to the uncertainty faced by life prisoners at that time.

D. Detainees in the context of armed conflict

286. In *Georgia v. Russia (II)* [GC], 2021, §§ 235, 242-252, 267 and 272-281, the Court dealt with the issue of conditions of detention of Georgian civilians and prisoners of war by the Russian and/or South Ossetian forces (whose actions were attributable to the Russian authorities) following a military conflict in Georgia. The Court found that in this context there was no conflict between Article 3 of the Convention and international humanitarian law, which provide in a general way that detainees (civilians and prisoners of war) are to be treated humanely and detained in decent conditions.

287. On the facts of the case, with respect to the detained civilians, the Court found a violation of Article 3 in relation, in particular, to a lack of personal space in the detention centres, mixing of men and women, insufficient bedding, and lack of basic health and sanitary conditions. Moreover, the Court noted that the detainees were subjected to vexatious and humiliating treatment by the guards: they were frequently insulted and had sometimes received blows, such as on their arrival at the detention centre, and had also been forced to clean the streets and collect corpses. As regards the prisoners of war, the Court stressed that they had a special protected status under international humanitarian law, which had not been respected in the circumstances of the case as they had been subjected to different forms of ill-treatment amounting to torture.

E. Other special categories of detainees

288. In *W.W. v. Poland*, 2024, §§ 91-95 the Court found a violation of Article 8 of the Convention regarding the refusal to allow a transgender person to continue hormone therapy in prison – which had earlier been granted to her in another prison – and instead obliging her to undergo further medical assessments. The Court considered that the impugned decision touched on the applicant's freedom to define her gender identity, one of the most basic essentials of self-determination. In the case at issue, there were strong elements before the domestic authorities indicating that hormone therapy was an appropriate medical treatment for the applicant's state of health with a beneficial effect on her. Thus, a disproportionate burden was placed on the applicant to prove the necessity of the prescribed medical treatment by undergoing an additional medical consultation. The Court also noted

that the applicant was particularly vulnerable as an imprisoned transgender person undergoing a gender reassignment procedure, thus requiring enhanced protection from the authorities.

VIII. Prisoners' rights in judicial proceedings

Article 6 of the Convention

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ...

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;"

Article 34 of the Convention

"The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

A. Access to legal advice

289. Prompt access to a lawyer constitutes an important counterweight to the vulnerability of persons in custody, provides a fundamental safeguard against coercion and ill-treatment, and contributes to the prevention of miscarriages of justice and the fulfilment of the aims of a fair trial under Article 6 of the Convention (*Salduz v. Turkey* [GC], 2008, §§ 53-54; *Ibrahim and Others v. the United Kingdom* [GC], 2016, § 255). From the perspective of the right to a fair trial, such right must be granted to everyone "charged with a criminal offence". The right of access to a lawyer may be restricted if there are compelling reasons justifying such a restriction and if that restriction has not caused prejudice to the overall fairness of the proceedings.[36]

290. The authorities must ensure confidentiality of communication between a prisoner and his or her lawyer, which may extend to other legal representatives (*A.B. v. the Netherlands*, 2002, § 86). Thus, for instance, the Court has found a violation of Article 8 of the Convention as regardsthe inspection of a lawyer's documents by prison staff before and after meeting his client in prison in the absence of any suspicion of wrongdoing and in a situation where such inspection was not regulated by a clear and detailed framework or safeguards against possible abuse or arbitrariness (*Namazli v. Azerbaijan*,-2024, §§ 42-54).

291. Moreover, the Court considered that, as a rule, correspondence between an actual or prospective applicant and his or her representative before the Court should be privileged (*Yefimenko v. Russia*, 2013, § 144).

36. See further, Guide on Article 6 (criminal limb) of the European Convention on Human Rights.

292. The Court has recognised that some measure of control over prisoners' correspondence is called for and is not of itself incompatible with the Convention, regard being paid to the ordinary and reasonable requirements of imprisonment (*Campbell v. the United Kingdom*, 1992, § 45).

293. However, according to the Court's case-law, any person who wishes to consult a lawyer should be free to do so under conditions which favour full and uninhibited discussion. For that reason the lawyer-client relationship is, in principle, privileged. The Court has many times stressed the importance of a prisoner's right to communicate with counsel out of earshot of the prison authority. By analogy, the same applies to the authorities involved in the proceedings against him. Indeed, if a lawyer were unable to confer with his client without such surveillance and receive confidential instructions from him, his assistance would lose much of its usefulness, whereas the Convention is intended to guarantee rights that are practical and effective. It is not in keeping with the principles of confidentiality and professional privilege attaching to relations between a lawyer and his client if their correspondence is susceptible to routine scrutiny by individuals or authorities who may have a direct interest in the subject matter contained therein. In view of these principles, the Court held that the reading of a prisoner's mail to and from a lawyer should only be permitted in exceptional circumstances when the authorities have reasonable cause to believe that the privilege is being abused in that the contents of the letter endanger prison security or the safety of others or are otherwise of a criminal nature. What may be regarded as "reasonable cause" will depend on all the circumstances but it presupposes the existence of facts or information which would satisfy an objective observer that the privileged channel of communication was being abused (*Campbell v. the United Kingdom*, 1992, §§ 46-48; *Piechowicz v. Poland*, 2012, § 239).

294. In *Canavcı and Others v. Türkiye*, 2023, §§ 91-109, in relation to the monitoring and recording, including by means of technical devices of the prisoners' meetings with their lawyers, the Court found a violation of Article 8 on the grounds that the discretion enjoyed by the public prosecutors in imposing restrictions on the applicants' communication with their lawyers was not subject to any conditions, that the scope of that discretion and the manner of its exercise were not defined and that no other specific guarantees were provided in that regard. In these circumstances, the Court considered that the adoption of the impugned measures against the applicants, although enforced for a limited period and during the state of emergency in Türkiye, was liable to be arbitrary and incompatible with the requirement of lawfulness.

B. Effective participation in domestic judicial proceedings

295. In the context of criminal proceedings, as a matter of principle, prisoners should enjoy all the guarantees of a fair trial for which Article 6 of the Convention.[37] However, in some instances, their effective participation in the proceedings may include the need to take further positive measures by the authorities allowing prisoners to prepare for the case properly (*Rook v. Germany*, 2019, § 65, where the applicant was allowed to inspect the relevant electronic documents in prison together with his lawyer).

296. In a situation where an accused had been detained, transported and confined at the courthouse in extremely cramped conditions, where he was subjected to such overcrowding that he could not read or write, and where he did not have adequate access to natural light and air or appropriate catering arrangements, the Court considered that he could not prepare for his case properly and effectively participate in the proceedings, as required under Article 6 of the Convention. The Court stressed that such a situation undoubtedly impaired his faculty for concentration and intense mental application in the hours immediately preceding the court hearings, which could not be alleviated by the fact that he was assisted by a team of professional attorneys (*Moiseyev v. Russia*, 2008, § 222).

37. See further, Guide on Article 6 (criminal limb) of the European Convention on Human Rights.

297. Moreover, measures of confinement of prisoners in the courtroom may affect the fairness of a hearing guaranteed by Article 6 of the Convention, in particular they may have an impact on the exercise of an accused's rights to participate effectively in the proceedings and to receive practical and effective legal assistance (*Svinarenko and Slyadnev v. Russia* [GC], 2014, § 134, with further references). It is therefore incumbent on the domestic courts to choose the most appropriate security arrangement for a given case, taking into account the interests of administration of justice, the appearance of the proceedings as fair, and the presumption of innocence; they must at the same time secure the rights of the accused to participate effectively in the proceedings and to receive practical and effective legal assistance (*Yaroslav Belousov v. Russia*, 2016, § 152).

298. Thus, for instance, where an applicant was confined in an overcrowded glass cabin in the courtroom in breach of Article 3 of the Convention, the Court found that it would be difficult to reconcile such degrading treatment with the notion of a fair hearing, regard being had to the importance of equality of arms, the presumption of innocence, and the confidence which the courts in a democratic society must inspire in the public, above all in the accused (*Yaroslav Belousov v. Russia*, 2016, §§ 149-150). Moreover, even where a particular measure of confinement in the courtroom does not in itself contravene Article 3, it may still undermine an accused's effective participation in the proceedings. In *Yaroslav Belousov v. Russia*, 2016, §§ 151-153, placement of an accused in a glass cabin in the courtroom, which was applied as a matter of routine, prevented him from having confidential exchanges with his lawyer and to handle documents or take notes. As this situation was not recognised and addressed by the relevant court, the Court found a violation of Article 6 §§ 1 and 3 (b) and (c) of the Convention.

299. As regards prisoners' participation in civil proceedings,[38] the Court has recognised that in the context of proceedings concerning the prison context there may be practical and policy reasons for establishing simplified procedures to deal with various issues that may come before the relevant authorities. The Court also does not rule out that a simplified procedure might be conducted *via* written proceedings provided that they comply with the principles of a fair trial as guaranteed by Article 6 § 1 of the Convention. However, even under such a procedure, parties must at least have the opportunity of requesting a public hearing, even though the court may refuse the application and hold the hearing in private (*Altay v. Turkey (no. 2)*, 2019, § 77).

300. Moreover, the Court has held that representation may be an appropriate solution in cases where a party cannot appear in person before a civil court. Given the obvious difficulties involved in transporting detained persons from one location to another, the Court can in principle accept that in cases where the claim is not based on the plaintiff's personal experiences, representation of the detainee by an advocate would not be in breach of the principle of equality of arms. To that end, the Court must examine whether the applicant's submissions in person would have been "an important part of the plaintiff's presentation of the case and virtually the only way to ensure adversarial proceedings" (*Margaretić v. Croatia*, 2014, § 128, with further references).

301. Thus, for instance, in *Margaretić*, § 132, where the applicant was detained and could not appear in person before the court, the Court found no violation of Article 6 § 1 of the Convention. It noted, in particular, that the applicant's claim did not depend on the details of his personal experience but rather on the resolution of matters of legal nature and that he was given a reasonable opportunity to present his case effectively through a representative.

302. By contrast, in *Altay v. Turkey (no. 2)*, 2019, §§ 79-82, the Court noted that in the applicant's case no oral hearing had been held at any stage of the domestic proceedings although the case concerned factual and legal issues. Under domestic legislation the proceedings had been carried out on the basis of the case file and neither the applicant nor his chosen representative had been able to attend their sittings. The Court therefore found a violation of Article 6 § 1 of the Convention.

38. See further, Guide on Article 6 (civil limb) of the European Convention on Human Rights.

303. In *Wick v. Germany*, 2024, § 102, the applicant was unable to obtain a court decision on the merits of his actions against the application of measures of a special prison regime (separation and video surveillance) because he was constantly transferred and the domestic courts considered that those actions had become moot after his transfer. The Court found that that approach of the domestic courts unduly restricted the applicant's right of access to a court under Article 6 § 1 of the Convention.

C. Communication with the Court

304. As regards prisoners' communication with the Court, it is important to note that Article 34 of the Convention contains an undertaking not to hinder the effective exercise of the right of individual application before the Court, which precludes any interference with the individual's right to present and pursue his complaint before the Court effectively (*Cano Moya v. Spain*, 2016, § 43, with further references).

305. In this connection, the Court has stressed that it is of the utmost importance for the effective operation of the system of individual petition, guaranteed by Article 34 of the Convention, that applicants or potential applicants should be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. In this context, "pressure" includes not only direct coercion and flagrant acts of intimidation, but also other improper indirect acts or contacts designed to dissuade or discourage applicants from pursuing a Convention complaint (*Chaykovskiy v. Ukraine*, 2009, § 85).

306. The Court has also emphasised the importance of respecting the confidentiality of the Court's correspondence with applicants since it may concern allegations against prison authorities or prison officials. The opening of letters from the Court or addressed to it, with or without reading their contents, undoubtedly gives rise to the possibility that it may conceivably, on occasion, also create the risk of reprisals by prison staff against the prisoner concerned. The opening of letters by prison authorities can have an intimidating effect on applicants and therefore hinder them in bringing their cases to the Court (*Klyakhin v. Russia*, 2004, §§ 118-119). Moreover, withholding certain enclosures from correspondence addressed to applicants from the Court may deprive them of obtaining information essential for the effective pursuance of their applications (*Chaykovskiy v. Ukraine*, 2009, § 87).

307. Although the Court has found that the obligation not to hinder the right of individual petition does not automatically mean that the State has a duty to provide applicants with copies of all or any desired documents or to furnish them with the technical facilities of their choice to make their own copies (*Kornakovs v. Latvia*, 2006, §§ 171-174), the Court has also established that Article 34 of the Convention may impose on State authorities an obligation to provide copies of documents to applicants who find themselves in situations of particular vulnerability and dependence and who are unable to obtain the documents needed for their files without State support (*Naydyon v. Ukraine*, 2010, § 63; *Cano Moya v. Spain*, 2016, § 50). Moreover, in some instances, the refusal of the prison administration to supply the applicant with the envelopes, stamps and writing paper necessary for his correspondence with the Court may constitute a failure by the respondent State to comply with its positive obligation to ensure effective observance of the applicant's right to respect for his correspondence (*Cotleţ v. Romania*, 2003, §§ 60-65).

308. Similarly, in some instances, the exercise of an applicant's right to individual application in a concrete and effective manner may imply the necessity for the respondent State to undertake positive measures, such as appointing a lawyer to the applicant under a legal-aid scheme and ensuring that the thus appointed lawyer fulfils the duties in a professional manner and to the best of his/her ability (*Feilazoo v. Malta*, 2021, §§ 125-132).

IX. Freedom of thought, conscience and religion

Article 9 of the Convention

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

309. The fact that prisoners in general continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention – save for the right to liberty in case of a lawful detention – has particular implications on prisoners' right to practise their religion. Thus, a prisoner's inability to participate in religious services amounts to an interference with his or her "freedom to manifest his [or her] religion or belief" under Article 9 of the Convention (*Poltoratskiy v. Ukraine*, 2003, §§ 167; *Moroz v. Ukraine*, 2017, § 105). In this connection, while the Court has recognised the importance of prison discipline, it stressed that a formalistic approach restricting the possibility to manifest religious belief on the grounds of discipline was inacceptable, in particular where it palpably disregards the prisoner's individual situation and does not take into account the requirement of striking a fair balance between the competing private and public interests (*Korostelev v. Russia*, 2020, § 59; see also *Abdullah Yalçın v. Turkey (no. 2)*, 2022, § 32, concerning the importance of an individualised risk assessment).

310. On the other hand, the Court has held that being required to pray, read religious literature and to meditate in the presence of others is an inconvenience which is almost inescapable in prisons but which does not go against the very essence of the freedom to manifest one's religion (*Kovaļkovs v. Latvia* (dec.), 2012, § 67). Similarly, a prisoner's inability to use certain objects in religious services which are not essential for manifesting a prisoner's religion and which might disturb other prisoners is a proportionate response to the necessity to protect the rights and freedoms of others within the meaning of Article 9 § 2 of the Convention (*ibid.*, § 68). The Court has also held that, as a general rule, Article 9 grants prisoners neither the right to proselytise in the institution where they are being held nor the right to manifest their religion outside that institution (*J.L. v. Finland* (dec.), 2000). Moreover, Article 9 affords prisoners neither the right to be recognised as a "political prisoner" or to be treated as such (*McFeeley and Others v. the United Kingdom*, 1980).

311. In the Court's case-law, an issue concerning prisoners' rights under Article 9 may arise with regard to the following situations:[39]

- inability of prisoners to receive visits from a priest or pastor (*Mozer v. the Republic of Moldova and Russia* [GC], 2016, § 201);
- refusal by the competent authorities to authorise the applicants, who had been remanded in custody, to take part in religious celebrations and the confiscation of religious books and certain objects (*Moroz v. Ukraine*, 2017, §§ 104-109);
- refusal of the prison administration, on Covid-19 grounds, of permission for a prisoner to attend church services outside prison which subsequently offered online access to religious support (*Constantin-Lucian Spînu v. Romania*,2022);

39. See further, Guide on Article 9 of the European Convention on Human Rights.

- refusal to allocate a room in a high-security prison for congregational prayers (*Abdullah Yalçın v. Turkey (no. 2)*, 2022, §§ 28-30);
- refusal by the prison administration to take into account a prisoner's specific nutritional requirements (*Jakóbski v. Poland*, 2010, §§ 48-55);[40]
- disciplinary punishment imposed for manifestation of religious belief (*Korostelev v. Russia*, 2020, § 50);
- overly rigid rules for ascertaining change in the prisoners' religious affiliations and lack of coordination between different prison establishment in recording facts relating to the prisoners' religious affiliations (*Saran v. Romania*, 2020; *Neagu v. Romania*, 2020; see, by contrast, *Mariș v. Romania* (dec.), 2020, where an erroneous entry of a prisoner's religion into his prison file in no way affected his right to manifest his religious belief).

312. The above principles concerning prisoners' rights under Article 9 are accordingly applicable in the context of house arrest (*Süveges v. Hungary*, 2016, §§ 151-157) and immigration detention (*C.D. and Others v. Greece*, 2013, §§ 78-79).

313. In this context, it should also be noted that in the case of a person involuntarily detained in a prison hospital who was pressured to "correct" her beliefs and practices, the Court found a breach of Article 9 of the Convention. The Court relied on the principles according to which freedom to manifest one's religious beliefs comprises also a negative aspect, namely the right of individuals not to be required to reveal their faith or religious beliefs and not to be compelled to assume a stance from which it may be inferred whether or not they have such beliefs. Consequently, State authorities are not entitled to intervene in the sphere of an individual's freedom of conscience and to seek to discover his or her religious beliefs or oblige him or her to disclose such beliefs. The Court also emphasised the primary importance of the right to freedom of thought, conscience and religion and the fact that a State cannot dictate what a person believes or take coercive steps to make him change his beliefs (*Mockutė v. Lithuania*, 2018, §§ 119 and 121-131).

X. Freedom of expression

Article 10 of the Convention

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

314. According to the Court's case-law, freedom of expression does not stop at the prison gate. There is no question that a person forfeits his or her right to freedom of expression under Article 10 of the Convention merely because of his or her status as a prisoner. Prisoners continue to enjoy the right to freedom of expression regardless of their detention (*Yankov v. Bulgaria*, 2003, § 126; *Donaldson v. the United Kingdom* (dec.), 2011, §§ 18-19). Thus, for instance, the Court found that the prison

40. See section "Nutrition" of this Guide.

authorities' refusal to deliver to the prisoners specified editions of a newspaper amounted to an interference with the applicants' right to receive information and ideas under Article 10 (*Mesut Yurtsever and Others v. Turkey*, 2015, § 102; *Mehmet Çiftci v. Turkey*, §§ 36-46; see, from the perspective of Article 8, *Mirgadirov v. Azerbaijan and Turkey*, 2020, § 115, and *Chocholáč v. Slovakia*, 2022, §§ 35 and 52-56, concerning access to pornographic material in prison).

315. Consistently, any restrictions on a prisoner's freedom of expression must be justified within the meaning of Article 10 § 2 of the Convention, although such justification may well be found in considerations of security, in particular the prevention of crime and disorder, which inevitably flow from the circumstances of imprisonment (*Donaldson v. the United Kingdom* (dec.)). Thus, for instance, where the authorities withheld periodicals sent to prisoners by post without going through the prison administration, and in the absence of satisfactory reasons for their decisions relating to the impugned content or the relevant domestic criteria for the prisoners' access to publications, the Court found a violation of Article 3 of the Convention (*Osman and Altay v. Türkiye*, 2023, §§ 44-60).

316. The principle of proportionality requires a discernible and sufficient link between the sanction and the conduct and circumstances of the individual concerned. In this context, an independent court, applying an adversarial procedure, provides a strong safeguard against arbitrariness. In any event, the justification for an interference with a prisoner's freedom of expression cannot be based solely on what would offend public opinion (*Nilsen v. the United Kingdom* (dec.), 2008, §§ 49-50).

317. Moreover, some control over the content of prisoners' communication outside the prison is part of the ordinary and reasonable requirements of imprisonment and is not, in principle, incompatible with Article 10 of the Convention (*Nilsen v. the United Kingdom* (dec.), 2008, § 51).[41]

318. In *Yankov v. Bulgaria*, 2003, §§ 130-145, the Court found that punishing a prisoner with seven days' confinement in a disciplinary cell for having made moderately offensive statements against the judicial and penitentiary systems in a personal manuscript amounted to an interference with his right to freedom of expression. The Court found it inacceptable that the factual statements in the applicant's manuscript called for his disciplinary punishment. It stressed that the authorities should have shown restraint in their reaction, in particular considering that the remarks had never been circulated among other detainees and there was no immediate danger of dissemination of the manuscript, even if it had been taken out of the prison, as it was not in a form ready for publication. In sum, the Court found that a fair balance had not been struck between the applicant's freedom of expression, on the one hand, and the legitimate aim of protecting the reputation of civil servants and maintaining the authority of the judiciary, on the other, which breached the applicant's right under Article 10 of the Convention (see also, *Skałka v. Poland*, 2003, concerning offensive statements made by a prisoner against a judge in a letter to the president of the court).

319. By contrast, in *Nilsen v. the United Kingdom*, 2008, §§ 51-58, the Court found that the confiscation of an autobiographical manuscript graphically describing a prisoner's crimes was justifiable for the protection of health or morals and the protection of the reputation or rights of others within the meaning of Article 10 of the Convention. In this respect, the Court had a particular regard to the impact on the families and surviving victims. In the Court's view, that the perpetrator of the crimes of killing and mutilation should seek to publish for personal satisfaction his own account of such crimes was an affront to human dignity, one of the fundamental values underlying the Convention. Moreover, the Court stressed, as regards the sense of outrage amongst the public, that there was a substantive and substantial difference between the perpetrator of grave, depraved and serious crime publishing his own detailed autobiographical description of those offences and a third party writing about the crimes and the offender, for which reason the fact that an account of the killings was already in a public domain was not sufficient to justify the applicant's request for the publication of his manuscript.

41. See section "Communication Protection of different means of communication" of this Guide.

320. On the other hand, in *Zayidov v. Azerbaijan (no. 2)*, 2022, the prison authorities seized and destroyed 278 pages of a manuscript written by a journalist in detention where he reflected his experiences and thoughts on his ongoing detention, as well as on political developments in the country and his memories of certain events and personalities over the past twenty years of his life. The authorities considered that the manuscript contained indecent and insulting statements about the State leadership and current government officials, and insulting words directed at the detention facility staff. The Court considered such an action by the authorities amounted to an interference with the applicant's freedom of expression under Article 10. This interference was based on the Internal Disciplinary Rules, which did not provide sufficient procedural safeguards against arbitrary decisions by the prison administration and essentially left the administration unfettered power in the assessment of the manuscript's content. The Court considered that such a legal regulation was incompatible with the "prescribed by law" requirement under Article 10 § 2 of the Convention.

321. In *Bidart v. France*, 2015, §§ 39-47, where part of a prisoner's release on licence was conditioned on his refraining from disseminating any work or audio-visual production authored or co-authored by him concerning, in whole or in part, the terrorist offence of which he had been convicted, the Court found that his freedom of expression under Article 10 of the Convention has not been unjustifiably interfered with. The Court had regard, in particular, to the rights of the victims and the sensitive context concerning the terrorism offences for which the applicant had been convicted. It also laid emphasis on the fact that the interference in question was subjected to judicial review.

322. In *Donaldson v. the United Kingdom*, 2011, §§ 20-33, the Court accepted that a prohibition of the display of vestimentary symbols (Easter lily) amounted to an interference with the prisoner's freedom of expression under Article 10 of the Convention. However, in the Court's view, such interference clearly pursued the legitimate aims of preventing disorder and crime and of protecting the rights of others. As to the proportionality of the measure, the Court stressed that States enjoyed a wide margin of appreciation in assessing which emblems could potentially inflame existing tensions, since cultural and political emblems had many levels of meaning which could only be fully understood by those knowing the historical background. The Easter lily was considered a symbol inextricably linked to the community conflict in question as it was worn in the memory of those republicans killed in Northern Ireland. It was therefore one of the many emblems deemed inappropriate in the workplace and in the communal areas of Northern Ireland's prisons as it was likely to be considered offensive and thus to spark violence and disorder if worn publicly. In the applicant's case, the interference complained of was relatively narrow since it applied only to serving prisoners when they were outside their cells, and in the circumstances, was proportionate to the legitimate aim of preventing disorder. The Court declared the applicant's complaint inadmissible as manifestly ill-founded.

323. In *Mehmet Çiftçi and Suat İncedere v. Turkey*, 2022, the Court found that a disciplinary sanction (restriction on communication for one month) for the singing of songs and recitation of poetry to commemorate a historic event (in which some prisoners had been killed and injured in the context of a security operation in prison) amounted to a disproportionate interference with the applicants' freedom of expression. The Court found, in particular, that the disciplinary sanction in question, although being moderate, had not been properly justified by the domestic authorities, which had failed to conduct a proportionality assessment of the relevant interests involved.

XI. Prison work

Article 4 of the Convention

"...

2. No one shall be required to perform forced or compulsory labour.

3. For the purpose of this Article the term 'forced or compulsory labour' shall not include:

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of [the] Convention or during conditional release from such detention;

..."

324. The Court has noted in its case-law that prison work differs from the work performed by ordinary employees in many aspects. It serves the primary aim of rehabilitation and resocialisation. Working hours, remuneration and the use of part of that remuneration as a maintenance contribution reflect the particular prison context (*Stummer v. Austria* [GC], 2011, § 93). Moreover, as authorities are responsible for the well-being of prisoners, necessary safety precautions need to be taken when prison work is performed (*Gorgiev v. the former Yugoslav Republic of Macedonia*, 2012, § 68).

325. With regard to work which prisoners may be required to perform, in one of its early judgments under Article 4 of the Convention[42] the Court had to consider the work a recidivist prisoner was required to perform, his release was conditional on accumulating a certain amount of savings. While accepting that the work at issue was obligatory, the Court found no violation of Article 4 of the Convention on the ground that the requirements of Article 4 § 3 (a) were met. In the Court's view, the work required "did not go beyond what is 'ordinary' in this context since it was calculated to assist him in reintegrating himself into society and had as its legal basis provisions which found an equivalent in certain other member States of the Council of Europe" (*Van Droogenbroeck v. Belgium*, 1982, § 59).

326. In respect of prisoners' remuneration and social cover, in *Stummer v. Austria* [GC], 2011, § 122, the Court referred to the decision of the Commission in *Twenty-One Detained Persons v. Germany*, 1968, Commission decision, in which the applicants, relying on Article 4, complained that they had been refused adequate remuneration for the work which they had to perform during their detention and that no contributions under the social security system had been made for them by the prison authorities in respect of the work done. The Commission found their complaint inadmissible as being manifestly ill-founded. It noted that Article 4 did not contain any provision concerning the remuneration of prisoners for their work. Moreover, it referred to its consistent case-law, which had rejected as inadmissible any applications by prisoners claiming higher payment for their work or claiming the right to be covered by social security systems.

327. The Court had to examine a similar complaint from a somewhat different angle in *Puzinas v. Lithuania* (dec.), 2005. The applicant complained, under Articles 4 and 14 of the Convention and Article 1 of Protocol No. 1, that the domestic social security legislation was inadequate in that it did not permit prisoners to claim a pension or any other social benefits for prison work. The Court examined the complaint in the first place under Article 1 of Protocol No. 1, noting that it was undisputed that the applicant was not entitled to any pension or social benefits under the relevant domestic legislation. Finding that the applicant therefore had no possessions within the meaning of Article 1 of Protocol No. 1 regarding his future entitlement to or the amount of a pension, the Court rejected the complaint under this provision, as well as under the other provisions relied on, as being

42. See further, Guide on Article 4 of the European Convention on Human Rights.

incompatible *ratione materiae* with the provisions of the Convention (see also *Sili v. Ukraine*, 2021, §§ 58-64).

328. In *Stummer v. Austria* [GC], 2011, §§ 124-134, where the applicant argued that European standards had changed to such an extent that prison work without affiliation to the old-age pension system could no longer be regarded as work required to be done in the ordinary course of detention, the Court did not consider that such work amounted to "forced or compulsory labour" under Article 4. The Court noted that domestic law reflected the development of European law in that all prisoners were provided with health and accident care and working prisoners were affiliated to the unemployment-insurance scheme but not to the old-age pension system. However, there was no sufficient consensus on the issue of the affiliation of working prisoners to the old-age pension system. For the Court, while the 2006 European Prison Rules reflected an evolving trend, this could not be translated into an obligation under the Convention. The Court did not find a basis for the interpretation of Article 4 advocated by the applicant and concluded that the obligatory work he had performed as a prisoner without being affiliated to the old-age pension system had to be regarded as "work required to be done in the ordinary course of detention" within the meaning of Article 4 § 3 (a) of the Convention.

329. Similarly, in *Meier v. Switzerland*, 2016, §§ 68-80, the Court did not consider that a duty of a prisoner to perform prison work after retirement age amounted to "forced or compulsory labour" but rather to a "work required to be done in the ordinary course of detention", within the meaning of Article 4 § 3 (a) of the Convention. The Court stressed that a prisoner's duty to continue working even after retirement age could be considered to comply with the aim of reducing the harmful effects of imprisonment. Appropriate and reasonable work could help structure everyday life and preserve useful activity, goals which were important to the well-being of a long-term prisoner. In the case at issue, as regards the nature of the work carried out by prisoners who have reached retirement age, domestic law provided exemptions from work for certain categories of prisoners depending on their fitness for work and state of health. The work assigned to the applicant appeared to comply with these guidelines as he was only required to take part in supervised work, including colouring mandalas, cleaning his cell and carving driftwood sculptures. For the Court, such activities were wholly appropriate to his age and physical capacities. Furthermore, he only worked about three hours a day, was integrated in the "dependant and retired persons wing" and was paid for his work. The Court also laid emphasis on the lack of a sufficient consensus among member States on requiring prisoners to work after reaching retirement age which meant that the national authorities enjoyed a wide margin of appreciation in this respect. Moreover, in the Court's view, the European Prison Rules were not necessarily to be interpreted as completely prohibiting member States from requiring prisoners who had reached retirement age to work.

330. Lastly, in *Yakut Republican Trade-Union Federation v. Russia*, §§ 29 and 39-48, the Court examined the statutory restriction on inmate unionisation from the perspective of Article 11 of the Convention. The Court found that Article 11 § 1 protected trade-union freedom as one form of or a special aspect of freedom of association and that its paragraph 2 did not exclude any occupational group from the scope of that Article. Thus, Article 11 applied in the circumstances of the present case. However, on the merits, the Court noted that prison work could not be equated with ordinary employment and that trade-union freedom might be difficult to exercise in detention. Moreover, on the basis of a comparative survey, the Court found that there was no sufficient European consensus to suggest that Article 11 guaranteed the right to inmate unionisation. The Court therefore found no violation of Article 11 of the Convention. However, it also stressed that the Convention was a "living instrument" and that developments in the field might at some point in future necessitate the extension of the trade-union freedom to working inmates, especially if they work for a private employer.

XII. Prisoners' property

Article 1 of Protocol No. 1 to the Convention

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

331. Article 1 of Protocol No. 1 guarantees in substance the right of property. Any interference with that right must comply with the principle of lawfulness and pursue a legitimate aim by means reasonably proportionate to the aim sought to be realised.[43]

332. In the context of interferences with prisoners' right freely to dispose of their property, including their earnings and savings, the Court stressed that that States have a wide margin of appreciation under Article 1 of Protocol No. 1 when it comes to general measures of economic or social strategy (*Michał Korgul v. Poland*, 2017, § 54). Thus, for instance, the Court has recognised that the obligation for prisoners to use half of their money to pay back their debt to the State was not disproportionate to the aim pursued (*Laduna v. Slovakia*, 2011, §§ 82-86).

333. The Court has also held that the national authorities could not be reproached for ensuring that a limited sum of money was deposited in a savings fund to be handed over to the applicant on his release from prison. In making that assessment, the Court had regard to the legitimate action of the State to use such schemes as it deems most appropriate for the reintegration of prisoners into society upon their release, including by securing for them a certain amount of money (*Michał Korgul v. Poland*, 2017, §§ 54-55). By contrast, in *Siemaszko and Olszyński v. Poland*, 2016, §§ 85-92, where the prisoners were obliged to save funds on an account bearing a lower interest rate than otherwise available on the open market, the Court found a violation of Article 1 of Protocol No. 1.

334. Article 1 of Protocol No. 1 also places an obligation on the authorities to keep temporarily seized items from a detainee with due care. In *Tendam v. Spain*, 2010, §§ 50-57, the applicant, after his release from detention, brought an action against the State on account of the damage to or disappearance of the items seized from him during the criminal proceedings. However, the national authorities dismissed the applicant's claim on the ground that he had not proved that the seized items had disappeared or been damaged. In those circumstances, the Court considered that the burden of proof regarding the missing or damaged items had remained with the judicial authorities, which had been responsible for looking after them throughout the duration of the seizure, and not with the applicant, who had been acquitted more than seven years after the items had been seized. Since, following the applicant's acquittal, the judicial authorities had not provided any justification for the disappearance of and damage to the seized items, they were liable for any losses resulting from the seizure. The domestic courts that had examined the claim had not taken into account the liability incurred by the judicial authorities or afforded the applicant an opportunity to obtain redress for the damage sustained. By refusing his claim for compensation, they had caused him to bear a disproportionate and excessive burden in violation of Article 1 of Protocol No. 1 of the Convention.

43. See further, Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights.

XIII. Education

Article 2 of Protocol No. 1 to the Convention

> "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

335. The Court has stated that while it is aware of the recommendations of the Committee of Ministers to the effect that educational facilities should be made available to all prisoners,[44] Article 2 of Protocol No. 1 does not place an obligation on Contracting States to organise educational facilities for prisoners where such facilities are not already in place. However, where the authorities refuse to a prisoner access to a pre-existing educational institution, an issue arises under Article 2 of Protocol No. 1. Any such limitation must be foreseeable, pursue a legitimate aim and be proportionate to that aim.[45] Although Article 2 of Protocol No. 1 does not impose a positive obligation to provide education in prison in all circumstances, where such a possibility is available it should not be subject to arbitrary and unreasonable restrictions (*Velyo Velev v. Bulgaria*, 2014, § 34; *Uzun v. Turkey* (dec.), 2020, §§ 25-34). On the other hand, where a prisoner abandons his or her studies or does not make a genuine request for access to education, he or she cannot complain of restrictions on his right to education (*Matiošaitis and Others v. Lithuania*, 2017, § 194; *Koureas and Others v. Greece*, 2018, §§ 96-99).

336. In *Velyo Velev v. Bulgaria*, 2014, §§ 34-42, concerning a remand prisoner's request for access to existing educational establishment in prison, which was rejected on the grounds that it was open only to convicted prisoners, the Government had relied on three different grounds to justify the applicant's exclusion from the school. As to their first argument that it was inappropriate for the applicant to attend school with convicted prisoners, the Court observed that the applicant did not have any objections and there was no evidence to show that remand prisoners would be harmed by attending school with convicted prisoners. Moreover, the Court did not consider the uncertainty of the length of the pre-trial detention to be a valid justification for exclusion from educational facilities. Finally, as regards the Government's third argument that the applicant risked being sentenced as a recidivist, so it would not be in the interests of the non-recidivist prisoners to attend school with him, the Court recalled that the applicant was entitled to the presumption of innocence and thus could not be classified as a recidivist. In the light of these considerations, and recognising the applicant's undoubted interest in completing his secondary education, the Court found that the refusal to enrol him in prison school had not been sufficiently foreseeable, had not pursued a legitimate aim and was not proportionate to that aim.

337. In *Mehmet Reşit Arslan and Orhan Bingöl v. Turkey*, 2019, §§ 51-53, the Court dealt with a situation where two sentenced prisoners submitted to the prison authorities a request to use audio-visual materials, computers and electronic devices with the aim of preparing for admission to university or pursuing their higher education. Domestic law allowed convicted prisoners to continue their studies in prison to the extent possible in view of the prison's resources. It also authorised the use of audio-visual training resources and computers, with Internet access, under supervision in rooms set aside for that purpose by the prison authorities in the context of rehabilitation programmes or training courses. That possibility constituted an indispensable material means to ensure the genuine exercise of the right to education, since it enabled the prisoners to prepare for examinations to be

44. Recommendation No. (89) 12 on education in prison; Recommendation Rec(2006) 2 on the European Prison Rules.
45. See further, Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights.

admitted to higher-education institutions and potentially to pursue their studies. In these circumstances, the Court found that the applicant's request fell within the scope of Article 2 of Protocol No. 1.

338. On the merits of the case, the Court found that the manner of regulating access to audiovisual training materials, computers and the Internet fell within the Contracting State's margin of appreciation. The prisons in the present case had the means to provide their inmates with the possibility afforded by the law. Moreover, no concrete justification for the lack of resources of the prisons in question had been put forward in the domestic proceedings or before the Court nor did the domestic authorities conduct an appropriate assessment of all the interests at stake or provide any justification for restricting the applicants' access to the use of the electronic material (*Mehmet Reşit Arslan and Orhan Bingöl v. Turkey*, 2019, §§ 60-72).

XIV. Right to vote

Article 3 of Protocol No. 1 to the Convention

> "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

339. Article 3 of Protocol No. 1 guarantees subjective rights, including the right to vote and to stand for election. The rights guaranteed by this Article are crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law. The right to vote is not a privilege. The presumption in a democratic State must be in favour of inclusion and the acceptance of universal suffrage as the basic principle (*Hirst v. the United Kingdom (no. 2)* [GC], 2005, §§ 57-58; *Scoppola v. Italy (no. 3)* [GC], 2012, § 82).

340. Nevertheless, the rights enshrined in Article 3 of Protocol No. 1 are not absolute. There is room for implied limitations and the Contracting States must be afforded a wide margin of appreciation in this sphere. However, it is for the Court to determine in the last resort whether the requirements of Article 3 of Protocol No. 1 have been complied with; it has to satisfy itself that the conditions do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate (*Anchugov and Gladkov v. Russia*, 2013, §§ 95-96).[46]

341. The Court has already addressed the issue of the disenfranchisement of convicted prisoners in many cases. In particular, in *Hirst v. the United Kingdom (no. 2)* [GC], 2005, §§ 70-71, it noted that there is no place under the Convention system, where tolerance and broadmindedness are the acknowledged hallmarks of a democratic society, for automatic disenfranchisement based purely on what might offend public opinion. According to the Court, this standard of tolerance does not prevent a democratic society from taking steps to protect itself against activities intended to destroy the rights or freedoms set forth in the Convention. Article 3 of Protocol No. 1, which enshrines the individual's capacity to influence the composition of the law-making power, does not therefore exclude that restrictions on electoral rights could be imposed on an individual who has, for example, seriously abused a public position or whose conduct threatened to undermine the rule of law or democratic foundations. The severe measure of disenfranchisement must not, however, be resorted to lightly and

46. See further, Guide on Article 3 of Protocol No. 1 to the European Convention on Human Rights.

the principle of proportionality requires a discernible and sufficient link between the sanction and the conduct and circumstances of the individual concerned.

342. The Court also considered that, since Contracting States had adopted a number of different ways of addressing the question, the Court must confine itself to determining whether the restriction affecting all convicted prisoners in custody exceeded any acceptable margin of appreciation, leaving it to the legislature to decide on the choice of means for securing the rights guaranteed by Article 3 of Protocol No. 1 (*Hirst v. the United Kingdom (no. 2)*, 2005, § 84; *Greens and M.T. v. the United Kingdom*, 2010, §§ 113-114).

343. In examining the particular circumstances of the case in *Hirst (no. 2)*, §§ 76-85, the Court considered that the legislation of the United Kingdom depriving all convicted prisoners serving sentences of the right to vote was a blunt instrument which stripped of their Convention right to vote a significant category of persons and did so in a way which was indiscriminate. It found that the provision imposed a blanket restriction on all convicted prisoners in prison. It applied automatically to such prisoners, irrespective of the length of their sentence and irrespective of the nature or gravity of their offence and their individual circumstances. The Court also noted that there was no substantive debate in Parliament on the continued justification in light of modern-day penal policy and of current human rights standards for maintaining such a general restriction on the right of prisoners to vote. The Court concluded that such a general, automatic and indiscriminate restriction on a vitally important Convention right must be seen as falling outside any acceptable margin of appreciation, however wide that margin might be, and as being incompatible with Article 3 of Protocol No. 1.

344. The principles set out in *Hirst (no. 2)*, were later reaffirmed in *Scoppola v. Italy (no. 3)* [GC], 2012, §§ 81-87. However, the Court found no violation of the Convention in the particular circumstances of this case. It observed that, under the domestic law, disenfranchisement was applied only in respect of certain offences against the State or the judicial system, or offences punishable by a term of imprisonment of three years or more, that is, those which the courts considered to warrant a particularly harsh sentence. The Court thus considered that the legal provisions in Italy defining the circumstances in which individuals might be deprived of the right to vote showed the legislature's concern to adjust the application of the measure to the particular circumstances of each case, taking into account such factors as the gravity of the offence committed and the conduct of the offender. As a result, the Italian system could not be said to have a general automatic and indiscriminate character, and therefore the Italian authorities had not overstepped the margin of appreciation afforded to them in that sphere (*ibid.*, § 106-110).

345. The *Hirst (no. 2)* principles have been also reaffirmed in a number of other cases against different States (for instance, *Kulinski and Sabev v. Bulgaria*, 2016, §§ 36-42). In particular, in *Frodl v. Austria*, 2010, §§ 27-36, the Court found that there had been a violation of Article 3 of Protocol No. 1 in relation to the disenfranchisement of prisoners serving a prison sentence of more than one year for offences committed with intent. In *Söyler v. Turkey*, 2013, §§ 32-47, the Court also found a violation of that provision concerning a far-reaching ban to voting which applied, not only to prisoners, but also to those on conditional release and to those who were given suspended sentences and therefore did not even serve a prison term (see also, *Murat Vural v. Turkey*, 2014, §§ 76-80).

346. In *Anchugov and Gladkov v. Russia*, 2013, §§ 101-112, the Court found a violation of Article 3 of Protocol No. 1 on the grounds that the applicants had been deprived of their right to vote in parliamentary elections regardless of the length of their sentence, of the nature or gravity of their offence or of their individual circumstances. However, as the ban was laid down in the Constitution, the Court stressed, as regards the implementation of the judgment, and in view of the complexity of amending the Constitution, that it was open to the domestic authorities to explore all possible ways to ensure compliance with the Convention, including through some form of political process or by interpreting the Constitution in harmony with the Convention.

347. In addition to the above circumstances, in *Mironescu v. Romania*, §§ 38-53, the Court dealt with a situation where the applicant was unable to vote in legislative elections due to the fact that he was serving a sentence in a prison situated outside the electoral constituency of his place of residence. On the basis of a comparative survey, the Court found the existence of a strong European consensus that prisoners in the applicant's situation would be allowed to exercise their right to vote. The Court also stressed that States must ensure that voter's particular circumstances are taken into account when organising the electoral system, which, however, had not been done in the present case. While the Court acknowledged that it was not its role to indicate to the respondent State what would be the best solution to allow prisoners in the applicant's situation to vote, it stressed that several different arrangements were possible and had already been put in place in other member States. Consequently, the State's task to secure the exercise of the right to vote to prisoners in the applicant's situation did not appear insurmountable. In these circumstances, the Court found a violation of Article 3 of Protocol No. 1 to the Convention.

348. In *Kalda v. Estonia (no. 2)*, 2022, despite the existence of a statutory blanket ban on voting by prisoners, the Court considered that the thorough assessment by domestic courts of the proportionality of the impact of the blanket ban on the particular applicant – life prisoner convicted of several serious offences – in circumstances where the domestic courts had also taken an overall critical stance against the blanket ban and referred extensively to the Convention and the Court's case-law, all suggested that the domestic authorities did not overstep their margin of appreciation in this context. The Court therefore did not find a violation of Article 3 of Protocol No. 1 to the Convention.

349. In *Myslihaka and Others v. Albania*, 2023, §§ 65-75, the Court found that a statutory voting ban preventing serving prisoners convicted of serious criminal offences from voting in parliamentary elections was not in breach of Article 3 of Protocol No. 1 to the Convention. It noted that the restriction was not general or universal and was limited to a specific list of offences affecting thus a restricted number of individuals. The application of the restriction was conditional on the nature and gravity of the offence committed and ending when prison sentence served. In the case at issue, there was a discernible and sufficient link between offences committed by the applicants and the withdrawal of their voting rights.

XV. Prohibition of discrimination

Article 14 of the Convention

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

350. In its case-law the Court has dealt with different complaints of prisoners concerning alleged discrimination in relation to the application of a particular prison regime or other aspects of their imprisonment, which lead to them being treated differently from some other categories of prisoner.

351. For instance, in *Kafkaris v. Cyprus* [GC], 2008, §§ 162-166), where the applicant complained, invoking Article 14 in conjunction with Articles 3, 5 and 7 of the Convention, about discriminatory treatment when comparing himself and other life prisoners released on the basis of a presidential pardon, the Court found no violation of Article 14. In particular, it stressed that bearing in mind the wide variety of factors taken into account in the exercise of the presidential discretionary powers, such as the nature of the offence and the public's confidence in the criminal-justice system, it could

not be said that the exercise of that discretion gave rise to an issue under Article 14. As regards the alleged discrimination between the applicant as a life prisoner, and other prisoners, the Court considered that, given the nature of a life sentence, the applicant could not claim to be in an analogous or relevantly similar position to other prisoners not serving life sentences.

352. In *Clift v. the United Kingdom*, 2010, §§ 73-79, the Court dealt with alleged discrimination related to differences in procedural requirements for early release depending on the length of sentence. In particular, the applicant, who served a prison sentence of more than fifteen years, in order to be granted early release needed to obtain a further approval by the relevant State authority, which was not required for those serving a prison sentence of less than fifteen years. The Court found that, where an early-release scheme applied differently to prisoners depending on the length of their sentences, there was a risk that, unless objectively justified, it would run counter to the need to ensure protection from arbitrary detention under Article 5. Accordingly, the applicant enjoyed "other status" for the purposes of Article 14. The Court also found that, as regards the issue of early release, the applicant could claim to be in an analogous position to long-term prisoners serving less than fifteen years and life prisoners. Lastly, the Court considered that the impugned difference in treatment lacked objective justification as the respondent State had failed to demonstrate how the additional approval required for certain groups of prisoners addressed concerns regarding the perceived higher risk posed by certain prisoners on release (see, by contrast, *Stott v. the United Kingdom*, 2023, §§ 94-109).

353. A combination of issues addressed in the *Kafkaris* and *Clift* cases arose in the case of *Khamtokhu and Aksenchik v. Russia* [GC], 2017, §§ 69-88, concerning alleged discrimination in provisions governing liability to life imprisonment. In particular, the applicants, who were both adult males serving life sentences, complained under Article 14 in conjunction with Article 5 of discriminatory treatment *vis-à-vis* other categories of convicts who were exempt from life imprisonment as a matter of law, namely women, persons under eighteen when the offence was committed or over sixty-five at the date of conviction.

354. In its assessment the Court firstly found that where national legislation exempted certain categories of convicted prisoners from life imprisonment, this fell within the ambit of Article 5 § 1 for the purposes of the applicability of Article 14 taken in conjunction with that provision. The Court also found that there was a difference in treatment between the applicants and the other categories of prisoners on grounds of sex and age. As to the justification of that difference in treatment concerning the applicants and juvenile offenders, the Court found that the exemption of juvenile offenders from life imprisonment was consonant with the approach common to the legal systems of all the Contracting States and with international standards. Concerning offenders aged sixty-five or over, the Court considered that there was an objective justification for the difference in treatment given that the requisite reducibility of a life sentence carried even greater weight for elderly offenders in order not to become a mere illusory possibility. As to the difference in treatment between men and women, the Court took note of different international standards and statistical data recognising the distinct needs of women offenders and showing a considerable difference between the total number of male and female prison inmates particularly in the context of life imprisonment. Moreover, the Court considered that since the delicate issues raised in the present case touched on areas where there was little common ground amongst the member States and, generally speaking, the law appeared to be in a transitional stage, a wide margin of appreciation had to be left to the authorities of each State. The Court also noted that while it would clearly be possible for the respondent State, in pursuit of its aim of promoting the principles of justice and humanity, to extend the exemption from life imprisonment to all categories of offenders, it was not required to do so under the Convention as currently interpreted by the Court. In sum, the Court was satisfied that there was a reasonable relationship of proportionality between the means employed and the legitimate aim pursued and that the impugned exemption did not constitute a prohibited difference in treatment within the meaning of Article 14 of the Convention.

355. On the other hand, in *Ēcis v. Latvia*, 2019, §§ 77-95, concerning blanket ban on prison leave (for attending a funeral) for a certain category of male prisoners in comparison to female prisoners who were legible for such a leave, the Court considered that there had been a violation of Article 14 in conjunction with Article 8 of the Convention. In particular, the Court found that in relation to the manner in which the applicable prison regime affected the restrictions on prisoners' family life, in particular, with regard to their right to prison leave on compassionate grounds, the applicant could claim to be in an analogous position to that of female prisoners convicted of the same or comparable offence.

356. As to the justification for the impugned difference in treatment, the Court stressed that providing for the distinctive needs of female prisoners, particularly in relation to maternity, in order to accomplish substantial gender equality should not be regarded as discriminatory. Accordingly, certain differences in the prison regimes that were applicable to men and women were acceptable and might even be necessary in order for substantive gender equality to be ensured. Nonetheless, within the context of the penitentiary system and prison regimes, a difference in treatment that was based on sex had to have a reasonable relationship of proportionality between the means employed and the aim sought. In the case at issue, the Court did not accept that the safety concerns justified such a difference in treatment. Moreover, it stressed that the rehabilitative aim of imprisonment applied irrespective of the prisoner's sex and that the maintenance of family ties was an essential means of aiding social reintegration and rehabilitation of all prisoners, regardless of their sex. Furthermore, prison leave was one of the means of facilitating social reintegration of all prisoners. Thus, a blanket ban for men to leave the prison, even for attending a funeral of a family member, was not conducive to the goal of ensuring that the distinctive needs of female prisoners were taken into account. The refusal to entertain the applicant's request to attend his father's funeral on the basis of the prison regime to which he was subjected owing to his sex had no objective and reasonable justification.

357. By contrast, in *Alexandru Enache v. Romania*, 2017, §§ 70-79, concerning a difference in treatment on the basis of legislation permitting deferral of prison sentence for mothers, but not fathers, of young children, the Court found no violation of Article 14 in conjunction with Article 8 of the Convention. The Court accepted that the applicant, as father of a small child, was in a comparable situation to any mother prisoner with a small child. It noted, however, that the impugned difference in treatment aimed at taking account of specific personal situations, including pregnancies in female prisoners and the period prior to the baby's first birthday, having regard, in particular, to the special bonds between mother and child during that period. In the specific sphere relevant to the present case, the Court considered that those considerations could provide a sufficient basis to justify the differential treatment of the applicant. Indeed, the Court stressed that motherhood has specific features which need to be taken into consideration, often by means of protective measures. International law provides that the adoption by States Parties of special measures to protect mothers and motherhood should not be considered as discriminatory. The same applies where the woman in question has been sentenced to imprisonment. Thus, the impugned difference in treatment did not lead to a prohibited discrimination within the meaning of Article 14 of the Convention.

358. Further, in *Chaldayev v. Russia*, 2019, §§ 76-83, the Court examined whether a difference of severity in regulations on visits to detainees between prisons and remand prisons (where the applicant was placed) was justified within the meaning of Article 14 in conjunction with Article 8 of the Convention. The Court found that the status of a detainee in a remand prison fell within the concept of "other status" under Article 14 of the Convention and that, from the perspective of the right to respect for private and family life, such detainees were in an analogous position to those in prisons. The Court also found that automatic restrictions on visits for such detainees flowing from the relevant legislation were not justified, particularly given their status of persons still not finally convicted of an offence. The Court thus found a violation of Article 14 in conjunction with Article 8 (see also *Laduna v. Slovakia*, 2011, and *Vool and Toomik v. Estonia*, 2022).

359. Similarly, in *Varnas v. Lithuania*, 2013, §§ 116-122, the Court found that a difference in treatment of remand prisoners compared to convicted prisoners as regards conjugal visits was not justified within the meaning of Article 14. The Court noted, in particular, that security considerations relating to any criminal family links were absent in the case at issue as regards the visits by the applicant's wife. The Court also did not accept the argument that a lack of appropriate facilities justified lack of access to conjugal visits. In sum, the Court found that the authorities had failed to provide reasonable and objective justification for the difference in treatment of remand prisoners compared to convicted prisoners and had thus acted in a discriminatory manner (see also, *Costel Gaciu v. Romania*, 2015, §§ 56-62).

360. The Court also found that, within the meaning of Article 14 in conjunction with Article 3 of the Convention, there was no justification of the difference in treatment of remand prisoners compared to convicted prisoners as regards the possibility of release when they are suffering from a terminal illness (*Gülay Çetin v. Turkey*, 2013, §§ 128-133).

361. By contrast, in *P.C. v. Ireland*, 2022, §§ 87-92 as regards allegations of discrimination against a convicted prisoner statutorily disqualified from old-age pension payments while incarcerated, the Court concluded that remand and convicted prisoners could not be regarded as being in a relevantly similar situation with respect to the continuance of the social security benefit at issue for the purposes of Article 14 taken in conjunction with Article 1 of Protocol No. 1. The Court noted, in particular, the different situation of convicted and remand prisoners most notably in relation to the fact that the status and situation of the former are characterised by certainty and finality, which is not the case for the latter, who stand accused in criminal proceedings and may always be acquitted. Thus, the Court expressed strong doubts that the subject-matter of the applicant's complaint – continuity of payment of a social benefit intended to cover the basic living costs of retired persons – could bring the two groups into an analogous position so as to permit the comparison for the purposes of Article 14 of the Convention.

362. Furthermore, in *Shelley v. the United Kingdom*, 2008, as regards the applicant's complaint that prisons were treated less favourably than those in the community as regards the needle-exchange programmes for drug users, the Court declared his complaint inadmissible as manifestly ill-founded. The Court was prepared to assume that prisoners could claim to be on the same footing as the community as regards the provision of health care. However, the difference in preventive policy applied in prisons and in the community fell within the State's margin of appreciation and could, as matters stood, be regarded as proportionate and supported by objective and reasonable justification, taking into account, in particular, the following: the absence of any specific guidance on the issue of needle-exchange programmes from the CPT; the fact that the risk of infection flowed primarily from the prisoners' own conduct; and the various policy considerations that had led the authorities to deal with the risk of infection through the provision of disinfectants and to approach the question of needle-exchange programmes with caution while monitoring their progress elsewhere.

363. On the other hand, in *Martzaklis and Others v. Greece*, 2015, §§ 67-75, concerning the separation and placement of HIV-positive prisoners in the prison psychiatric wing, the Court found a violation of Article 3 taken alone and in conjunction with Article 14 of the Convention. The Court could not criticise the prison authorities' initial intention to move the HIV-positive prisoners, including the applicants, to the prison hospital in order to provide them with a greater degree of comfort and regular supervision of their medical treatment. Their placement in the psychiatric wing had been justified by the need to improve their monitoring and treatment, protect them against infectious diseases, provide them with better meals and allow them longer exercise periods and access to their own kitchen and washrooms. Hence, although there had been a difference in treatment where they were concerned, it had pursued a "legitimate aim", namely to provide them with more favourable conditions of detention compared with ordinary prisoners. However, the applicants were simply HIV-positive rather than having full-blown Aids and, as such, did not need to be placed in isolation in order to prevent the spread of a disease or the infection of other inmates. Furthermore, the various

findings and comments made at domestic and international level corroborated the applicants' assertions concerning their detention.

364. By contrast, in *Bechi v. Romania*, 2024, §§ 56-65, the Court found that the placement of a HIV positive prisoner in prison hospital was necessitated by the particular circumstances characterising Romanian prisons as found by the CPT (severe overcrowding, poor material and hygienic conditions, a lack of medical confidentiality and high levels of prejudice against people living with HIV) and that his placement there was aimed at offering him greater comfort and regular follow-up treatment. In this connection, the Court stressed that any differential treatment vis-à-vis ordinary detainees was aimed at providing the applicant with better conditions tailored to his medical needs and well-being, which amounted to an objective and reasonable justification within the meaning of Article 14 of the Convention.

365. As regards the separation of different categories of prisoners, the case of *X v. Turkey*, 2012, §§ 51-58 concerned the holding of a homosexual prisoner in total isolation for more than eight months to protect him from fellow prisoners. The Court found a violation of Article 14 in conjunction with Article 3 of the Convention. The Court considered that, although the concerns of the prison administration to the effect that the applicant risked suffering harm if he remained in a standard cell with other inmates were not totally unfounded, they were not sufficient to justify a measure of total isolation from other prisoners. This is particularly true since the prison authorities had not performed a sufficient assessment of the risk for the applicant's safety. Because of his sexual orientation they had simply taken the view that he risked serious bodily harm. The applicant's total exclusion from prison life could thus not be regarded as justified.

366. Lastly, it should be noted that in *Stummer v. Austria* [GC], 2011, §§ 90-111, the Court examined an issue of alleged discrimination in relation to a refusal to take work performed in prison into account in the calculation of pension rights from the perspective of Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1. The Court found that, irrespective of the particular nature of the prison work,[47] as regards the need to provide for old age the applicant was in a relevantly similar situation to ordinary employees. However, the Court accepted that, as working prisoners often did not have the means to pay social-security contributions, the overall consistency of the old-age pension system had to be preserved and periods of work in prison could not be counted as qualifying or substitute periods compensating for times during which no contributions had been made. As to the proportionality of the difference in treatment, the Court noted that in the area of economic and social policy the States enjoyed a wide margin of appreciation and that the matter of social security for prisoners was not subject to a European consensus. The Court also considered it significant that the applicant, although not entitled to an old-age pension, was not left without social cover. In sum, in a context of changing standards, a Contracting State could not be reproached for giving priority to the insurance scheme it considered most relevant for the reintegration of prisoners upon their release. While the domestic authorities were required to keep the issue raised by the case under review, the Court found that by not having working prisoners affiliated to the old-age pension system they had not exceeded the wide margin of appreciation afforded to the State in that matter.

47. See section "Prison work" of this Guide.

XVI. Right to an effective remedy

Article 13 of the Convention

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

367. With respect to complaints under Article 3 of inhuman or degrading conditions of detention, two types of relief are required under Article 13 of the Convention: improvement in these conditions (preventive remedy) and compensation for any damage sustained as a result of them (compensatory remedy).[48] The former remedy is normally relevant only during an applicant's detention, while the latter is relevant after the release. However, if an applicant complained of inadequate conditions of imprisonment while still detained, but was then released for reasons unrelated to the matters of which he or she complained, that does not absolve the relevant domestic authority from examining the complaint of inadequate conditions of detention and providing reasoning in that respect (*Kargakis v. Greece*, 2021, §§ 81-84).

368. As regards the interrelationship between the preventive and compensatory remedies, the Court explained that it did not consider the use of the civil action for damages to be an alternative to the proper use of the preventive remedy. In this context, it noted that an effective preventive remedy is capable of having an immediate impact on an applicant's inadequate conditions of detention, while the compensatory remedy could only provide redress for the consequences of his or her allegedly inadequate conditions of detention. Moreover, the Court stressed that, from the perspective of the State's duty under Article 13, the prospect of future redress cannot legitimise particularly severe suffering in breach of Article 3 and unacceptably weaken the legal obligation on the State to bring its standards of detention into line with the Convention requirements. Thus, normally, before bringing their complaints to the Court concerning the conditions of their detention, applicants are first required to use properly the available and effective preventive remedy and then, if appropriate, the relevant compensatory remedy. However, the Court accepted that there may be instances in which the use of an otherwise effective preventive remedy would be futile in view of the brevity of an applicant's stay in inadequate conditions of detention and thus the only viable option would be a compensatory remedy allowing for a possibility to obtain redress for the past placement in such conditions. This period may depend on many factors related to the manner of operation of the domestic system of remedies (*Ulemek v. Croatia*, 2019, §§ 84-88; see further *Sukachov v. Ukraine*, 2020, § 113; *J.M.B. and Others v. France*, 2020, § 167).

369. The Court has so far examined the structural reforms in the systems of remedies in different countries introduced in response to its pilot and leading judgments concerning inadequate conditions of detention.

370. For instance, as regards the preventive remedy, in *Stella and Others v. Italy* (dec.), 2014, §§ 46-55, in response to the *Torreggiani and Others v. Italy*, 2013, pilot judgment, the Court accepted that a complaint to the judge responsible for the execution of sentences – competent to issue binding decisions concerning conditions of imprisonment – satisfied the requirements of its case-law. Similarly, in *Domján v. Hungary* (dec.), 2017, §§ 21-23, in response to the *Varga and Others v. Hungary*, 2015, pilot judgment (cited above), a complaint to the governor of a penal institution – who had the right to order relocation within the institution or transfer to another institution – which was subject to a further judicial review was found to be compatible with the requirements of the Court's case-law (see also *Draniceru v. the Republic of Moldova* (dec.), 2019, §§ 32-34, concerning a

48. See further Guide on Article 13 of the European Convention on Human Rights.

complaint to the investigating judge, who can order improvement of the inadequate conditions of detention).

371. As regards compensatory remedies, in *Stella and Others v. Italy* (dec.), 2014, §§ 56-63, the Court accepted that the new compensatory remedy introduced in the Italian system satisfied the requirements of its case-law. That remedy is accessible to anyone who alleges they have been imprisoned in physical conditions that were contrary to the Convention. This applies to those currently detained, as well as those released. The compensatory remedy in question provided for two types of compensation. Individuals who were detained and had still to complete their sentence could receive a reduction in sentence equal to one day for each period of ten days of detention that were incompatible with the Convention. Individuals who had served their sentences or in respect of whom the part of the sentence which remained to be served did not allow for full application of the reduction could obtain a financial compensation for each day spent in conditions considered contrary to the Convention. The Court accepted that a reduction in sentence constituted an adequate remedy in the event of poor material conditions of detention in so far as, on the one hand, it was specifically granted to repair the violation of Article 3 of the Convention and, on the other, its impact on the length of the sentence of the person concerned was measurable. With regard to the financial compensation, the Court considered that the amount of compensation provided for under domestic law could not be considered unreasonable or such as to deprive the remedy introduced by the respondent State of its effectiveness.

372. In *Atanasov and Apostolov v. Bulgaria* (dec.), 2017, §§ 58-66, concerning the pilot case in *Neshkov and Others v. Bulgaria*, 2015, the Court accepted that a compensatory remedy by which prisoners can seek damages before the administrative court was effective. In particular, the Court noted that the remedy was simple to use and did not place an undue evidentiary burden on the inmate; there was nothing to suggest that claims would not be heard within a reasonable time; the criteria for examining inmates' claims appeared to be fully in line with the principles flowing from the Court's case-law under Article 3 of the Convention; and poor conditions of detention must be presumed to cause non-pecuniary damage. As regards quantum, the new remedy did not lay down a scale for the sums to be awarded in respect of non-pecuniary damage and would thus have to be determined under the general rule of equity, which the Court considered acceptable in so far as it is applied in conformity with the Convention and its case-law. In *Dimitar Angelov v. Bulgaria*, 2020, § 68, the Court found that the remedies introduced in response to the *Neshkov and Others v. Bulgaria* pilot judgment were also effective as regards the specific circumstances related to life prisoners.

373. In the case of *Domján v. Hungary* (dec.), 2017, §§ 24-29, the Court noted that two pre-conditions were set in the relevant law for the use of the compensatory remedy: first, the previous use of the preventive remedy; and second, compliance with the six-month time-limit running from the day on which the inadequate conditions of detention have ceased to exist or, for those who had already been released at the date of entry into force of the new law, from a particular date set by the law. For its part, the Court did not consider any of these conditions to be unreasonable obstacles to the accessibility of the remedy in question. The Court also considered that the amount of compensation that could be obtained by the use of the compensatory remedy was not unreasonable, having regard to economic realities.

374. In response to the leading judgment in *Shishanov v. the Republic of Moldova*, 2015, in the case of *Draniceru v. the Republic of Moldova* (dec.), 2019, §§ 35-40, the Court considered that a new law providing for a compensatory remedy that can lead to the reduction of sentence or the award of damages satisfied the requirement of an effective remedy concerning allegations of inadequate conditions of detention. Similarly, in *Dîrjan and Ştefan v. Romania* (dec.), 2020, the Court considered that a possibility in the reduction of sentence of six days for each thirty days spent in inadequate conditions of detention, introduced in the Romanian system in response to the *Rezmiveș and Others v. Romania* pilot judgment, satisfied the requirements of an effective compensatory remedy (see also

Polgar v. Romania, 2021, §§ 77-97, concerning a remedy allowing for the award of non-pecuniary damage).

375. In *Shmelev and Others v. Russia* (dec.), 2020, §§ 107-131 and 153-156, the Court found the compensatory remedy, introduced in the domestic legal system in response to the *Ananyev and Others v. Russia* pilot judgment, to be effective. The Court was satisfied that the procedural requirements of access to the compensatory scheme were simple and accessible and did not excessively burden claimants either procedurally or in terms of cost. The Court was also satisfied that the procedure was equipped with the requisite procedural guarantees associated with adversarial judicial proceedings, such as independence and impartiality and the right to legal assistance. There were safety measures to take into account the special situation of detainees. The courts were equipped with the ability to apply preliminary measures, such as ordering a detainee's transfer to other premises or a medical examination. Furthermore, the courts were reminded of the need to treat any motion for withdrawal of a complaint by a detainee with caution. The adjudication of administrative complaints was based on shifting the burden of proof to the administration. The courts were instructed to bear in mind the difficulties faced by detainees in collecting evidence and were encouraged to play an active role in identifying and obtaining evidence. A complaint had to be considered within a month or processed immediately, if there were special circumstances calling for urgency. The Court was also satisfied that the domestic authorities and competent courts had been sufficiently apprised of the Court's own practice and of the criteria that needed to be taken into account when making a compensation award, which allowed them to avoid making awards of compensation that would be "incommensurably small" or would not "even approach the awards usually made by the Court in comparable circumstances".

376. In *Barbotin v. France*, 2020, §§ 50-59, the Court found that the otherwise available and effective compensatory remedy before the administrative courts was ineffective due to the fact that the compensation awarded to the applicant represented a small percentage of the amount which the Court would have awarded for the same inadequate conditions of detention and, in addition, although his action was well-founded, the applicant was obliged to bear the costs of an expert opinion concerning the conditions of his detention.

XVII. Prisoners' rights in extra-territorial context

Article 3 of the Convention

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. General principles

377. According to the Court's well-established case-law, protection against the treatment prohibited under Article 3 is absolute. As a result, the extradition of a person by a Contracting State can raise problems under this provision and therefore engage the responsibility of the State in question under the Convention, where there are serious grounds to believe that if the person is extradited to the requesting country he would run the real risk of being subjected to treatment contrary to Article 3 (*Soering v. the United Kingdom*, 1989, § 88).

378. In addition, Article 3 implies an obligation not to remove the person in question to the said country, even if it is a non-Convention State. The Court draws no distinction in terms of the legal basis

for removal; it adopts the same approach in cases of both expulsion and extradition (*Harkins and Edwards v. the United Kingdom*, 2012, § 120; *Trabelsi v. Belgium*, 2014, § 116).

379. In this connection, it should also be noted that the Court does not distinguish between the various forms of ill-treatment proscribed by Article 3 when making its assessment of the relevant risk in the context of removal of a person to another country (*Harkins and Edwards v. the United Kingdom*, 2012, § 123).

380. Furthermore, as regards the question of whether a distinction can be drawn between the assessment of the minimum level of severity required in the domestic context and the same assessment in the extra-territorial context, the Court has held that there was no room in the context of removal for balancing the risk of ill-treatment against the reasons for expulsion in determining whether a State's responsibility under Article 3 was engaged. However, the absolute nature of Article 3 does not mean that any form of ill-treatment will act as a bar to removal from a Contracting State. Indeed, the Convention does not purport to be a means of requiring the Contracting States to impose Convention standards on other States. This being so, treatment which might violate Article 3 because of an act or omission of a Contracting State might not attain the minimum level of severity which is required for there to be a violation of Article 3 in an expulsion or extradition case (*Harkins and Edwards v. the United Kingdom*, 2012, §§ 124-130, with further references).

381. Thus, the Court has been very cautious in finding that removal from the territory of a Contracting State would be contrary to Article 3 of the Convention. Save for cases involving the death penalty, it has rarely found that there would be a violation of Article 3 if an applicant were to be removed to a State which had a long history of respect for democracy, human rights and the rule of law (*Harkins and Edwards v. the United Kingdom*, 2012, § 131).

B. Specific risks in the extra-territorial context

382. The great majority of the Court's cases concerning the relevant risk in the context of removal or extradition of prisoners to another country concerns the matter of life sentences which the persons concerned risk incurring/serving in case of extradition or removal.

383. Already in its earlier case-law, the Court stressed that it could not be ruled out that the imposition of an irreducible life sentence could raise an issue under Article 3 of the Convention. It was likewise not to be excluded that the extradition of an individual to a State in which he runs the risk of being sentenced to life imprisonment without any possibility of early release may raise an issue under that provision (*Einhorn v. France* (dec.), 2001, § 27).

384. However, in *Einhorn*, §§ 27-28, the Court noted that under the relevant law in the United States (Pennsylvania) there was a possibility to commute a life sentence to another one of a duration which afforded the possibility of parole. Consequently, although the possibility of parole for prisoners serving life sentences in Pennsylvania was limited, it could not be inferred from that that if the applicant was sentenced to life imprisonment after a new trial in Pennsylvania, he would not be able to be released on parole (see also, for instance, *Schuchter v. Italy* (dec.), 2011; *Segura Naranjo v. Poland* (dec.), 2011, §§ 34-40).

385. In *Harkins and Edwards v. the United Kingdom*, 2012, §§ 139-149, applying the pre-*Vinter and Others* criteria for the assessment of life sentences,[49] the Court found that, given the offences for which the applicants were wanted and the available judicial review of all the relevant interests at stake in the United States, even a mandatory life sentence (which could, in principle, be reviewed and reduced at a later stage) and a discretionary life sentence without parole would not be inacceptable

49. See section "Life prisoners" of this Guide.

from the perspective of Article 3 of the Convention (see also *Babar Ahmad and Others v. the United Kingdom*, 2012, §§ 243-244).

386. However, following the adoption of the *Vinter and Others* judgment, in *Trabelsi v. Belgium*, 2014, §§ 127-139, the Court found that the life sentence to which the applicant was liable in the United States was irreducible inasmuch as the relevant law provided for no adequate mechanism for reviewing this type of sentence, which meant that the applicant's extradition to the United States had amounted to a violation of Article 3 of the Convention (by contrast, *Čalovskis v. Latvia*, 2014, §§ 143-148; and *Findikoglu v. Germany* (dec.), 2016, where a risk of a prison sentence amounting to life imprisonment could not be assumed).

387. In *Sanchez-Sanchez v. the United Kingdom* [GC], 2022, the Court distanced itself from the *Trabelsi* approach. It clarified that the Convention compliance of a life sentence in a third country requesting extradition was not to be assessed by reference to all of the standards which apply to serving life prisoners in the Contracting States. In so far as they comprise procedural safeguards (the timeframe, criteria and conditions for the requisite review, as well as its nature and scope), the principles set out in *Vinter and Others* in respect of the domestic context were not applicable in the extradition one. The Court therefore developed an adapted approach for the latter context, comprising a two-stage test. At the first stage, it is necessary to establish whether the applicant has adduced evidence capable of proving that there are substantial grounds for believing that, if extradited and convicted, there is a real risk of a sentence of life imprisonment without parole. In this regard, the burden is on the applicant to demonstrate that such a penalty would be imposed. If the said risk is established under the first limb of the inquiry, the second limb will focus on the question whether the relevant authorities of the sending State established, prior to authorising extradition, that there existed in the requesting State an adequate mechanism of sentence review. In other words, it must be ascertained whether, as from the moment of sentencing, there is a review mechanism in place allowing the consideration of the prisoner's progress towards rehabilitation, or any other ground for release, based on his or her behaviour or other relevant personal circumstances. On the facts of the case, the Court found that the applicant had not demonstrated that, in the event of his conviction, there existed a real risk that a sentence of life imprisonment without parole would be imposed without due consideration of all the relevant mitigating and aggravating factors. It was therefore sufficient for the Court to find, in accordance with the first step of the above-noted test, that if the applicant were to be extradited there would be no violation of Article 3 of the Convention.

388. In *Hayes and Others v. the United Kingdom*, 2025, the Court found that the domestic courts had failed to engage with the first limb of the test defined in *Sanchez-Sanchez v. the United Kingdom* [GC], 2022, and to rebut the presumption that the mandatory life sentence would be imposed if the applicants were to be convicted of one particular charge (§§ 87-93). The Court therefore turned (and for the first time) to apply the second limb of the *Sanchez-Sanchez* test, the Court found that the compassionate release review mechanism, although not allowing release on the basis of rehabilitation alone, nonetheless allowed the US authorities "to consider a prisoner's progress towards rehabilitation or any other ground for release based on his or her behaviour or other relevant personal circumstances". It thus satisfied the second limb of the test (§§ 95-106).

389. Further, the conditions of detention in the receiving country are also relevant for the assessment of compliance with the requirements of Article 3 in an extradition context.

390. In *Romeo Castaño v. Belgium*, 2019, § 85, the Court acknowledged that a real risk to the person whose surrender was sought on the basis of an European Arrest Warrant ("EAW") of being subjected to inhuman and degrading treatment on account of his or her conditions of detention in the issuing State constituted a legitimate ground for refusing execution of the EAW and hence cooperation with that State. On the basis of this principle, in *Bivolaru and Moldovan v. France*, 2021, the Court examined the complaints of two applicants whose surrender from France was sought by the Romanian authorities.

391. With respect to the applicant Moldovan, the Court noted that he had produced weighty and detailed evidence pointing to systemic or generalised shortcomings in the prisons in Romania, which, on the basis of the information provided by the Romanian authorities, the French authorities had discounted. However, the Court found that: the French authorities had failed to put that information sufficiently in the context of the Court's case-law concerning endemic overcrowding in the prison where the applicant was to be held; the different aspects, such as freedom to move around and out-of-cell activities, had been described in stereotypical fashion and had not been taken into account in the assessment of the risk; and the recommendation made by the French authority that the applicant should be held in an institution providing identical if not better conditions was in itself insufficient to preclude a real risk of inhuman or degrading treatment, as it did not enable that risk to be assessed in relation to a specific institution. Accordingly, the Court found a violation of Article 3 due to a failure of the French authorities to establish the existence of a real risk to the applicant of being exposed to inhuman or degrading treatment on account of his conditions of detention in Romania (*Bivolaru and Moldovan v. France*, 2021, §§ 117-126).

392. By contrast, concerning the applicant Bivolaru, the Court found that the applicant's description to the French authority of the conditions of detention had not been sufficiently detailed or substantiated to constitute *prima facie* evidence of a real risk of treatment contrary to Article 3 in the event of his surrender to the Romanian authorities. Thus, there had been no obligation for that authority to request additional information from the Romanian authorities concerning the applicant's future place of detention, the conditions of detention or the prison regime. There had not been a solid factual basis for the French judicial authority to establish the existence of a real risk of a violation of Article 3 and to refuse execution of the European arrest warrant on that ground. The Court therefore found no violation of Article 3 in respect of that applicant (*Bivolaru and Moldovan v. France*, 2021, §§ 142-145).

393. In *Babar Ahmad and Others v. the United Kingdom*, 2012, §§ 216-224, the Court examined whether the applicants' extradition to the United States and their placement in a high security regime in ADX Florence prison would be contrary to Article 3 of the Convention. On the facts, the Court found that this would not be the case.

394. The Court found that the physical conditions there – such as, the size of the cells, the availability of lighting and appropriate sanitary facilities – met the requirements of Article 3. Moreover, the Court did not accept that the applicants would be detained at ADX Florence simply on account of their conviction for terrorism offences. Instead, it was clear to the Court that the relevant United States authorities would apply accessible and rational criteria, and placement was accompanied by a high degree of involvement of senior officials who were external to the inmate's current institution. Both this fact and the requirement that a hearing be held prior to transfer provided an appropriate measure of procedural protection. Even if the transfer process were to be unsatisfactory, there would be recourse to an administrative remedy programme and the federal courts to cure any defects in the process.

395. Moreover, the Court found that, while the regime in the General Population Unit and the Special Security Unit at ADX Florence were highly restrictive and aimed to prevent all physical contact between an inmate and others, that did not mean that inmates were kept in complete sensory isolation or total social isolation. Although confined to their cells for much of the time, a great deal of in-cell stimulation was provided through television and radio, newspapers, books, crafts and educational programming. Inmates were also permitted regular telephone calls and social visits and even those under special administrative measures were permitted to correspond with their families. Furthermore, the Court found that applicants could talk to each other through the ventilation system and during recreation periods they could communicate without impediment. In any case, the Court observed that the figures showed that there would be a real possibility for the applicants to gain entry to step down or special security unit programs. Consequently, the Court concluded that the isolation experienced by ADX inmates was partial and relative.

396. The Court also considered the position of persons with mental health problems. It noted that insofar as the applicants' complaints concerned the conditions of pre-trial detention, those complaints were manifestly ill-founded because it had not been suggested that prior to extradition the United Kingdom authorities would not inform their United States' counterparts of the applicants' mental health conditions or that, upon extradition, the United States' authorities would fail to provide appropriate psychiatric care to them. The Court also noted that it had not been argued that psychiatric care in the United States' federal prisons was substantially different to that currently available. Moreover, there was no reason to believe that the United States' authorities would ignore any changes in the applicants' conditions or refuse to alter the conditions of their detention to alleviate any risk to them. The Court further found that no separate issue arose with regard to post-trial detention.

397. However, in *Aswat v. the United Kingdom*, 2013, §§ 50-57, concerning uncertainty over conditions of detention in the event of extradition to the United States of suspected terrorist suffering from serious mental disorder (paranoid schizophrenia), the Court found that his extradition would constitute a violation of Article 3 of the Convention (see also *Schuchter v. Italy* (dec.), 2011, concerning health care).

398. In particular, in *Aswat* the Court stressed that whether or not the applicant's extradition to the United States would breach Article 3 of the Convention very much depended upon the conditions in which he would be detained and the medical services available to him there. However, the relevant information on this matter was lacking. The Court also accepted that, if convicted, the applicant would have access to medical facilities and, more importantly, mental health services, regardless of which institution in which he was detained. However, the mental disorder suffered by the applicant was of sufficient severity to have necessitated his transfer from ordinary prison to a high-security psychiatric hospital and the medical evidence clearly indicated that it continued to be appropriate for him to remain there "for his own health and safety". Moreover, there was no guarantee that if tried and convicted he would not be detained in ADX Florence, where he would be exposed to a "highly restrictive" regime with long periods of social isolation. There was no evidence to indicate the length of time he would spend in ADX Florence. While the Court in *Babar Ahmad* had not accepted that the conditions in ADX Florence reached the Article 3 threshold for persons in good health or with less serious mental health problems, the applicant's case could be distinguished on account of the severity of his mental condition.

399. Lastly, it should be noted that an issue in the context of extradition or removal of prisoners to another country arises under Articles 2 and 3 of the Convention in case of a real risk of the death penalty being imposed in the receiving country (*Al-Saadoon and Mufdhi v. the United Kingdom*, 2010, §§ 115-145; *A.L. (X.W.) v. Russia*, 2015, §§ 63-66).[50]

50. See further, Guide on Article 2 of the European Convention on Human Rights.

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The case-law cited in this Guide refers to judgments or decisions delivered by the Court and to decisions or reports of the European Commission of Human Rights ("the Commission").

Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber.

Chamber judgments that are not final within the meaning of Article 44 of the Convention are marked with an asterisk in the list below. Article 44 § 2 of the Convention provides: "The judgment of a Chamber shall become final (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) when the panel of the Grand Chamber rejects the request to refer under Article 43". In cases where a request for referral is accepted by the Grand Chamber panel, the Chamber judgment does not become final and thus has no legal effect; it is the subsequent Grand Chamber judgment that becomes final.

The hyperlinks to the cases cited in the electronic version of the Guide are directed to the HUDOC database (http://hudoc.echr.coe.int) which provides access to the case-law of the Court (Grand Chamber, Chamber and Committee judgments and decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note), and of the Commission (decisions and reports) and to the resolutions of the Committee of Ministers.

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