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Fundamental and Human Rights

REGIONAL
REPORT

The Situation of LGBTIQ Detainees in the EU: Standards, Challenges and Recommendations



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The situation of LGBTIQ Detainees in the EU: Standards, Challenges and Recommendations



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PROJECT TITLE

Strengthening the rights of LGBTIQ Detainees in the EU - LGBTIQ Detainees

PROJECT CONSORTIUM

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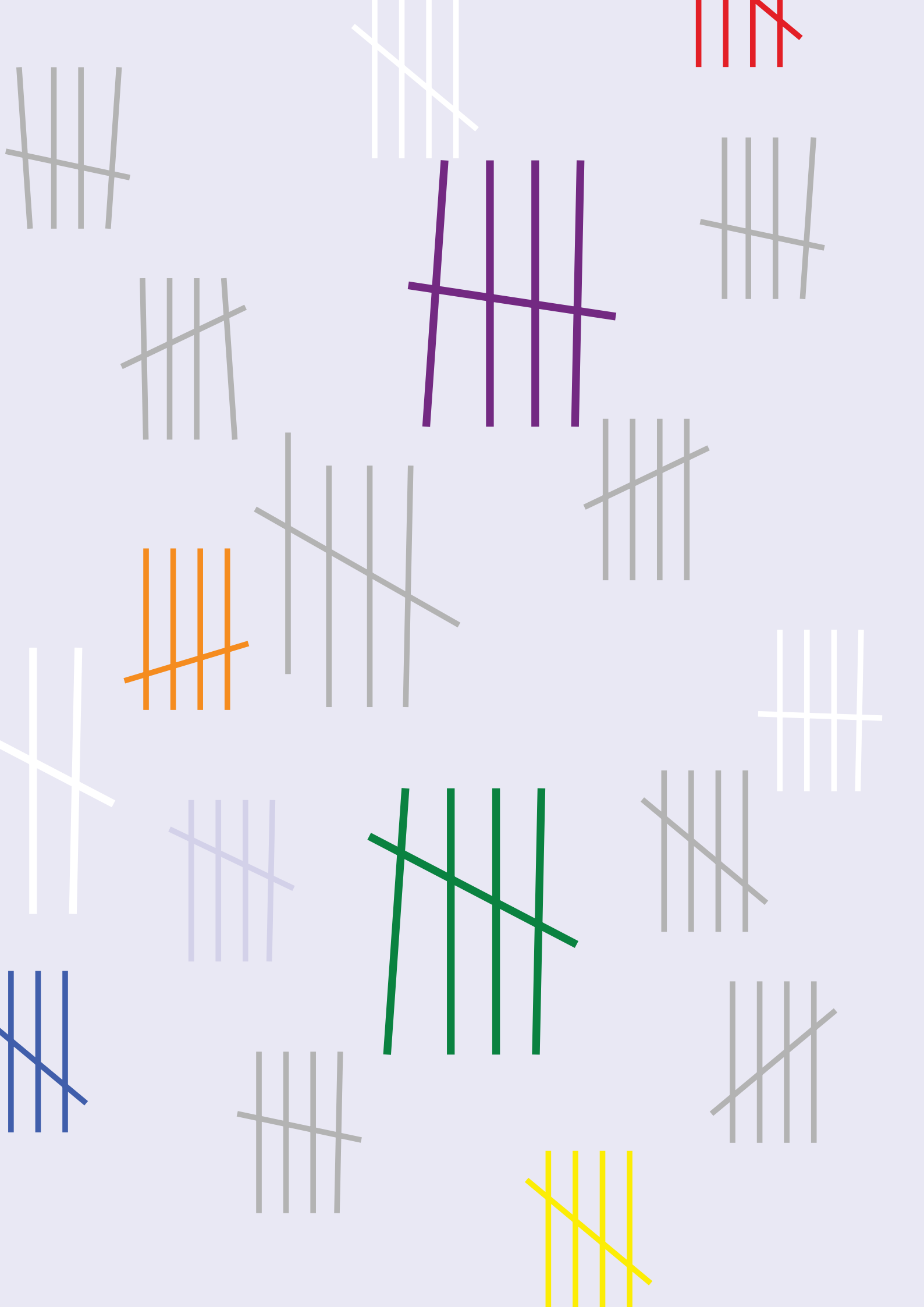


TABLE OF CONTENTS

Glossary	06	Access to health care	33
Acronyms	07	Relevant international standards	33
Executive summary	08	National challenges and practices	34
Introduction	10	Sexual and reproductive health care	34
Project background and objectives	10	Gender-affirming health care	35
Methodology	10	Mental health care	37
Aim of the report	11	Recommendations	38
<u>PART 1: RELEVANT INTERNATIONAL AND NATIONAL FRAMEWORKS</u>	12	Daily life in prison	39
Overview of key international standards concerning LGBTIQ detainees	12	Relevant international standards	39
Yogyakarta Principles	12	National challenges and practices	40
UN standards	13	Work and recreational activities	40
Council of Europe standards	14	Gender affirming clothing and products	40
EU standards	14	Use of appropriate pronouns	41
National laws and policies	15	Contact with the outside world	42
Relevant international standards	15	Recommendations	43
National laws, guidelines and policies	15	Safety and security	44
National laws referring to sexual orientation and gender identity	16	Harassment and violence	44
National guidelines and policies concerning LGBTIQ detainees	17	Relevant international standards	44
Analysis of the national guidelines and policies	19	National challenges and practices	45
Recommendations	20	Body searches	47
<u>PART 2: KEY CHALLENGES AND PRACTICES ON THE NATIONAL LEVEL</u>	22	Relevant international standards	47
Sexual orientation, gender identity and gender expression in prisons	22	National challenges and practices	48
(Fear of) coming out in prison	23	Recommendations	49
(Hyper)masculinity within prison culture	24	Complaint mechanisms, access to justice and monitoring	50
Recommendations	25	Relevant international standards	50
Placement, admission and accommodation	25	National challenges and practices	51
Relevant international standards	25	Recommendations	52
National challenges and practices	27	Training and sensitisation	53
Placement based on sex assigned at birth and legal gender	27	Relevant international standards	53
Protective measures for LGBTIQ detainees	28	National challenges and practices	54
Separate units and isolation	28	Training and sensitisation of staff	54
Placement based on gender identity and sexual orientation	29	Training and sensitisation of detainees	56
Admissions and screening	31	Recommendations	56
Recommendations	32	Bibliography	58
		Endnotes	65

GLOSSARY

Bisexual	A person who is physically, romantically and/or emotionally attracted to persons of two (or more) sexes or genders.
Cisgender	A person who identifies with the gender that aligns with the gender assigned at birth.
Cisnormativity	The assumption that cisgender people, those whose gender identity matches their biological sex, are the norm or default, perpetuating the idea that other gender identities are abnormal or less legitimate.
Deadnaming	The deadname is the name given to a transgender, non-binary, and/or gender-diverse person at birth and no longer used. Deadnaming refers to using the deadname of a person. Like misgendering, it is often used to harass trans or non-binary people.
Gay	Primarily used to describe a man who is (physically, romantically and/or emotionally) attracted to other men; may also be used to describe both gay men and lesbian women.
Gender	Gender can be understood as a socially constructed set of norms, roles and behaviours associated with being a man (or boy), woman (or girl), or other gender.
Gender identity	Each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including their personal sense of their body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.
Gender expression	Describes how an individual publicly expresses or presents their gender. This may include behaviour, outwards appearance (e.g., hair, make-up, choice of clothes, body language, voice).
Gender affirming treatment	Includes hormone replacement therapy as well as gender confirmation/affirmation surgery (a surgical procedure, bringing a person's physical appearance and genitals into alignment with their gender identity).
Gender-diverse	A person whose gender identity, including their gender expression, is at odds with what is perceived as being the gender norm in a particular context at a particular point in time, including those who do not place themselves in the male/female binary. Transgender is a more specific form of gender-diverse.
Heteronormativity	The assumption that heterosexuality is the only (normal) or natural expression of sexuality, and that it is superior to other sexual orientations.
Homophobia	An irrational fear of, hatred or aversion towards lesbian, gay or bisexual people.
Intersex	People whose bodies do not have typically male or female sex characteristics due to variations in chromosomes, gonads, sex hormones and/or genitals. Intersex people are born with physical sex characteristics (such as sexual anatomy, reproductive organs, hormonal patterns and/or chromosomal patterns) that do not fit typical definitions for male or female bodies. Intersex is not about gender identity or sexual orientation. Intersex is a lived experience of the body. Many forms of intersex exist, mostly genetic in origin.
Legal (gender) recognition	The process of changing official documents to match a person's gender identity.
Lesbian	A woman who is (physically, romantically and/or emotionally) attracted to other women.
Misgendering	Referring to someone (especially a transgender person) using a pronoun or form of address that does not reflect their gender identity.
Non-binary	A gender identity that is outside the male/female gender binary, i.e., that does not conform to binary beliefs about gender which indicate that all individuals are exclusively either male or female.



Queer	An umbrella term for persons whose identity does not fit into a binary classification of sexuality and/or gender, i.e., sexual and gender identities that are not cisgender and heterosexual.
Sex	The classification of a person as having female, male and/or intersex sex characteristics. A person's sex is a combination of a range of bodily sex characteristics. A person's sex may or may not be aligned with their gender identity.
Sex characteristics	Each person's physical features relating to sex, including genitalia and other sexual and reproductive anatomy, chromosomes, hormones, and secondary physical features emerging from puberty.
Sexual orientation	Each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.
Transgender / Trans	A person whose gender identity does not align with the sex they were assigned at birth.
Transphobia	An irrational fear of, hatred or aversion towards transgender people.

ACRONYMS

APT	Association for the Prevention of Torture
CAT	Committee against Torture
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CSO	Civil society organisation
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EPR	European Prison Rules
EU	European Union
HIV	Human Immunodeficiency Virus
ICCPR	International Covenant on Civil and Political Rights
LGBTIQ	Lesbian, gay, bisexual, trans, intersex, and queer
NGO	Non-Governmental Organisation
NPM	National Preventive Mechanism
OHCHR	Office of the High Commissioner of Human Rights
OSCE	Office for Security and Cooperation in Europe
ODIHR	Office for Democratic Institutions and Human Rights
PRI	Penal Reform International
SOGIESC	Sexual orientation, gender identity, gender expression, or sex characteristics
SPT	Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
UN	United Nations
UK	United Kingdom
WHO	World Health Organization

PROMISING PRACTICES ARE MARKED WITH 





EXECUTIVE SUMMARY

The report provides a comprehensive picture of the experiences and challenges faced by LGBTIQ detainees in the EU—an area that has long been overlooked in both policy and practice. It draws on extensive research and consultations with civil society representatives, legal professionals, LGBTIQ detainees and former detainees, oversight bodies, prison staff and prison authorities, as well as state authorities.

Reliable data on the situation of LGBTIQ detainees is scarce across the EU. Few prison systems collect information on sexual orientation, gender identity or gender expression, and even when such data exists, it is often incomplete or anecdotal. This invisibility makes it difficult to assess the scale of challenges or to design targeted interventions. In practice, most available information and reported cases concern transgender detainees, whose needs and vulnerabilities are often at the forefront of prison-related issues. By contrast, there are very few identified cases of non-binary or intersex detainees, reflecting both their limited visibility within prison systems and a general lack of awareness of their specific circumstances. For many LGBTIQ detainees, both invisibility and visibility carry risks: those who do not come out for safety reasons may remain beyond the reach of support measures, while those whose identity is known may face harassment or discrimination—dynamics that are often reinforced by the broader prison culture.

Findings show that, while LGBTIQ individuals are not a homogenous group, many face heightened risks of discrimination, violence and social exclusion, and these risks are often magnified in detention settings. Prison culture can reinforce hypermasculinity, stigmatise diversity and create environments where LGBTIQ detainees feel unsafe to disclose their identity. Many choose not to come out, fearing ridicule, harassment or violence, which can lead to isolation and negatively affect their wellbeing. Others, particularly transgender detainees, may be involuntarily 'outed' and face disrespect, misgendering, and denial of gender-affirming practices. The extent to which LGBTIQ detainees can live openly varies widely—not only between countries but also between individual facilities—often depending on the attitudes of staff and the prevailing informal culture.

A main finding across many countries is the lack of formal guidelines or policies tailored to the rights and needs of LGBTIQ detainees. In many prison systems, decisions around placement, access to gender-affirming items or body searches are made on an ad hoc and case-by-case basis, often relying on the dis-

cretion of individual staff members rather than clear institutional standards. This leads to inconsistent practices and can result in discriminatory treatment. Where policies or guidelines exist, they very often focus (exclusively) on transgender detainees.

Placement and accommodation remain particularly problematic. In many prison systems, the detainee's sex at birth is still a relevant and decisive factor. In many countries, trans women, for example, are routinely placed in men's prisons, where they may face high levels of harassment and abuse. In some cases, they are subjected to prolonged solitary confinement or segregation to specific units under the guise of "protection." Such measures, while intended to ensure safety, often further isolate detainees, harm mental health and reinforce marginalisation. Trans and gender-diverse detainees also face significant challenges with regard to body searches; in many countries, there are no search protocols or clear policies on this issue. Searches are often carried out by staff of the detainee's sex assigned at birth, rather than in accordance with their self-identified gender, causing distress and humiliation.

Access to health care is another area of concern. While all detainees have a right to medical care, which according to international standards must be equivalent to health care provided outside, this is very often not the case. Transgender detainees, in particular, often face barriers to accessing gender-affirming health care, such as hormone replacement therapy. Additionally, there is a lack of mental health care, tailored to the needs and challenges of LGBTIQ detainees. These challenges are compounded by a general lack of understanding among prison staff, including medical staff, about the needs of LGBTIQ persons in detention.

Daily life in prison for LGBTIQ detainees can also be shaped by informal cultures and staff attitudes. Access to personal items that affirm gender identity—such as make-up, wigs, binders or clothing—remains limited. This can have a serious impact on the dignity, wellbeing, and mental health of trans and gender-diverse detainees. While the rules governing contact with the outside world are generally the same for all detainees, LGBTIQ detainees may experience particular obstacles in practice. These can include reluctance to disclose their identity during visits or correspondence due to fear of stigma and limited access to LGBTIQ-specific support networks. In many facilities, engagement with civil society or community-based outreach for LGBTIQ detainees is minimal or absent, which can erode their support networks and heighten feelings of isolation.



Despite such challenges, research also shows some promising practices. Some prison systems have begun to develop policies that specifically address the needs of LGBTIQ detainees. Where LGBTIQ detainees are supported by informed and respectful staff, or are housed in more inclusive environments, they report feeling safer and more able to live openly.

The report also contains a series of concrete recommendations aimed at improving detention conditions and treatment of LGBTIQ detainees. Key priorities include adopting clear, enforceable guidelines that recognise the specific needs of LGBTIQ detainees, while allowing for individual case-by-case assessments. Key priorities include respecting self-identified gender in placement, regarding body searches and in everyday interaction, ensuring access to gender-affirming items and appropriate health care, ensuring confidential and effective complaint mechanisms and providing practical training for prison staff. It also stresses the importance of meaningful involvement of LGBTIQ individuals and civil society organisations focused on LGBTIQ rights in shaping policies, providing support to LGBTIQ detainees and in developing and facilitating trainings.





INTRODUCTION

PROJECT BACKGROUND AND OBJECTIVES

In the period April 2024 – September 2025, the Ludwig Boltzmann Institute of Fundamental and Human Rights (LBI-GMR) implemented the project “Strengthening the rights of LGBTIQ detainees in the EU – LGBTIQ Detainees,” in cooperation with the Centre for European Constitutional Law (Greece), Hungarian Helsinki Committee (Hungary) and Associazione Antigone (Italy). The project was funded by the Justice Programme (JUST) of the European Commission, Directorate-General for Justice and Consumers.

Across the EU, LGBTIQ persons experience heightened levels of discrimination and marginalisation in many areas of life.¹ Although many countries have laws and policies in place to tackle discrimination based on sexual orientation and gender identity, many LGBTIQ persons are confronted with intolerance, homophobia, transphobia or hate speech in their lives and have a higher likelihood of experiencing violence.² LGBTIQ individuals have long been a hidden part of the prison population and, in many cases, continue to be so today. Due to lack of reliable data, gaining a clear understanding of the situation of LGBTIQ detainees remains difficult, mirroring broader challenges in assessing the experiences of LGBTIQ persons outside of the prison setting.³

Being imprisoned is difficult for all detainees; life in detention can be depressing, frightening and distressing, and the pains of imprisonment⁴ are felt to varying degrees by all detainees. Nonetheless, prison conditions and the experience of imprisonment can be particularly harsh for certain detainees, among them are detainees belonging to the LGBTIQ community. In addition, LGBTIQ persons may experience intersecting forms of discrimination.⁵ At the same time, it is important to mention that many challenges that LGBTIQ persons experience in prisons are faced by the prison population as a whole. Challenges such as overcrowding, inadequate mental health services, limited access to recreational activities, or a lack of resources in general, are shared by the wider prison population. However, systemic factors, discrimination and the absence of tailored support often mean that LGBTIQ detainees experience these issues more acutely, leaving them disproportionately affected.

To date, initiatives addressing the situation of LGBTIQ detainees have been limited, with minimal attention given to specific challenges, risks and forms of discrimination that this group faces in detention settings. To address these gaps, this project aimed to

raise awareness and assess relevant standards, as well as the existing challenges, shortcomings, and promising practices related to the fundamental rights of LGBTIQ individuals in detention.

The project’s objectives include mapping existing legal and policy frameworks across the EU, identifying key challenges and best practices, fostering mutual learning among stakeholders, and building awareness to address the specific needs and rights of LGBTIQ individuals in detention. By supporting greater alignment with international and regional human rights standards, the project seeks to combat discrimination and improve detention conditions to ensure safety, dignity and equal treatment for LGBTIQ detainees and strengthen their rights and wellbeing.

METHODOLOGY

The project targeted deprivation of liberty in the criminal justice setting. “Detainees” refers to persons who are deprived of liberty within the criminal justice context (including both pre-trial detention and imprisonment after conviction). The project focused on the situation of LGBTIQ detainees, identifying specific challenges such as allocation⁶ and accommodation, body searches, access to health care, discrimination, harassment and violence, as well as access to justice/complaints mechanisms and monitoring.

In the framework of the project, each project partner conducted in-depth research on the national situation in their country, encompassing desk-research as well as a focus group and individual interviews with relevant actors, including representatives of civil society organisations focusing on LGBTIQ rights, lawyers, representatives of national preventive monitoring bodies (NPMs) and human rights bodies, prison staff and relevant representatives of the prison administration, judges with oversight responsibilities and other relevant stakeholders. Additionally, each partner conducted interviews with LGBTIQ persons with lived detention experience, encompassing both current and former detainees. The national research was supported by four National Coalitions which were established in each project country to ensure that LGBTIQ perspectives were meaningfully integrated throughout the project. Each Coalition consisted of four members with extensive expertise on the rights and experiences of LGBTIQ individuals in detention, including representatives from civil society. The results of the national research were consolidated in four national reports.⁷

In addition to the national research in the four partner countries, the LBI-GMR conducted desk research on the situation of LGBTIQ detainees in the EU more broadly, including reports of international human rights bodies, international, regional and na-



tional monitoring bodies, as well as other relevant reports published by civil society, international, regional and national organisations and actors in various countries. Further, 13 interviews were conducted with international experts, including representatives of international bodies and experts representing nine different countries, who shared their insights into recent relevant developments across the EU. The regional research was further supported by the findings and discussions at an EU-wide regional consultation workshop that took place in Vienna in March/April 2025. It gathered 59 experts from 14 countries, including representatives of civil society, prison authorities and prison staff, lawyers, representatives of monitoring bodies and academics to discuss challenges, as well as promising practices and recommendations to strengthen the rights of LGBTIQ detainees in the EU.

In the framework of this project, the project team chose to use the acronym “LGBTIQ,” aligning with the terminology used by the European Commission while simultaneously acknowledging ongoing discussions around evolving acronyms and considering the key arguments in these debates throughout the implementation of the project.

Generally, however, the acronym “LGBT,”⁸ which does not include “intersex” and “queer” individuals, is still widely used. While intersex persons share some common concerns with lesbian, gay, bisexual and transgender persons (e.g., shared experience of harm and discrimination for not conforming to societal norms around sex and gender), they also have distinct lived experiences and human rights concerns.⁹ The letter “Q” stands for “queer” and represents a broad umbrella term for individuals who do not identify within traditional categories of sexuality and gender, and whose identities fall outside binary frameworks such as heteronormativity and cisnormativity. Some international bodies omit the “Q” and instead use the acronym “LGBTI.”¹⁰ In recognition of the evolving understanding of gender and sexual diversity, some actors and countries also include a “+” and use the acronym “LGBTQI+”¹¹ to symbolise inclusion of other identities beyond those listed. Others prefer to include an asterisk at the end – “LGBTIQ*” – to indicate a broad and open-ended inclusivity. Other institutions further use the acronym “LGBTQIA(+)” to explicitly include asexual individuals (“A”) and others under the broader spectrum.

It is important to highlight that LGBTIQ persons are not a homogenous group and treating them as such can erase important diverse challenges and needs. The experience of imprisonment can be very different for gay men and lesbian women for example, and not all gay men in prison have the same experience either. The project aimed to highlight individual experiences and illustrate the heterogeneity that was reported in practice.

AIM OF THE REPORT

This report is based on in-depth national-level research in the four partner countries, consolidated in their four national reports,¹² as well as a broader examination of other EU countries comprising desk research, interviews, focus groups and consultations with a wide range of stakeholders from across the EU. The report aims to provide an overview of the relevant international and regional human rights standards applicable to LGBTIQ detainees, as well as the current situation in the EU, including challenges and promising practices and recommendations to strengthen the rights of LGBTIQ detainees.

The report is structured in two main parts: the first part provides an overview of relevant legal and policy frameworks, starting with a mapping of the key international and regional human rights standards applicable to LGBTIQ detainees. It then examines the national frameworks in several countries in the EU, including the existence (or absence) of specific policies and guidelines with regard to LGBTIQ detainees, as well as the processes behind their development. This part provides the foundation for understanding how different legal and policy environments shape the treatment and protection of LGBTIQ detainees.

The second part covers the relevant thematic areas that emerged from the research. It begins with the chapter on sexual orientation, gender identity and gender expression, which sets the scene by exploring broader structural and cultural issues within prison systems, as well as the specific challenges that these issues pose for LGBTIQ detainees. This chapter provides context that is relevant for understanding the subsequent topics included in the thematic chapters: placement, accommodation and admission of detainees, access to health care, daily life in prison, safety and security, access to justice, complaint mechanisms and monitoring as well as training and sensitisation. These topics were identified as a priority based on the desk research and the focus set by international standards on the one hand, and main issues identified by participants of the interviews and consultations on the other hand.

Each thematic chapter first highlights the relevant international standards, followed by an in-depth analysis of the main challenges and promising practices identified throughout the project. Promising practices (PP) are highlighted in the margin of the text. Each chapter ends with a set of recommendations based on the research findings.





PART 1: RELEVANT INTERNATIONAL AND NATIONAL FRAMEWORKS

OVERVIEW OF KEY INTERNATIONAL STANDARDS CONCERNING LGBTIQ DETAINEES

Most of the existing international standards relevant to the rights of persons deprived of liberty and the detention context emphasise core principles such as non-discrimination, humane treatment and protection from violence, but few explicitly mention LGBTIQ detainees. While there are relatively few instruments that directly address the specific needs of LGBTIQ individuals in detention, several important standards nonetheless promote the dignity, safety and equality of LGBTIQ individuals generally (outside the detention context). Key standards pertaining to this topic include the Yogyakarta Principles, the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), the UN Convention Against Torture, the European Prison Rules, as well as those standards adopted by the European Committee for the Prevention of Torture or the European Court of Human Rights. Together, these instruments outline states' obligations to uphold the rights of all persons in detention, including LGBTIQ detainees.¹³

YOGYAKARTA PRINCIPLES

The **Yogyakarta Principles** are a key international human rights guidance document focusing on sexual orientation, gender identity, gender expression and sex characteristics.¹⁴ Although the Principles have not been formally adopted by the United Nations, they provide authoritative guidance on the application of existing international law to human rights violations based on sexual orientation and gender identity.

With regard to the detention context, they require states to adopt and implement comprehensive policies to protect persons deprived of liberty from violence and discrimination based on sexual orientation, gender identity or gender expression. They address appropriate placement, access to gender affirming (health) care and effective oversight to safeguard the rights of LGBTIQ detainees.



The initial Yogyakarta Principles from 2006 were extended in 2017 into the Yogyakarta Principles Plus 10. The expansion of the original document reflected developments in international human rights law and practice since the 2006 Principles were issued. The new document also contains 111 “additional state obligations,” related to areas such as torture, asylum, privacy, health and the protection of human rights defenders.

The Yogyakarta Principles affirm that all individuals, regardless of their sexual orientation, gender identity, gender expression or sex characteristics (SOGIESC), are entitled to be free from discrimination and to be treated with dignity in all contexts, including when deprived of their liberty (Principle 2). Principle 3 affirms the right to legal recognition of each person's self-defined gender identity, which is especially significant in the context of detention, where official recognition of gender affects placement, treatment and access to services. Principle 9 emphasises the right to humane treatment while in detention. It requires that all persons deprived of liberty be treated with respect for their dignity and their specific needs, including protection from violence or abuse and access to appropriate health care, such as gender-affirming care. It also underscores that placement in detention facilities must reflect the individual's gender identity. Principle 10 further requires that individuals deprived of liberty be protected from torture and cruel, inhuman, or degrading treatment or punishment. This includes ensuring that no one is subjected to such treatment on the basis of SOGIESC and that authorities take active steps to prevent and respond to such abuses within places of detention.

UN STANDARDS

International human rights law provides general protection on the basis of the core human rights principle of non-discrimination. The **International Covenant on Civil and Political Rights (ICCPR)**,¹⁵ states that all people are equal before the law and must be protected equally and effectively from discrimination. It requires laws to prohibit discrimination on any grounds, including race, sex, religion and other personal or social characteristics (Article 26). Although no specific reference is made to sexual orientation and gender identity, lists of grounds of discrimination are generally non-exhaustive, and it can be interpreted as including discrimination based on sexual orientation and gender identity. The ICCPR further emphasises the humane treatment of all detainees (Article 10) and prohibits torture and cruel, inhuman, or degrading treatment (Article 7).¹⁶

More specifically to the detention context, the **United Nations General Assembly first adopted Standard Minimum Rules for the Treatment of Prisoners** in 1955, which were revised 2015 and are known as the **Nelson Mandela Rules**.¹⁷ These rules make up the key international framework regarding the treatment of prisoners and have influenced many national prison rules and regimes. Although the Nelson Mandela Rules do not explicitly mention sexual orientation, gender identity, or expression, the rules support protections through broader principles of non-discrimination, individualised treatment and protection from abuse. For example, the reference to non-discrimination contained in Basic Principle 2 requires that prison administrations must consider the individual needs of prisoners, especially those from vulnerable groups.

The higher risk of LGBTIQ detainees to experience ill-treatment, torture, and sexual, physical, and psychological violence has also been noted by the **Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment**.¹⁸ In General Comment No. 3 (2012) on the Implementation of Article 14 by States parties¹⁹ the **UN Committee Against Torture (CAT)** requires states to ensure that victims of an act of torture obtain redress and have the right to fair and adequate compensation. The document makes specific reference to states' obligations to ensure timely and effective access to redress mechanisms for LGBT individuals, recognising them as a vulnerable group entitled to both legal and practical protection (Paragraph 39).

Other UN bodies have also issued guidance and standards that are relevant to the detention of LGBTIQ persons. In 2009, the **United Nations Office on Drugs and Crime (UNODC)** released its *Handbook on Prisoners with Special Needs*,²⁰ which includes a dedicated chapter on LGBT prisoners (Chapter 5). This guidance recognises the heightened vulnerability of LGBT detainees to abuse, discrimination and neglect within prison systems. The handbook emphasises that states have a responsibility to develop clear policies and practical measures to protect the rights, safety, and wellbeing of LGBT prisoners.

The **World Health Organization (WHO)** Regional Office for Europe's guidance on *Prisons and Health*²¹ outlines recommendations by international experts to improve the health of persons in detention. The guidance includes a specific focus on the health needs of LGBTIQ prisoners, noting their heightened risk of sexual violence, including rape, and increased vulnerability to sexually transmitted infections.²² Experts recommend providing mental health counselling related to experiences of victimisation, and emphasise the importance of collaboration with community-



based organisations that specialise in LGBTIQ health to ensure access to additional specialist care from outside the prison.²³ In addition to health-related recommendations, the guidance stresses the need for appropriate placement of LGBTIQ individuals within the prison system to reduce their risk of (sexual) violence. Finally, the authors underscore that clear national policies and strong institutional leadership are essential to enable prison staff to ensure the dignified treatment of LGBTIQ detainees.

In addition, some UN guidance focuses specifically on transgender persons in detention. The *Technical Brief on Transgender People and HIV in Prisons and Other Closed Settings*²⁴ developed by UNODC and partners highlights the elevated risk of HIV among transgender detainees due to systemic discrimination, inadequate health care and frequent exposure to violence, including sexual assault. It recommends rights-based, gender-affirming approaches in prison health systems, including access to HIV prevention, care and treatment, alongside the provision of gender-affirming health care and protection from abuse.

COUNCIL OF EUROPE STANDARDS

The **European Convention on Human Rights (ECHR)**²⁵ provides core protections relevant to LGBTIQ detainees, even though it does not explicitly mention sexual orientation or gender identity. Three key provisions are particularly applicable: the prohibition of torture and inhuman or degrading treatment (Article 3); the right to respect for private and family life, including protection of personal data (Article 8); and the prohibition of discrimination in the enjoyment of the rights set out in the Convention (Article 14). These provisions form the legal foundation for challenging discriminatory or degrading treatment of LGBTIQ individuals in detention across Council of Europe member states.

The **European Court of Human Rights (ECtHR)** has also developed jurisprudence affirming the rights of LGBTIQ persons in detention. For example, in the case of *X v. Turkey*²⁶ the Court found violations of Articles 3 and 14 after a gay detainee was held in near-total isolation for over eight months under the pretext of protecting him from fellow detainees. The Court held that such extreme isolation amounted to degrading treatment and emphasised that sexual orientation cannot justify disproportionate restrictions. By contrast, in the case of *Stasi v. France*,²⁷ which concerned a gay detainee who had experienced abuse from other detainees and was subsequently placed in solitary confinement, the Court found no violation of Article 3, ruling that the authorities had taken reasonable steps under the circumstances.

In the more recent case of *W.W. v. Poland*,²⁸ the Court found a violation of Article 8 after a transgender woman was denied access to her medically prescribed hormone therapy while in prison. The Court ruled that the domestic authorities had failed to strike a fair balance between her health-care needs and the operational concerns of the prison administration, affirming the obligation to provide gender-affirming care where medically indicated.

In a *Recommendation of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity (CM/Rec(2010)5)*,²⁹ member states are advised to ensure the safety and dignity of all individuals in detention, including LGBT people. This includes protecting them from physical violence, rape, and sexual abuse by inmates or staff and specifically safeguarding the gender identity of transgender individuals.

Furthermore, the **European Prison Rules (EPR)**³⁰ — adopted as a recommendation by the Committee of Ministers in 2006 and revised in 2020 — set standards for the treatment of all detainees, with a strong emphasis on dignity, safety, appropriate health care, and fair placement. While the EPR do not explicitly refer to LGBTIQ persons, the accompanying *Guidance Document on the European Prison Rules* (developed together with Penal Reform International)³¹ addresses LGBTIQ-specific concerns in several areas. These areas include the allocation of prisoners (Rule 17), training on prison health-care staff (Rule 41), duties of health care staff during admission (Rule 42), monitoring of mental health (Rule 47), staff specialists and recruitment (Rule 89), searches and controls (Rule 54) and solitary confinement (Rule 60).

The **European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)** has further clarified standards concerning transgender persons in detention. In its 33rd General Report,³² the CPT outlined core principles to ensure the respectful and humane treatment of transgender persons in prison. These principles cover key areas such as placement and accommodation decisions, risks of abuse by staff or other detainees, daily regimes and detention conditions, body searches, transport procedures and access to appropriate health care. The CPT recognises that prisons are a reflection of broader society and that vulnerable groups, including transgender individuals, require tailored safeguards.

EU STANDARDS

Under EU law, the **Charter of Fundamental Rights of the European Union** provides a binding legal framework that safeguards the rights and dignity of all in-



dividuals, including those in detention. Article 1 of the Charter affirms that human dignity is inviolable and must be respected and protected in all circumstances.³³ Furthermore, Article 4 prohibits torture and inhuman or degrading treatment or punishment, offering crucial protection to detainees against abuse by prison staff or other detainees. Article 21 explicitly prohibits discrimination on a wide range of grounds, including sexual orientation, thereby reinforcing legal protections for LGBTIQ persons in detention settings.

In 2020, the European Commission developed its first-ever strategy of LGBTIQ Equality (*Union of Equality: LGBTIQ Equality Strategy 2020-2025*)³⁴ which promotes protection against discrimination, exclusion, and violence across EU Member States, though the detention context is not specifically mentioned. The *Commission Recommendation on Procedural Rights of Suspects and Accused Persons Subject to Pre-Trial Detention and on Material Detention Conditions from December 2022* (henceforth referred to as “Recommendation (C(2022) 8987)”) ³⁵ directly references the Yogyakarta Principles and explicitly calls on Member States to take into account the particular vulnerability of certain groups in detention—including LGBTIQ persons—and to provide clear guidance on how to safeguard their rights as well as to prevent violence and other ill-treatment against them.

NATIONAL LAWS AND POLICIES

RELEVANT INTERNATIONAL STANDARDS

Several international bodies have recognised the need for prison systems to adopt and implement guidelines and policies, specifically with regard to safeguarding the rights and needs of LGBTIQ detainees.³⁶ Amongst them, the Yogyakarta Principles stand out as calling for targeted and comprehensive policies to cover various domains of prison life. According to the additional obligations relating to Principle 9 set forth in the 2017 Yogyakarta Principles + 10 states shall:

H. Adopt and implement policies to combat violence, discrimination and other harm on grounds of sexual orientation, gender identity, gender expression or sex characteristics faced by persons who are deprived of their liberty, including with respect to such issues as placement, body or other searches, items to express gender, access to and continuation of gender affirming treatment and medical care, and “protective” solitary confinement;

I. Adopt and implement policies on placement and treatment of persons who are deprived of their liberty that reflect the needs and rights of persons of all sexual orientations, gender identities, gender expressions, and sex characteristics and ensure that persons are able to participate in decisions regarding the facilities in which they are placed;

This is echoed in the publication *Prisons and Health* by WHO, which states that national policies are needed to guide the prison staff and the leadership of senior management in “providing a proper manner of detention” for LGBT people in detention.³⁷

Some international bodies call for policies specifically for the treatment and care of transgender detainees; the UNODC technical brief on transgender people and HIV in prisons and other closed settings recommends that “[p]rison officials should also adopt and implement prison policies to eradicate all forms of discrimination, violence, torture, degrading treatment, punishment and sexual harm based on gender identity and sexual orientation.”³⁸ Similarly, the CPT has called on states on multiple occasions to develop clear frameworks specifically for the treatment of transgender persons in detention, highlighting that there is a particular need for guidance with regard to this population.³⁹

At the EU level, the European Commission calls on member states in its Recommendation (C(2022) 8987)⁴⁰ to provide guidance on safeguarding the rights of certain demographics within prison populations, such as LGBTIQ individuals:

[...] Furthermore guidance should be provided on safeguarding the rights of persons for whom deprivation of liberty constitutes a situation of particular vulnerability, such as women, children, persons with disabilities or serious health conditions, LGBTIQ and foreign nationals, as well as the prevention of radicalisation in prisons. [...]

NATIONAL LAWS, GUIDELINES AND POLICIES

As already mentioned above, prisons are rather rigid systems that operate based on clear structures, guidelines or protocols requiring adherence. Many EU Member States do not have specific references to sexual orientation or gender identity in their criminal



laws nor targeted policies to guide prison management and prison staff in relation to the specific needs of LGBTIQ detainees. Where no guidelines exist, prison administrations and staff usually act and handle situations on a case-by-case basis. This is the case in **Austria** and **Italy**. Such case-by-case decision-making, however, must not necessarily entail diminished rights of LGBTIQ detainees. In some cases, such an individualised approach can also lead to beneficial solutions for the detainee, as it involves individual assessment without defaulting to one-size-fits-all solutions. However, where positive solutions are reached – for instance with regard to the placement of trans detainees – this often depends on the strong personal commitment and engagement of individual staff members. It requires staff who take the time and resources to consider the detainee's specific circumstances in order to propose a satisfactory solution. Hence, case-by-case decision-making also leaves room for uncertainty, lack of transparency and wide discretionary powers of prison authorities, potentially leading to disparities and unequal treatment. Therefore, guidelines can be an important tool to set minimum standards and give concrete practical guidance regarding relevant procedures and decisions while also allowing for individualised assessments and consideration of specific needs.

The uncertainty is not only a concern for detainees, but also for prison staff, who, lacking clear protocols, are often overwhelmed when it comes to interactions with LGBTIQ detainees and addressing specific needs, especially considering their already limited resources in many cases. In several countries, such as **Austria**, where guidelines regarding the care and treatment of LGBTIQ detainees currently do not exist, prison officers and other experts have voiced a need for guidance and practical support.

At the same time, more and more countries have started paying attention to the treatment of and care for LGBTIQ detainees, highlighting the importance of the topic and the need for more clarity and transparency, especially in the past few years. The following section will first outline legal provisions in some countries that are relevant to LGBTIQ detainees and then provide an overview of some of the national policies identified within the framework of the project that address specifically the management, treatment and care of LGBTIQ individuals in detention. This overview does not aim to be exhaustive but rather strives to highlight some illustrative policies and guidelines identified throughout the research. Some mentioned documents may not be publicly available.

National laws referring to sexual orientation and gender identity

Besides specific guidelines and policies on LGBTIQ detainees, some countries have provisions in their criminal laws referring to sexual orientation and/or gender identity.

The **Italian Prison Law** includes an obligation to respect the humanity and dignity of the detainee as well as a prohibition of discrimination. Since 2018, this also includes gender identity and sexual orientation among the prohibited grounds of discrimination. Additionally, the Prison Law contains provisions for the placement of LGBTIQ detainees in separate “protected homogenous units,” as they may experience aggression or abuse by the rest of the prison population (see also chapter ‘Placement, admission and accommodation’).⁴¹

Similarly, in **Greece**, the Penitentiary Code includes two references to sexual orientation and gender identity. Firstly, it includes a prohibition of any discriminatory treatment of prisoners, including on the grounds of gender, gender identity or sexual orientation. It further states that special treatment may be applied based on a detainee's gender identity “if it is in favour of the prisoner and in order to meet the individual needs arising from the situation in which he or she finds himself or herself.” Secondly, the Code refers to the placement and allocation of trans detainees. Trans detainees who have their gender identity legally recognised are to be allocated to prisons in accordance with their legal gender. Trans detainees who do not have their gender identity recognised (yet), may request to be transferred to penitentiary facilities that corresponds with their gender identity or (in case of trans women) the special unit in the Korydallos prison. This unit is only for trans women as no specialised unit has been established for trans men.⁴²

The **Austrian Execution of Sanctions Act** does not include any reference to sexual orientation or gender identity (neither generally nor in the context of anti-discrimination).⁴³ The **Hungarian Penitentiary Code** does not specifically mention sexual orientation and/or gender identity. However, in its preamble, the Code states that the Act was adopted, with the aim, among others, to uphold the principle of equal treatment. Additionally, the Act on Equal Treatment and the Promotion of Equal Opportunities refer to sex and corresponding identity (but not gender identity as such) among the protected grounds.⁴⁴



In **Germany**, the penitentiary system falls within the responsibility of the federal states. In **Berlin**, the penitentiary law was adapted in 2021 and now foresees a separation of detainees based on gender (without explicitly naming “women” and “men”). It also includes a provision stating that where the gender identity does not correspond with the gender stated in the public records, the prison authority may deviate from this general rule and accommodate the person in another facility. Transgender persons who had their legal gender changed must be accommodated in accordance with their legal gender.

National guidelines and policies concerning LGBTIQ detainees

Besides specific national laws referring to LGBTIQ individuals in detention, some countries or administrations have developed documents addressing the topic and providing recommendations, guidance and instructions for prison authorities. Some of these documents specifically concern trans (and intersex) persons in detention while others cover LGBTIQ detainees more generally. The documents vary in nature (e.g., guidelines/guidance documents that are usually non-binding and policy documents which are usually binding), scope (e.g., only concerning trans detainees), and target audience (e.g., prison staff, governments, etc.) and underlying principles and approaches.

In **Malta**, the Correctional Services Agency already developed its “Trans, Gender Variant & Intersex Inmates Policy” in 2016, with an update published in 2023 that also included non-binary detainees.⁴⁵ The policy is applicable to all entities operating within the framework for the Correctional Services in Corradino Correctional Facility, Malta’s largest and main prison. It is a comprehensive and progressive document, informed by a person-centred approach and emphasising the principle of gender self-identification on multiple occasions, such as with regard to the use of pronouns in accordance with the detainees’ gender identities. The policy also contains specific rules for the placement of trans, gender variant or intersex detainees, requiring that these detainees must be housed according to the gender marker on their official ID or a sworn declaration, leaving room for self-identification. Their safety and well-being must be prioritised. Their placement, including cell-sharing, must be assessed on a case-by-case basis, with single-cell accommodation provided if needed. Restrictions on social interactions with other detainees should be avoided unless necessary for safety. Requests for alternative placements due to safety concerns must be formally reviewed. The policy contains provisions regarding rubdowns and searches, show-

ering and changing facilities, access to clothing and gendered items, access to gender-based activities, access to legal gender identity recognition while in detention, as well as documentation and data protection. In addition to the policy document, a corresponding Standard Operating Procedure was also developed.

In **France**, an operational document for prison staff regarding the care of LGBT+ people in prison was issued by the Ministry of Justice in May 2024.⁴⁶ It is a non-binding document with the objective of gathering relevant resources on the subject and lists good practices to “answer the questions of prison staff,” “secure professional practices” and “guarantee respectful and appropriate care for LGBT+ people.” The document aims to sensitise prison staff to LGBTIQ issues, including clarifications on concepts regarding sexual orientation, gender identity and intersex. It further provides a section on identifying situations of vulnerability and specific guidance for the treatment and care of trans detainees. A second part addresses specific practical challenges and potential questions that staff might have, including regarding assessment and allocation, individual confinement and access to clothes, accessories and cosmetics. The document follows the principle of self-determination as the basis for interaction with trans detainees, including in questions regarding allocation, body searches, etc. However, there are no specific provisions regarding the medical treatment of transgender detainees, and the provisions still leave quite some room for discretion for prison staff due to “security concerns.”

In **Greece**, the Ministry for Citizen Protection issued “Guidelines on the treatment of LGBTIQ detainees” in 2024.⁴⁷ The Guidelines are addressed to prison staff and aim to equip them with the knowledge and tools to interact positively with detainees and to raise their awareness on issues of sexual orientation and gender identity, expression, and characteristics. The document largely consists of chapters on relevant international, European and national frameworks and standards relating to LGBTIQ individuals. Its main drawback is that it is confined to a repetition of legal norms while it lacks any kind of practical guidance on how to approach everyday scenarios and challenges. Moreover, the Guidelines contain gaps regarding the legal and policy framework, disregarding important international standards and significant recent domestic developments, such as the law on marriage equality. The Guidelines further omit to mention the constitutional provision on safeguarding equality. Overall, the Guidelines appear to have been developed in a relatively unstructured and expedited manner without consulting civil society and the LGBTIQ community.



Their issuance seems to have been driven primarily by a desire to align with the national LGBTIQ strategy rather than by a participatory or needs-based process.⁴⁸

In **Switzerland** no policy exists so far, however, there is a guidance document (“Grundlagenpapier”) on the treatment and care of LGBTIQ+ detainees⁴⁹ that was developed in 2020/2021 by the Swiss Center of Expertise in Prison and Probation based on a mandate from the Swiss government.⁵⁰ The development process included a survey among all penitentiary facilities in Switzerland. It did not, however, include consultation with the LGBTIQ community. The document outlines key principles such as respect for self-identified gender, protection from discrimination, and access to appropriate health care, including gender-affirming treatments. The document emphasises an individualised rights-based approach to placement, body searches, and day-to-day interactions, aiming to ensure safety and dignity for LGBTIQ detainees. A particularly progressive element is its recognition of non-binary identities and the inclusion of intersex individuals alongside the commitment to regular staff training on LGBTIQ issues. It also explicitly recommends the use of preferred names and pronouns and supports contact with LGBTIQ organisations to reduce isolation. Despite being non-binding, the document has reportedly gained relevance in practice, as it is also included in the curriculum used for training prison staff.

In 2023, the **Scottish Prison Service** published the “SPS Policy for the Management of Transgender People in Custody”, which entered into force in February 2024.⁵¹ The policy provides detailed and practical directions for staff, outlining a case-by-case approach to the placement and management of trans detainees. The guidance document states that the preferred name and pronouns of detainees must be respected and trans detainees should be searched in line with their affirmed gender identity. However, searching arrangements are to be assessed individually and if the detainee requests to be searched according to their sex at birth or if there are overriding safety or security concerns, exceptions may apply. The guidance document further highlights particular challenges for trans persons in prison (including emotional stress and anxieties) and calls for consideration of this situation. Importantly, the policy calls for transgender case conferences when admitting trans detainees, which includes a multi-stakeholder approach involving the detainee, in order to inform and review placement decisions. Placement decisions are individualised, guided by risk assessments and balancing the rights and affirmed gender identity of the transgender person with the safety and welfare of other detainees. However, there is some disparity in the assessment of

trans women versus trans men, with the former being mainly assessed in terms of the risk they potentially pose to other female detainees and the latter being assessed mainly in terms of the risk they could be exposed to by other male detainees. Transgender women may be placed in the women’s estate unless they meet specific Violence Against Women and Girls risk criteria or pose a proven, unacceptable risk. Transgender men are placed in the men’s estate unless there are health, safety or welfare concerns. In this case, they may initially be housed in the women’s estate. However, individuals may participate in activities in the estate aligned with their affirmed gender even if housed elsewhere.

The **UK Ministry of Justice’s** 2024 policy framework, “The Care and Management of Individuals who are Transgender”⁵² provides updated guidance (building on the policy from 2016) on the treatment and placement of transgender individuals in prison. The policy framework aims to provide prison staff with practical guidance regarding their duties of support and safe management for transgender individuals. It adopts a rights-based and risk-informed approach, aiming to balance the dignity, safety and legal rights of transgender individuals with the need to protect the safety and welfare of others, particularly in the women’s estate. Placement decisions are made on a case-by-case basis, taking into account a range of factors, including the individual’s legal gender, their gender identity and gender expression, any history of sexual or violent offending and the risks they may pose to others or face themselves. While individuals are generally housed in the estate aligned with their legal gender, this is not automatic. All placement decisions are informed by multi-disciplinary assessments, including a Local Transgender Case Board. The framework also aims to ensure that transgender individuals receive appropriate health care, including gender-affirming treatment where clinically indicated, and that their identity is respected in all interactions. Each establishment must designate a Transgender Lead to oversee implementation, support staff and promote consistency in practice.

In **Portugal**, the Directorate General for Reintegration and Prison Services adopted a manual, “Accompanying Transgender Persons Deprived of their Liberty – Manual of Technical Recommendations” in 2022.⁵³ The manual contains a variety of recommendations that are based on the principle of gender self-identification and self-determination, which are intended to inform all decisions, including placement decisions. The overarching aim is to ensure a balance between safety and wellbeing of the person deprived of liberty. The manual further emphasises the need to ensure continuity of health care, including hormone



treatment. In an annex, the manual also includes a template questionnaire and admission checklist for prison staff to be completed with the active participation of the detainee. Experts reported that despite the manual's alignment with international standards and its generally positive content, it has had little to no practical impact on the treatment of transgender detainees to date. The manual was distributed to prison facilities without any accompanying guidance or training for staff, limiting its effective implementation.

In **Belgium**, the Ministry of Justice⁵⁴ developed the "Recommendations/guidelines for dealing with transgender detainees"⁵⁵ in consultation with civil society. Thematically, it covers basic principles, classification and allocation of cells, admission procedures, access to hygiene products and other gendered items, health care, body searches and access to work activities. It emphasises the right to be treated in accordance with one's gender identity, the importance of confidentiality and the provision of health care equivalent to that on the outside, including access to gender-affirming treatment. It further discusses confidentiality and exchange of information as well as training of prison staff. The document foresees training for prison staff in order to raise awareness of gender diversity and to equip staff with appropriate tools for respectful and effective communication and interaction with trans detainees.

In other countries, where no dedicated policies exist with regard to the management, treatment and care of LGBTIQ detainees, some provisions are nevertheless contained in other policy documents providing guidance for prison staff on dealing with topics around gender identity and sexual orientation.⁵⁶

Many other countries in the EU – such as **Austria**,⁵⁷ **Italy**, **Hungary**⁵⁸ and the **Netherlands** – currently do not have any specific guidelines on the management, treatment and care of LGBTIQ detainees. In **Austria**, a working group was set up by the Ministry of Justice in 2015 to develop guidelines on the management of trans persons in detention. The working group was composed of members of prison staff, civil society, lawyers, representatives of academia and representatives of government/policy makers. Despite their successful work from 2015 to 2017, which concluded in a draft guidance document, the document was never published or disseminated to detention facilities. However, there are plans to develop operational guidelines in cooperation with external experts.⁵⁹

Analysis of the national guidelines and policies

Some countries – such as **Switzerland**, **France** and **Greece** – have policies/guidelines for the management, treatment and care of LGBTIQ detainees generally, recognising individuals in the LGBTIQ community as being at risk of discrimination and harassment when in prison, warranting specific attention to their rights and needs. In contrast, other countries – such as **Belgium**, the **UK** and **Scotland**, **Portugal** and **Catalonia** – the guidelines are specifically on transgender detainees. This is likely because this demographic challenges the binary structure of the prison system quite overtly, especially in terms of placement and accommodation, presenting a need for guidance for prison staff. The guidelines in **Malta** also cover gender variant, intersex and non-binary persons besides transgender individuals.

All the aforementioned policies and guidelines include some general principles and definitions at the outset, explaining concepts related to sexual orientation and gender identity. Some – such as those of **Portugal**, **Malta**, **Switzerland** and **Greece** – also refer to some applicable and relevant international standards. However, amongst these, only **Malta** and **Switzerland** make explicit references to the updated Yogyakarta Principles plus 10. The guidelines in **Portugal** refer to some Recommendations of the Committee of Ministers of the Council of Europe and the Mandela Rules. The guidelines in **Greece** only refer to the original Yogyakarta Principles, and the guidelines in **Belgium**, **Scotland** and **UK** do not include any reference to international standards or documents. It is important that, where guidance documents exist, they make reference to international standards and align with the principles contained therein.

Some of the aforementioned guidelines and policies are more general in nature, emphasising general principles with regard to the management, treatment and care of LGBTIQ detainees while others – especially the operational guidance in **Scotland** – contain quite concrete practical instructions for prison staff. However, all the guidelines leave room for discretionary power of the prison authorities, usually on the basis of safety and security considerations. It is pivotal that any guidelines leave room for individual assessment, taking into account safety and security concerns but also, crucially, the specific needs of each detainee, considering their sexual orientation, gender identity, gender expression and sex characteristics, as well as their health and wellbeing.



The different policies and guidelines also vary in their development processes. Some include guidelines that were developed in consultation with civil society organisations, for example, others are based on the insights of prison staff. In **France**, three associations specialised in LGBTIQ rights (Flag!, SOS Homophobie and Pastt) were consulted in the process of developing the guidelines, although this engagement occurred relatively late in the drafting process and was limited to reviewing a draft. In **Switzerland**, the process of development included a survey conducted in all prisons in Switzerland and discussions in a working group comprising internal and external experts, including civil society. Similarly, in **Belgium**, civil society was involved in the process of the developments. In the **UK**, there was also a wide consultation process, including public consultations. It is important to note that LGBTIQ persons with lived experience of detention were rarely involved in developing guidelines. Only in **Malta**, the updated policy was also based on the feedback from detained persons and included their perspective. In contrast, in **Greece**, the policy was developed without any participation from NGOs, civil society or other actors outside of the penitentiary system. Instead, the policy was developed by the Ministry for Citizen Protection and rolled out without further instructions or clarification regarding its practical application.

Experiences regarding the effectiveness of the guidance documents were mixed. Some experts, including from **Switzerland**, **Malta** and **Belgium**, reported positive developments following the adoption of the guidelines in their countries. However, experts also shared that while in some cases, policies and guidelines may appear comprehensive, useful and human rights compliant on paper, it is crucial that they are also implemented in practice. The practical realities often fall short of what is prescribed in the guidelines. This is because there is insufficient knowledge of the guidelines among prison staff, because staff have not been adequately trained on how to apply them in practice or because faithful implementation is not possible due to structural factors such as staff shortages, overcrowding and limited resources.

In **Switzerland**, following the issuing of the guidance document, corresponding trainings for prison staff were introduced. Additionally, a mechanism was foreseen to review the implementation of the guidance document within five years of its development. Results of the review have not been published yet. In **Malta**, a Standard Operating Procedure was developed alongside the policy, translating the principles of the policy into concrete practical guidance. Prison staff were informed of the policy and the Standard Operating Procedures. In **Portugal**, the manual was shared among national prison

administrations, however, no further presentation or training for prison staff was foreseen. In **Greece**, the guidance document was published. However, no further instructions or measures were provided to support its implementation. In order to ensure the effective implementation of such guidelines and policies, all prison staff should be made aware of them and should be adequately trained on applying the principles contained therein in practice in their daily work.⁶⁰

Throughout the project, experts have highlighted that – just as during the development stage of guidelines – civil society participation is also crucial during the implementation of guidelines, especially with regard to the facilitation of trainings and workshops.

RECOMMENDATIONS

Research demonstrated that few national laws governing the deprivation of liberty/penitentiary system currently refer to sexual orientation, gender identity and gender expression. However, in order to safeguard the rights of LGBTIQ detainees, national laws concerning detention should include an emphasis to respect a person's sexual orientation, gender identity and gender expression, ideally referring to relevant international standards like the Yogyakarta Principles plus 10.

Reference in national laws

Based on the experiences of various prison systems shared in the framework of the project, the development of targeted guidelines for the management, treatment and care of LGBTIQ detainees should be considered and aligned with relevant international standards, i.e. incorporating principles from the Yogyakarta Principles plus 10.

Dedicated guidelines

Any such document should be seen as creating a benchmark of minimum standards, ensuring transparency and due process for detainees. However, any guidelines must leave room for individual assessment, taking into account the specific needs of each detainee and considering sexual orientation, gender identity, gender expression and sex characteristics.

Individual assessment

Research has revealed that one of the crucial elements in positive experiences of guidelines were linked to a participatory and multi-stakeholder approach with civil society, LGBTIQ advocates and experts in the development of policies and guidelines. Specifically, persons belonging to the LGBTIQ community with lived detention experiences should be involved in the development, implementation and review of guidelines and policies.

Participatory approach

As part of the implementation, guidelines should not only be distributed to prison administrations but fur-

Training activities



ther included in training activities. This would ideally be supported by (external) experts in the field of sexual orientation, gender identity and gender expression, increasing awareness and ensuring adequate sensitisation. Where necessary, additional standard operating procedures should be developed to ensure that the guidelines are translated into concrete action and can easily be applied in practice.

Ensure accessibility

Guidelines should be made available in all detention facilities, and detainees should be informed upon admission about the guidelines. Additionally, the guidelines should be published online. This will increase transparency, and consequently, awareness of the guidelines.

Regular reviews

In order to ensure that guidelines are effectively implemented and meet their aims, shortages and additional needs should be identified. Implementation should be assessed, and independent mechanisms for regular review and monitoring should be established.

Additional research

Research revealed no independent study of the implementation of the developed guidelines or policies. Additional research at the regional level in this field could help to identify promising practices and shortages in the specific national guidelines.

Support for the development of guidelines

At the regional level, gather information on national policies, enhance support for developing guidelines that align with international and regional standards and create a platform for exchange.





PART 2: KEY CHALLENGES AND PRACTICES ON THE NATIONAL LEVEL

SEXUAL ORIENTATION, GENDER IDENTITY AND GENDER EXPRES- SION IN PRISONS

Overall, LGBTIQ detainees and the challenges they may face in the prison environment often remain invisible. Due to lack of data and information, obtaining a good insight into the situation of LGBTIQ detainees remains challenging, similar to the situation of LGBTIQ persons outside of the prison setting.⁶¹ Very few EU Member States collect data regarding the Sexual Orientation Gender Identity and Expression or Sex Characteristics (SOGIESC) of detainees. Even where data is collected, the assumption remains that this number may not accurately reflect reality. In some cases, figures regarding LGBTIQ detainees are mentioned in the reports of National Preventive Mechanisms (NPMs) or the CPT⁶², but these numbers solely refer to specific facilities without providing a thorough overview. Also, where figures are available, they are often limited to (anecdotal) numbers of transgender detainees.⁶³

Further impeding data collection, many LGBTIQ detainees choose to not “out” themselves and keep their gender identity or sexual orientation hidden from other detainees and prison staff. Visibility can be dangerous. However, while they remain invisible, it is difficult to access LGBTIQ detainees, identify any particular needs and provide support measures.

It is important to highlight that LGBTIQ persons are not a homogenous group and treating them as such can erase important diverse challenges and needs. The experience of imprisonment can be very different for gay men and lesbian women for example, and not all gay men in prison have the same experience either. Additionally, experiences may also differ intersectionally based on race and ethnicity. LGBTIQ people from ethnic minorities might face discrimination from their ethnic minority community but also racism from the broader LGBTIQ community and a combination of both from the dominant heterosexual community.⁶⁴ Some challenges, including those related to body searches and regulations regarding the placement, are very much connected to the gender identity of a detainee and not the sexual orientation. In practice, most available information and reported cases within the project concern transgender detainees, whose needs and vulnerabilities are often at the forefront of prison-related issues. In contrast, intersex persons, as well as non-binary persons, are very much under-represented in ongoing debates, and only very few cases were identified in the framework of the project. There is also generally a lack of public knowledge on intersex and non-binary identities



compared to more commonly discussed identities like gay, lesbian or transgender. A recent case concerning a non-binary person who was extradited from Germany to Hungary gained attention raising concerns regarding the prison conditions - particularly for non-binary persons.⁶⁵

Regardless of sexual orientation, gender identity or gender expression, experiences of imprisonment can of course also depend on particular aspects of the facility, the staff working there, and importantly, the detainees themselves. Different personalities, whether an individual is extroverted or prefers to keep to themselves, or whether they have severe mental health needs for example, may all impact experiences of imprisonment. While the project identified a plethora of challenges for LGBTIQ individuals in prison, it should be stated at the same time that there were also several reported cases of LGBTIQ detainees living with their sexual orientation or gender identity quite openly and without considerable negative consequences. Some detainees have mentioned that although they have occasionally received insults, a confident attitude and projected strength can preclude harassment and discrimination. Some have also reported living openly as a gay man or a trans woman, for example, and feeling accepted by other detainees, having quite harmonious relations with them.

Throughout the project and this report, the project team underlined the individuality of experiences and also clearly states distinct challenges to avoid generalisations.

(FEAR OF) COMING OUT IN PRISON

There are multiple reasons why LGBTIQ detainees may not want to come out as LGBTIQ in prison. Coming out is, of course, always a personal matter and it is a person's own prerogative to choose if, when and to whom to come out. Living openly as LGBTIQ can be extremely difficult outside of prison in the community as well. Prisons are part of the community and are accordingly not immune to societal attitudes towards LGBTIQ persons. Hateful attitudes towards LGBTIQ individuals pervade many societies. Political environments also shape the flexibility of the prison system to accommodate detainees that might not fit into strict binary gender systems. This is evident in countries like Hungary, where repressive laws towards LGBTIQ persons have also correlated with prisons becoming increasingly hostile places for LGBTIQ detainees.⁶⁶

The contrary can be seen in Malta, where the general political climate in the country can be described as supportive and progressive with regards to enhancing the rights of LGBTIQ persons. Similarly, the penitentiary system in Malta mirrors this reality and has introduced progressive guidelines in its "Trans, Gender Variant & Intersex Inmates Policy" (see also chapter 'National laws, guidelines and policies'), which aims to safeguard the rights of LGBTIQ detainees and align with international standards. Also, on the sub-national level, these influences can be visible and a great variety can also be seen between facilities in the same country. For example, it has been reported that there are considerable differences between attitudes towards trans detainees in prisons in Berlin, a cosmopolitan and comparatively progressive city with a vibrant LGBTIQ community, versus other parts of Germany, which are more traditional and conservative in many ways.

In addition, while societal attitudes towards the LGBTIQ community permeate prison walls in many ways, challenges that LGBTIQ persons face are also heightened in the prison environment. For one, the topic of sexuality and anything to do with it is a taboo subject in most places of detention. Most guidelines and protocols for the management of detainees do not mention topics related to sexual conduct in prisons. In some countries (such as Greece and the UK), sexual conduct is prohibited in prison (both with detainees and with partners by way of conjugal visits). Even where sexual conduct is not prohibited, it is not always openly discussed. While some prisons simply tolerate sexual conduct, other prison authorities and officers deny that sexual conduct even occurs in prison. Treating sex and sexuality in prisons as a taboo subject not only fosters invisibility of LGBTIQ detainees but also prevents implementation of adequate health and safety measures, such as adequate access to information about sexual and reproductive health, or HIV and Hepatitis C prevention measures (see also chapter 'Access to health care').

Lastly, the lack of open discourse may prevent violence or non-consensual sexual conduct from being reported. However, it is a fact that same-sex sexual conduct takes place in (almost) all prisons. There are many forms and grey zones of sexual conduct in prison – as in outside society. Some detainees who have sex with other detainees would identify themselves as homosexual (or bisexual), some would not (referred to as men who have sex with men), some sexual conduct takes place in the context of prostitution or sex in exchange for goods and services, and some sexual encounters in prisons are also non-consensual. While it is imperative for prison staff to take caution with regard to preventing possible non-consensual sexual conduct, a climate where sexu-



al conduct is not expressly prohibited or taboo but rather tolerated may actually serve to prevent harmful conduct because topics can be addressed more openly. Despite a reported increase in awareness of LGBTIQ issues in some cases, numerous experts noted that sexual orientation, and even more so gender identity, gender roles and gender expression are still topics that are rarely addressed in prison. There is a sense that these aspects of a person's identity are not "relevant" in places of detention and are to be hidden due to a safety concern.

Indeed, many LGBTIQ detainees do not come out in prison for fear of ridicule, harassment and violence (see also chapter 'Safety and security'). It is understood that whether and how LGBTIQ detainees express their LGBTIQ identity can make them more or less safe in the prison environment. Fear of negative attention, insults and harassment can also lead to some LGBTIQ detainees refraining from certain activities. It has been reported that in many facilities, even though there are no formal restrictions for LGBTIQ detainees with regard to access to work, sports or other leisure activities, indirect restrictions were nevertheless perceived (see also chapter 'Work and recreational activities'). For example, a trans woman housed in a men's facility in Austria said that she did not feel comfortable participating in sports alongside men because she would be exposed to the stares and comments of the other detainees.⁶⁷

In addition, some prison staff also actively discourage detainees from drawing attention to themselves by declaring their LGBTIQ identity or exhibiting behaviour or appearance that diverges from cis-gendered and heterosexual norms to avoid risking adverse consequences (as was reported in Austria⁶⁸). A reported example was that prison officers recommend LGBTIQ detainees not to draw too much attention to themselves by dressing "extravagantly." While there may be some advantages to "hiding" one's sexual orientation and gender identity in prison, it can be very distressing to perform cis- and heteronormativity to camouflage such a crucial aspect to one's identity and to constantly fear being outed. This fear and a perceived pressure to hide a part of one's identity can be very distressing and can contribute to mental ill-health for LGBTIQ detainees.⁶⁹ It has also been suggested that the length of one's sentence may impact whether a person chooses to be out in prison. It could seem preferable or "easier" to hide one's sexuality while in pre-trial detention or for a brief prison sentence, whereas individuals who are sentenced for many years could find the prospect of remaining "in the closet" for the entire duration of their sentence very difficult.

Besides the abovementioned, it must be stated that

while gay or lesbian detainees may choose, for different reasons, not to disclose their sexual orientation while in prison, it is sometimes unavoidable for trans detainees to be outed and to have their gender identity known. For this reason, issues related to trans detainees are often at the forefront of the discourse on the situation of LGBTIQ detainees. Transgender detainees experience manifold challenges in prison environments, including disrespect, insults or blatant transphobia. They may not have the possibility – or desire – to pass as cis-gendered. However, gender-affirming practices and self-expression are of vital importance to their personal dignity (see also chapter 'Gender affirming clothing and products').

(HYPER)MASCULINITY WITHIN PRISON CULTURE

Prison culture is generally characterised by strict hierarchies and tension and prison can be a harsh environment for all detainees.⁷⁰ Within prison cultures, hypermasculinity and "toughness" are valued traits that are considered essential to stay safe from harassment from other detainees.⁷¹ In such environments, it can be difficult for persons who are considered "weaker" and have traditionally lower standing among prison subcultures. Individuals who are homosexual, or perceived to be so, or individuals whose appearance or demeanour defies traditional gender stereotypes, often fall into this category. Experts argued that being gay can be seen to contradict the "typical patriarchal image of masculinity" that is reinforced in prison, and it can be particularly difficult for men in prison who are gay or queer or perceived to be so. Such an oppressively rigid view of masculinity often goes hand in hand with homophobic attitudes. Some experts – as well as LGBTIQ persons with lived experience, including from Germany, Italy and Austria⁷² – have reported that in prison, detainees from certain cultural or national backgrounds stand out as holding particularly hypermasculine and homophobic views.

Homophobia in prison is intimately tied to notions of masculinity, and it was apparent in the project, that being a gay man in prison can be an entirely different experience than being a lesbian woman. Multiple experts from different countries have reported that homosexuality among women is comparatively more tolerated and accepted in prison among detainees, who generally appear to be accepting of lesbians and lesbian relationships, as well as among prison staff. Cases from Switzerland, Austria, Hungary, Italy, Portugal and Belgium were reported where female detainees who were in a relationship with each other were also allowed to share a cell. Staff have also stated that they usually have no problems with facilitating such accommodation arrangements as it is seen as contributing to



a calm and pleasant atmosphere on the ward. While it reportedly occurs in some cases, such cell-sharing is not as frequently heard of for male detainees who are in a relationship (e.g., some cases in Austria⁷³).

It cannot be overstated that experiences of LGBTIQ detainees are far from homogeneous. In addition to the particular structural and social environment in prison, the level of perceived victimisation on the basis of one's sexual orientation or gender identity also depends on the character of the individual person. Some LGBTIQ detainees throughout the project have expressed feeling safe and even accepted around other detainees and unbothered by occasional crude jokes. On the other hand, other personal characteristics may also increase an individual's likelihood to experience discrimination (i.e., being a person who uses drugs, working as a sex worker or having an uncertain residence status can lead to intersectional or multiple discrimination). Such discrimination can, and often does, create cumulative disadvantages.⁷⁴ In Italy for example, many trans women and gay men in prison have substance use problems too, which can lead to additional difficulties in prison.⁷⁵

It has also been mentioned that staff culture and an inclusive staff environment is important for both LGBTIQ staff and detainees; prison staff who are themselves openly LGBTIQ can have a positive effect on the treatment of LGBTIQ detainees. A positive example emerged from a prison in Switzerland, where a non-binary prison staff openly shared their gender identity. This raised awareness and fostered greater sensitivity among prison staff. In response, the prison administration implemented reasonable accommodations – such as adjustments regarding changing room arrangements – and also highlighted the topic within the institution. Notably, the staff member's openness also encouraged a non-binary detainee to come out, demonstrating the empowering ripple effect that visible representation can have.

RECOMMENDATIONS

Collect data

The research revealed a lack of data when it comes to LGBTIQ persons in detention, which keeps their situation and challenges invisible. States should establish systematic, rights-based mechanisms for collecting disaggregated data on the situation of LGBTIQ individuals in detention while ensuring strict safeguards for privacy, consent and data protection. This can help to identify gaps, inform evidence-based policy and practice and monitor the impact of measures aimed at protecting the rights and well-being of LGBTIQ detainees. Similarly, at the regional level, data collection should be enhanced to respond to trends, developments and ensure protection.

Prisons continue to be places that are governed by a rigid binary understanding of SOGIESC, dominated by hypermasculinity (especially in facilities for men) and hierarchies. The research revealed that many of these underlying approaches can lead to various challenges for all detainees, but particularly for LGBTIQ detainees. In order to overcome these challenges, a holistic approach towards the penitentiary that respects the dignity of all detainees and enables an open approach to sexuality, sexual orientation, gender identity and gender expression in prisons is required. Prison staff and the penitentiary management can play a big role in breaking down taboos and combat discrimination. Any initiatives should also include support for queer prison staff.

At the regional level, strengthen exchange and cooperation between stakeholders from different Member States to share positive experiences and overcome stigma.

Strengthening the capacity of prison systems and prison staff to embrace diversity and appropriately address sexual orientation, gender identity and gender expression is a cross-cutting theme in this report and many other recommendations in other chapters also pursue this objective.

Promote prison culture that embraces diversity

Strengthen cross-border exchange and cooperation

PLACEMENT, ADMISSION AND ACCOMMODATION

RELEVANT INTERNATIONAL STANDARDS

International standards emphasise the need to ensure the safety, dignity and rights of all detainees, including LGBTIQ individuals in detention. These principles call for individualised placement decisions that respect self-identified gender and address the unique vulnerabilities of LGBTIQ detainees, particularly trans detainees. Where necessary, appropriate protective measures should be put in place to safeguard those at heightened risk, provided these do not lead to further marginalisation. Isolation must only be used as a last resort, never as a substitute for proper protection and care.

In all prison systems, there is a strict division between facilities for men and women. This principle is also enshrined in Rule 11 of the Nelson Mandela Rules,⁷⁶ which establishes that “Men and women shall so far as possible be detained in separate institutions,” as well as in Rule 18.8b of the European Prison Rules. Rule 18.9 allows for exceptions of this general rule to allow prisoners to participate jointly in organised activities, but these groups shall always be separated at night unless they consent to be detained together and the prison authorities judge that



it would be in the best interest of all the prisoners concerned. The Nelson Mandela Rules additionally require that prisoners' **self-identified gender be respected in prison records**. Rule 7(a) states that the “precise information enabling determination of his or her unique identity, respecting his or her self-perceived gender” should be entered in the file management system upon admission for each prisoner. This Rule is the only one explicitly mentioning gender and the right to determining one’s self-perceived gender identity.

The Yogyakarta Principles highlight in Principle 9⁷⁷ that states shall:

- a) Ensure that **placement in detention avoids further marginalising persons** on the basis of sexual orientation or gender identity or subjecting them to risk of violence, ill-treatment or physical, mental or sexual abuse;
- c) Ensure, to the extent possible, that all **prisoners participate in decisions** regarding the place of detention appropriate to their sexual orientation and gender identity;
- d) Put **protective measures** in place for all prisoners vulnerable to violence or abuse on the basis of their sexual orientation, gender identity or gender expression and ensure, so far as is reasonably practicable, that such protective measures involve no greater restriction of their rights than is experienced by the general prison population.

In a similar vein, the European Commission in its Recommendation (C(2022) 8987) called for measures to protect detainees with special needs or vulnerabilities:

(77) Member States should ensure that **placement in detention does not further aggravate the marginalisation of persons because of their sexual orientation, racial or ethnic origin or religious beliefs or on the basis of any other ground**.⁷⁸

Specifically concerning the accommodation of trans detainees, the CPT states that “**transgender persons should be accommodated in the prison section corresponding to the gender with which they identify**”⁷⁹ provided their safety and dignity are ensured. Isolation or segregation, often used as a protective measure, is discouraged, except for exceptional and short-term circumstances due to its harmful psychological effects. To mitigate these risks, the CPT recommends mixed-gender custodial staff in all prison units and emphasises that prison transfers should avoid mixing male and female detainees.

The European Prison Rules emphasise the need to respect the dignity and privacy of detainees (Rule 18.1).⁸⁰ Regarding transgender individuals, the PRI & Council of Europe’s Guidance Document on the European Prison Rules highlights the risks of abuse in placements based on either sex assigned at birth or self-identified gender, underscoring the **need for careful and individualised decisions**.⁸¹

The report of the OHCHR Working Group on Arbitrary Detention in 2021 includes a section on the detention of LGBTIQ+ persons in its annex. It states that **transgender women should not be automatically housed in male prisons** due to their higher risk of sexual violence. Placement of LGBTIQ+ individuals should be determined on a case-by-case basis, respecting their gender identity and following the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (“the Bangkok Rules”).⁸²

Moreover, the UN Special Rapporteur on Torture has noted that trans prisoners should be given the opportunity to **appeal placement decisions**.⁸³

Various international and regional standards have raised concerns about the use of solitary confinement,⁸⁴ and they emphasise the need to limit solitary confinement to a measure of last resort, for the shortest period of time under strict oversight with judicial review.⁸⁵ Similarly, in its Recommendation (C(2022) 8987), the European Commission recommended that states ensure detainees have adequate time outside their cells to engage in work, education and recreational activities essential for maintaining appropriate human and social interaction. It also emphasised that any exceptions—such as solitary confinement or special regimes—must be necessary, proportionate and compliant with the prohibition of torture and inhuman or degrading treatment.⁸⁶

With regard to LGBTIQ persons in detention, the SPT found that “[s]olitary confinement, isolation and administrative segregation are not appropriate methods of managing the security of persons, including lesbian, gay, bisexual, transgender and intersex persons, and can be justified only if used as a last resort, under exceptional circumstances, for the shortest possible time and with adequate procedural safeguards.”⁸⁷ The SPT also **cautions against the use of ‘protective’ solitary confinement for LGBTIQ+ prisoners**, stating that measures like separation or solitary confinement should not be used to stigmatise or punish. When separation is necessary, prisons must ensure meaningful social interaction and activities. Transgender individuals undergoing sex reassignment should not be automatically placed in solitary confinement.⁸⁸



In addition, the ECtHR has addressed issues related to the treatment and allocation of LGBTIQ detainees. In *X v. Turkey*,⁸⁹ the Court considered that placing a gay detainee in total isolation and in inadequate conditions for more than eight months to protect him from fellow detainees was not a justified measure and that the conditions of the applicant's solitary detention had caused him both mental and physical suffering as well as a strong feeling of being stripped of his dignity (a violation of Article 3). Further, the Court was not convinced that excluding him from prison life was done to protect his physical well-being. It instead considered that it was the applicant's sexual orientation that was at issue, concluding that the applicant had been discriminated against by the prison administration on the basis of his sexual orientation (violation of Article 14 in conjunction with Article 3).

NATIONAL CHALLENGES AND PRACTICES

In all EU prisons, there are strict divisions between facilities or units for male and female detainees. This indubitably creates challenges for prison administrations (and risks for the detainees) when admitting detainees who do not conform to this rigid gender-binary. Within the project, such placement and allocation challenges arose mostly with regard to trans detainees, but detainees who are non-binary, intersex or gender-diverse may have similar experiences. Though this group of detainees generally corresponds to a very small proportion of the prison population, prison authorities often struggle to accommodate them and address any specific needs.

There is great variation in how countries (and also facilities within a country) approach placement decisions for transgender detainees (i.e., whether they are housed in the women's or men's facilities). Few states have formal policies or legislation guiding these decisions (see also chapter 'National laws, guidelines and policies'), and placement is frequently handled on a case-by-case basis. In some facilities, trans detainees are housed among the general prison population, and there are separate wings or units dedicated to housing LGBTIQ detainees or trans women specifically. The topic of placement of trans detainees, specifically trans women housed in women's facilities, is fiercely debated and has garnered political and media attention in some cases. Ostensibly, such debates centre around a concern for safety and security on the part of trans detainees, as well as of other detainees (see also chapter 'Admissions and screening'). At the same time, separating LGBTIQ detainees (particularly transgender detainees) from others as a way to protect them should be carefully balanced with the harmful impacts of isolation.

Placement based on sex assigned at birth and legal gender

In several countries, placement is based on the gender recorded in the detainee's official documents/public register, which is usually their sex assigned at birth. Consequently, transgender detainees are often allocated in a facility that aligns with their sex at birth, disregarding their gender identity. This can be extremely distressing for the individual, and they may experience elevated risk of harassment, discrimination and violence.⁹⁰ This is particularly the case for trans women who are housed in all-male facilities (see also chapter 'Harassment and violence').

In many countries, including **Austria**,⁹¹ **Greece**, **Hungary**,⁹² and the Netherlands the legal gender is decisive for placement decisions. However, there are still differences in the national systems, particularly pertaining to trans persons.

In **Hungary**, since May 2020, a change of one's legal gender is no longer possible. As a result, transgender detainees are systematically placed according to their sex assigned at birth, regardless of their gender identity.⁹³ However, trans persons who have acquired legal gender recognition prior to this ban are placed in facilities that correspond to their legal gender regardless of whether they have had any gender affirming procedures.

In **Greece**, trans women who have had their gender identity legally recognised are placed in women's facilities. However, transgender women who have not had their gender identity legally recognised may request to be transferred to women's penitentiary facilities by a decision of the Central Committee for the Transfer of Prisoners. Transgender women may also request their transfer to a newly created specialised unit, which opened at the women's ward of the Korydallos penitentiary facility in 2021. In the same way, trans men who have had their gender identity legally recognised are placed in penitentiary facilities for men.⁹⁴ While in **Greece** there is currently no specialised unit to house trans men, according to the Penitentiary Code, trans men may request to transfer to facilities for men under the same procedure as trans women. In practice, however, there are no known cases of trans men who have requested such transfer; indeed, experts mentioned that in their experience, trans men prefer to stay in female facilities, as these tend to be more open and accepting of LGBTIQ individuals.⁹⁵

Similarly, in **Austria**, trans persons who have had their gender legally recognised should be placed in a facility corresponding to that gender.⁹⁶ However, the



project has revealed that even a change of the legal gender does not automatically lead to a placement according to the legal gender. One such reported case concerned a trans woman detained in a male facility who changed her status in the Central Civil Status Register to female and was consequently transferred to a facility where both men and women were accommodated. There, however, she was placed in the male ward. The reason for this was that she had male genitalia and therefore could not be accommodated with women due to concerns on the part of the prison administration about her potentially having sexual relations with other female detainees, resulting in (unwanted) pregnancy.⁹⁷

Being housed alongside detainees of another gender can be very distressing for trans detainees and negatively affect their wellbeing and mental health. In addition, it can expose them to risks of harassment and violence (see also chapter ‘Harassment and violence’). In **Austria**, a trans woman who is accommodated with men explained that it causes her severe emotional stress because she feels discomfort around so many men and also misses the possibility to talk to other women.⁹⁸

Protective measures for LGBTIQ detainees

Prison administrations and staff are often very aware of the risks LGBTIQ detainees can face in prison, especially trans women if they are housed in male units. For this reason, there are many examples of facilities implementing certain protective measures to ensure the safety of “vulnerable” detainees.

Within a prison, some places are considered riskier than others in terms of assault by other detainees. These include, for example, the communal showers. As a result, some facilities enable separate shower times for trans detainees, which is reportedly practiced in **Malta, Switzerland, Scotland and England and Wales**, and it has been reported in **Austria** too.⁹⁹ This practice ensures the privacy and safety of trans detainees. It can also ease discomfort of other detainees. For example, trans women are granted separate shower times in **Malta**, as some female detainees expressed uneasiness when showering alongside trans detainees with male genitalia.

Also, single occupancy rooms are sometimes available to LGBTIQ detainees to ensure their safety at night. Similarly, in **Hungary**, although there is little flexibility with regard to the accommodation of LGBTIQ detainees, some facilities have nevertheless accommodated LGBTIQ detainees in single-occupancy rooms or with another detainee assessed as

posing no risk to their safety. The reason for such placement decisions is never officially stated, since belonging to the LGBTIQ group cannot be officially registered. Due to the repressiveness in the country, no measure might be officially taken based on sexual orientation or gender identity. However, in order to protect the personal safety of certain LGBTIQ detainees, staff sometimes undertake such a sort of preventive measures without explicitly stating the underlying reasons.¹⁰⁰

Within the project, experts have agreed that such protective measures can be immensely important to protect LGBTIQ detainees and safeguard their rights where it is impossible – due to legal restrictions or other obstacles – to accommodate them in a facility that aligns with their gender identity or that best suits their needs. However, such measures are often implemented on a case-by-case basis and depend to a large extent on the flexibility of the prison administration, as well as on the goodwill and engagement of individual prison officers or other staff. It was mentioned several times throughout the project, that in some cases, prison staff had been very supportive and determined to make the accommodation arrangements for LGBTIQ detainees less harmful.

It should also be acknowledged that many prison systems struggle with overcrowding and understaffing, which impede the implementation of some measures. If resources are available, indeed, additional measures that enhance privacy and detention conditions should be implemented for all detainees. For example, it was argued that in-cell showers are a structural modification that provides privacy and prevents abuse, benefitting all detainees.

Separate units and isolation

In order to ensure the safety of LGBTIQ detainees, some countries and facilities have also taken the approach of housing LGBTIQ detainees (usually, trans women) in separate units or wings, segregated from the general prison population.

For example, in **Greece**, a special transgender unit was established in Korydallos Women’s Remand Facility in 2021.¹⁰¹ As of 2025, the new ward housed seven detainees. Experts reported that this ward represents a vast improvement in terms of detention conditions for trans women, including the size of the rooms, sanitation and support from prison staff. However, the transgender women in the Korydallos special unit are held in isolation from the general prison population and do not come into contact with the other women. Due to a lack of personnel and resources, they also



have very little access to recreational activities (see also chapter ‘Work and recreational activities’). Additionally, the ward is located in the basement of the Korydallos prison, without natural light and where the sewage system has occasionally overflowed.¹⁰²

In **Portugal**, it was reported that trans detainees are allocated mainly to three of the country’s prisons, where they are confined to a separate wing of the facilities. Though this is a functional segregation, detainees reportedly prefer to be accommodated there as the units provide comparatively more safety than in the general (male) prison population.

In other places, there are no specifically dedicated units, but instead there is an (informal) practice of placing detainees who are either deemed to be “vulnerable” or at risk of harassment amongst the general prison population – such as LGBTIQ detainees – to be housed in other segregated units, such as in separate units intended for detainees convicted of sexual crimes or isolation units for detainees who are deemed “dangerous.” For example, in **Italy**, it is common practice in several facilities to house trans women in “promiscuous protected units” (so-called “sezioni protette promiscue”) within male facilities. These units can be small sections just for the accommodation of trans women or bigger sections that accommodate various categories of people considered at risk (e.g., sexual offenders and former police officers).¹⁰³ Sometimes, homosexual men are also accommodated in these protective units if they declare their wish to be transferred there. Additionally, there are “protected homogeneous units” that are solely either for trans women or for gay men.¹⁰⁴

This is ostensibly a safety measure aimed to protect the LGBTIQ detainees from harassment or violence from other detainees. However, this segregation constitutes de facto isolation from the rest of the prison community, with little to no interactions with detainees from other units.¹⁰⁵ The **Italian** NPM, in fact, noted that this can negatively impact their physical and mental wellbeing.¹⁰⁶ Also, housing LGBTIQ detainees alongside other detainees deemed worthy of protection does not necessarily result in a greater sense of safety. For example, trans women held in Milan Prison reportedly felt uncomfortable being housed alongside men accused of sexual offences and therefore purposefully masked their gender identity by not wearing dresses or make-up.¹⁰⁷

Housing trans detainees in units for “vulnerable” detainees – such as detainees who have committed sexual offences or who have intellectual/psychosocial disabilities or specific psychiatric needs is also

common in **Hungary**. There, it is common practice to house LGBTIQ detainees in special units called “psychosocial units” intended for detainees with special needs, such as mental disorders. Such units are not suitable environments for detainees who are not experiencing mental health issues, and they are not available at all facilities.¹⁰⁸ In some facilities, rather than placing them in some kinds of specialised units, LGBTIQ detainees (usually trans women) are held in isolation, effectively amounting to solitary confinement – ostensibly for their protection. While this minimises direct threats from other detainees, prolonged isolation can lead to psychological harm and restrict access to meaningful activities and social interactions with other detainees. One specific example of these practices concerns a non-binary person who is detained in Hungary in solitary confinement without meaningful interaction.¹⁰⁹ In one case in **Poland**, a trans woman was held in isolation in a unit intended for “dangerous detainees” even though she was not considered to be dangerous. She was without any contact to other detainees, even on her daily walk.¹¹⁰ A similar case concerning a gay detainee was reported in **France**.¹¹¹

When LGBTIQ detainees are housed in separate units or wings – as is the case in **Italy**¹¹² and **Greece**¹¹³ – this segregation, while perhaps aimed at ensuring their safety, not only isolates them from the general prison population but also sometimes results in detainees being excluded from communal spaces and meaningful activities (see chapter ‘Daily life in prison’).

Placement based on gender identity and sexual orientation

As outlined above, various international and regional standards emphasise that a detainee’s gender identity should be a central consideration in placement decisions. Following these standards, each detainee should be accommodated in a facility that corresponds to their gender identity. The project has revealed that few jurisdictions (broadly) comply with such standards so far. For instance, **Scotland, Switzerland, Malta** and **Berlin** have protocols for enabling an individualised approach to placement decisions, considering the gender identity of detainees, involving them in the decision-making process and considering their preferences. However, it should be mentioned that the fact that guidelines have been issued in a country does not automatically mean that their principles are implemented in practice. In **Portugal**, the new manual lays out that allocation decisions should be based on gender identity. In practice, however, detainees are still placed in facilities based on their legal gender.



In **Scotland**, the Policy for the Management of Transgender People in Custody Operational Guidance¹¹⁴ emphasises individualised assessments that ensure that decisions align with the individual's gender identity while also considering potential risks. A central aspect of this policy is the Transgender Case Conference, which involves relevant staff and the individual detainee to plan their placement, care and management. The guidance states that the views of the individual should be heard and considered on each area of discussion. This includes access to gender-appropriate facilities, personal property and transitioning support with consistent use of preferred names and pronouns.

Indeed, the project has shown that many prison administrations share similar concerns regarding the placement of trans women among other detained women. Especially in cases of trans women who have male sex characteristics or who present as more masculine, there are concerns around the risks they could pose to other women, including risks of sexual assault. This fear has also been propagated by some prominent negative media portrayals of trans women in women's facilities. Such notions have been criticised by experts in the project and rejected as unfounded. In fact, trans women are more likely to be victims of harassment in prison – especially if they are accommodated in male units – than to be threat to other detainees. Indeed, experts who have experience with trans detainees being accommodated in female facilities (e.g., in **Switzerland** and **Berlin**) shared positive experiences and reported that no significant problems or issues arose in practice. Also, a narrow focus on such concerns only neglects the fact that harassment and violence can also happen among detainees of the same gender.

It has also been suggested by experts that in order to assuage detainees' fears or concerns about trans detainees being housed alongside them, it could be sensible to facilitate a meeting with everyone, especially the trans detainees' cell mates. Being able to address concerns beforehand could lead to better outcomes. For example, in a case in the **Netherlands**, before a trans woman was transferred to a male facility, there had been an assembly of staff and other detainees to address concerns and provide information and a sensitivity training.

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In **Berlin**, transgender detainees are accommodated on the basis of their gender identity. If the gender identity corresponds with the legal gender, this is followed. If the gender identity does not correspond with the legal gender, an individual assessment in the framework of a case conference is conducted in order to determine placement in a detention facility.

This assessment has to be initiated by the detainee without formal checks and their wishes are taken into account. This approach also facilitates a speedy and uncomplicated process when dealing with trans detainees who may be foreign nationals with an illegal residence status and who are not connected to any service systems, which may often be the case with sex workers (who may also be foreign nationals and may not have had any legal gender recognition). The approach centres on the self-identified gender of the person and their specific preferences and needs. In the assessment, the interests of the detainee are weighed against possible concerns for the safety of other detainees. In contrast to the Scottish system, in **Berlin**, prior convictions are only considered in an abstract way and do not à priori exclude detainees due to a specific category of conviction. Rather, the person and their needs/risks are assessed holistically. An expert has noted that out of 29 trans women who had been accommodated in female units in **Berlin** since 2023, only one of them was transferred back to a male unit out of a concern of her constituting a threat to other women. Assessments consider any potential risks for the safety of the detainee, and if necessary, additional safety measures are taken (e.g., separate shower times).

Similarly, in **Malta**, in cases of non-nationals who are not able to change their legal gender, trans detainees are able to make a formal declaration to the prison authorities, and this enables the authorities to accommodate them in line with their affirmed gender.

It has been emphasised throughout the project that it is crucial that trans detainees are also involved in decisions regarding their placement and asked about their preference. While some detainees prefer to be allocated to a facility that corresponds to their gender identity, other cases were mentioned (particularly of trans men) who preferred to stay in the female facility, as they would be more exposed to the risk of violence at the male facility. In the framework of the consultations experts mentioned that one reason for this is that female units are generally, across countries, more harmonious and less violent than male units. This highlights that any approaches to placement decisions of trans detainees should not follow a strict approach based on sex at birth or gender identity (or gender expression or gender-affirming treatment, for that matter) that disregards the heterogeneity of the detainees and their individual preferences and needs. It would be harmful to assume that all trans men, for example, would prefer to be housed in male units, or that all trans women would prefer to be housed in a separate unit for trans detainees rather than among the male prison population. In **Switzerland**, for example, a case was reported of a trans man who had

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decided to remain in the female unit of a prison, and this was facilitated with relative ease in dialogue with the detainee himself and the other women in the unit. Clear and open communication with all individuals involved in these circumstances are of utmost importance. Though the project did not reveal many cases of non-binary detainees, it has been acknowledged that these detainees may present with additional challenges in terms of placement. In **Berlin**, where placement decisions are based on self-determination, it has been reported that non-binary detainees may also prefer to be housed in the female units, owing to these units being comparatively calmer and more pleasant to live in. In **Hungary**, where placement is based on legal gender (i.e. sex at birth), non-binary detainees are assigned to units corresponding to their official papers.

Notwithstanding the abovementioned, other factors can play a role in the preference of allocation of detainees. In addition, it has been reported that if given the choice, some trans women declare a preference for being accommodated in male units, as this sometimes gives them an opportunity to support their income in prison through sex work (as has been mentioned by experts from **Berlin**).

Admissions and screening

Regardless of whether protocols are in place for the decision process for the placement of trans detainees, or whether trans detainees are placed in accordance with their sex at birth or legal gender (in accordance with national laws), certain security measures may be necessary to ensure their safety and wellbeing in detention. The project highlighted the importance of a comprehensive admissions procedure, including a thorough screening for specific needs and required support or safety measures. This applies not just to trans detainees but to all LGBTIQ detainees, and indeed to all detainees, whether they out themselves as part of the LGBTIQ community or not. Experts have noted that enhanced care and attention at this stage can preclude risky accommodation arrangements and can help establish the need for certain safety measures (e.g., separate shower times or ensuring compatibility with roommates).

While it appears to be standard procedure in **Scotland**¹¹⁵ to actively enquire at admission about the sexual orientation of the detainee for security purposes, in most other countries this is not done. It was argued by experts that gender identity and especially sexual orientation are not considered relevant factors at this point. Indeed, a coerced declaration could be highly problematic, and this “involuntary outing” could also lead to stigmatisation and discrimination.

In **Berlin**, a “Checklist” was developed for the admission process specifically of trans persons, intersex persons and persons with the legal gender “diverse.” This checklist contains a variety of questions on preferred pronouns, gender identity, etc., and it includes questions about any relevant medical issues and the person’s preference regarding their accommodation. This questionnaire was perceived as a positive development; however, it was emphasised that it is a basic guidance tool and should be accompanied by comprehensive and sensitive interviewing to get to know the person. Also, the utility of such a tool depends on the detainee feeling confident and comfortable enough to reveal their gender to the authorities right at the beginning. Additionally, some practitioners raised concerns about consequences of this kind of “labelling.”

Some experts have also noted that using sensitive interviewing techniques can also be a useful tool to inquire about specific needs or necessary safety measures without requiring the detainee to out themselves. In **France**, according to the National Guidelines for the Care of LGBT+ Persons in Custody (see chapter “National laws, guidelines and policies”),¹¹⁶ “vulnerability assessments” are to be conducted during intake to determine appropriate housing and ensure the safety of LGBTIQ individuals. Decisions are made on a case-by-case basis, focusing on individual needs rather than rigid binary classifications. The guidelines aim to avoid isolation unless explicitly requested for safety, promoting integration within the prison population while mitigating risks of discrimination and violence.

However, in many countries, including in **Austria**, admissions screenings are rather brief and focus on the most salient security-relevant aspects. Apart from identifying a possible risk of self-harm or suicide, these interviews were reportedly not sufficient to address the individual detainee’s situation and needs. They are sometimes conducted in a rushed manner, have to cover several domains and occur at a point when the detainee is likely to experience distress due to just having been admitted to prison. Austrian experts explained that sexual orientation and gender identity were not recorded or systematically queried as part of the admission process, and the procedure does not formally include any gender-specific screening for particular needs, including any history of experiencing gender-based violence or sexual abuse.¹¹⁷

Similarly, in **Switzerland** and **Hungary**, the question of sexual orientation or gender identity is almost never raised at admission (often on the grounds of privacy) unless the issue is “obvious” (based on their

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expressed gender or how they present or identify themselves) or if the person speaks openly about their trans identity.¹¹⁸ If it is considered that a person may be at risk, upon entry, the person is placed in a “protected” or “isolated” wing. In some countries, including **Austria**¹¹⁹ and **Switzerland**, further meetings and interviews happen at a later point in the course of detention (depending also on the specific needs of the detainee), which opens up the opportunity to ask more sensitive questions where the detained person may be more inclined to answer them.¹²⁰

When specific needs, including safety needs, are not enquired at the admission stage, it can be more difficult for detainees to access certain security measures (e.g., requesting a transfer to a different room or unit or separate shower times) at a later stage because it is then contingent upon them outing themselves, which could be associated with some (perceived) risks.

RECOMMENDATIONS

Individualised approach to placement

Decisions regarding the placement (in a specific detention facility) and accommodation (within the facility, i.e., wings, floors and specific prison cells) of detainees should follow an individualised approach, taking into account the different needs of each detainee. The research has shown that automatic placement (i.e., based on sex assigned at birth) can heighten the risk of violence and harassment; in contrast, individualised placement can lead to safer outcomes. Detainees should be allocated to detention facilities according to their self-identified gender, with individualised (risk) assessments conducted. The research revealed that transgender persons, and particularly trans women, are often placed in facilities that do not correspond to their gender identity (especially when no gender affirming surgery had happened). Trans women should never be automatically placed in male prisons. Trans women should also not be presumed to pose a risk to other female detainees and should not face automatic restrictions on their interactions with other women. Indeed, the project found positive experiences in jurisdictions where trans women were accommodated in women’s units without significant problems.

Sensitive admission screening

The research demonstrated that admission interviews can be a crucial opportunity for identifying individual needs. Prisons should consider expanding admission interviews to systematically inquire about and record such individual needs and any necessary protective measures – particularly in relation to sexual orientation and gender identity. Questions about sexual orientation or gender identity should be asked sensitively, for example by trained staff or via confidential questionnaires, and responses must be voluntary.

The research showed that for trans detainees, additional challenges can arise in the prison context, leading in some cases to discrimination. However, the gender identity of a person must not have any disadvantageous impact on their placement and accommodation. The lack of medication transition, e.g., no prior hormone replacement therapy or gender-affirming surgeries, must not be used as a deciding factor for placement, as medical transition is a personal choice and not a precondition for recognising gender identity. International standards also emphasise respect for self-identified gender rather than medical status.

Detainees should be able to participate meaningfully in the decision of their placement (e.g., as part of an individual case conference), especially where gender-sensitive aspects are concerned. Decisions on the placement of trans detainees should also draw on the expertise of CSOs and health professionals specialised in transgender care. Detainees must have the right to appeal placement decisions and request reviews of their situation at any time.

Where individual accommodation (single occupancy) is impossible or undesired, suitable shared accommodation should be ensured (i.e., LGBTIQ detainees should be housed with individuals known for non-violent behaviour and without a history of LGBTIQ-phobic attitudes). This decision should also include consultation with the other detainee(s).

The research has shown that in many countries, LGBTIQ detainees are accommodated separately from the general prison population. Segregation and isolation can have severe harmful effects on detainees. Solitary confinement must never be the default solution for protecting LGBTIQ detainees and should never be based purely on the sexual orientation or gender identity of a person. Solitary confinement should only be a measure of last resort, explicitly justified, for the shortest possible duration and subject to documentation and independent review. Segregation of LGBTIQ detainees into separate wings or units should also be avoided unless requested by the detainee or deemed absolutely necessary for safety; it should not be used as a routine protection measure.

While it may sometimes be necessary to accommodate LGBTIQ detainees in separate units for their own protection, any protective measures must not impose harsher restrictions than those faced by other detainees. No matter where they are accommodated, LGBTIQ detainees should have full access to education, vocational training, recreation and work programmes at the same level as other detainees without discrimination.

No requirement of gender-affirming treatment

Participation in decision-making

Compatible roommates

Avoid solitary confinement and segregation

Equal regime access



The objective of placement decisions is to ensure both safety and dignity of detainees, and where the prison system cannot provide conditions that meet these requirements (such as accommodation in line with self-identified gender and without undue restrictions), continuing detention may itself amount to further marginalisation or even a risk of harm. Alternatives to deprivation of liberty should be used and considered wherever possible, but especially where (gender-)appropriate accommodation is not feasible.

ACCESS TO HEALTH CARE

RELEVANT INTERNATIONAL STANDARDS

International and regional standards emphasise the importance of providing equitable access to health care for detainees, ensuring their dignity, safety and wellbeing. The Nelson Mandela Rules¹²¹ reinforce the **principle of equivalence of care** and state that prisoners must receive the same standard of health care available to the general population free of charge and without discrimination based on legal status (Rule 24.1). Health-care services in prisons should also be closely integrated into national health systems to ensure continuity of care, particularly for HIV treatment (Rule 24.2).

The European Commission further held that “Member States should guarantee that detainees have **access in a timely manner to the medical, including psychological, assistance** they require to maintain their physical and mental health. To this end, Member States should ensure that health care in detention facilities meets the same standards as that provided by the national public health system, including with regard to psychiatric treatment.”¹²²

Principle 17 of the Yogyakarta Principles emphasises that all individuals are entitled to “**the highest attainable standard of physical and mental health, without discrimination on the basis of sexual orientation or gender identity.**”¹²³ Health-care providers should also receive training to address the unique needs of LGBTIQ individuals and eliminate prejudice within the health-care system (Principle 17.i). Principle 9b highlights the importance of providing adequate access to medical care that recognises the unique needs of detainees based on their sexual orientation or gender identity. This includes access to reproductive health services, HIV/AIDS information and treatment, hormone treatments and gender affirming surgeries for those who wish to access them.

Similarly, the European Prison Rules stress that medical services in prisons must provide **all necessary treat-**

ments, including surgical and psychiatric care, comparable to those available in the community (Rule 40).¹²⁴

LGBTIQ detainees, particularly transgender individuals, often have **specific medical needs** that require tailored attention. The Guidance Document on the European Prison Rules stresses that “LGBTQI+ prisoners, and in particular trans persons, may have special medical needs.”¹²⁵ Initial health screenings are critical to identifying the needs of LGBTIQ detainees. These screenings must be conducted confidentially by qualified health-care professionals, as they are particularly important for transgender individuals who may require hormone therapy or other gender-affirming treatments.

With regard to sexual and reproductive health care, the UNODC technical brief on HIV prevention, treatment and care in prisons and other closed settings¹²⁶ sets out a comprehensive package of interventions for HIV, hepatitis and other communicable diseases in prisons. It highlights the importance of condoms and compatible lubricants to be freely, easily and discreetly available in all closed settings, without requiring a request or risking exposure.

The CPT underscores the importance of **allowing transgender detainees to start or continue gender-affirming treatments during detention** and advocates for these treatments to be covered under national health insurance schemes:

Prison authorities should allow access to gender-affirming treatments and surgery for transgender prisoners, for those who so wish. Ideally, where such health services are included in national health insurance schemes, the cost should be absorbed at an equal rate as that for transgender persons living in the community. This must be done based on a careful and comprehensive risk assessment involving medical doctors, psychologists and social workers.¹²⁷

Moreover, the CPT endorses the World Professional Association for Transgender Health (WPATH) standards, ensuring that **health care for transgender individuals in detention** meets global best practices.¹²⁸

The CPT also notes that many **LGBTIQ detainees face heightened risks of mental health challenges**, including self-harm, suicide and trauma often linked to experiences of discrimination, family rejection or transphobia. According to studies, “self-harm or suicide risk factors may include discrimination, family rejection and internalised (or externalised) transphobia.”¹²⁹ Dedicated mental health services are essential to address these vulnerabilities, particularly for those who have experienced sexual violence or other forms of abuse.



The ECtHR has repeatedly stated that “[u]nder Article 3, the State must ensure 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 the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance.”¹³⁰ In the case of *W.W. v. Poland*,¹³¹ concerning a transgender detainee who was denied continuation of her medically prescribed hormone therapy in prison, the ECtHR found a violation of Article 8, as the domestic authorities failed in reaching a fair balance between the applicant’s health needs and the prison administration’s considerations.

NATIONAL CHALLENGES AND PRACTICES

Most people in prison eventually return to their communities, so health issues that arise in prisons or which are made worse by poor detention conditions (such as HIV, hepatitis, tuberculosis, and mental health problems) have broader public health implications. Health in prison is a right that encompasses access to medical treatment, preventive care and health services that are at least equal in quality to those provided in the general community. Despite international standards requiring equivalence of care for all detainees, in practice, health care in prison faces many limitations. In many countries, facilities lack adequate staffing levels for health care, and specialists (e.g., dentists, gynaecologists) may only visit the facility in insufficient intervals.¹³² A limitation stemming from imprisonment is that detainees do not have a choice in their health-care provider (e.g., in *Austria* and *Hungary*). Seeing specialists or attending health care appointments on the outside also depends on the availability of prison staff to chaperone the detainee.¹³³

Though all health-care services that are covered by public insurance schemes outside of prisons should also be covered in prisons, in practice, it may still be difficult for detainees to obtain services at the same standard and quality as patients in the community. For example, experts have reported that detainees are sometimes merely given pain killers or aspirin even if requiring stronger (more expensive) medication (e.g., in *Austria*¹³⁴). In *Greece*, gender affirming surgery is not covered by the public social insurance scheme and therefore not available to trans persons outside of prison.¹³⁵

Access to adequate health-care services – especially continuity of care – may also be further compound-

ed because prisons may not be able to easily access health records from outside (e.g., hospital records or prescriptions). This is even more difficult if the detainee accessed health care in another country; interviewed lawyers recalled the difficulties of accessing hormones prescribed in the home country of a detainee in a pre-trial detention facility in *Hungary*.¹³⁶ Also, when detainees are transferred between facilities, there may be difficulties with sharing health records, as was reported in *Greece*.¹³⁷

Sexual and reproductive health care

People in prison, gay men and men who have sex with men, sex workers, transgender people and people who inject drugs are considered the five main populations that are particularly vulnerable to HIV and frequently lack adequate access to services.¹³⁸ In addition to HIV, detainees also have a high prevalence of sexually transmitted infections and viral hepatitis; behaviours that increase the risk of contracting these infections – such as having unprotected sex, having multiple sexual partners, using substances and engaging in commercial, survival or coerced sex – are common among prison populations.¹³⁹

Few jurisdictions offer comprehensive measures to address such health concerns. One example of low-threshold services to address HIV and viral hepatitis among prison populations is found in the state of Berlin. In Berlin prisons, in addition to testing for viral hepatitis, detainees can use anonymous self-tests for HIV and anonymous needle and syringe programming.

Generally, however, it seems that in EU prisons, sexual and reproductive health care, including the prevention, treatment and care of HIV and other communicable diseases, are not perceived to be a pressing issue by detainees or health-care staff. Though screening for such diseases is purportedly part of the admission process at many facilities, it is often not clear whether prevention and treatment measures go beyond that. In *Hungary*, it was reported that voluntary screening opportunities are available in prisons.¹⁴⁰

In *Greece*, there are considerable problems with health-care provisions in prisons in general, including sexual and reproductive health-care services, which are considerably limited due to a severe shortage of medical personnel in prisons. There is only one medical doctor specialised in HIV working in Greek prisons, who is appointed to the Korydallos prison. In this prison, most detainees living with HIV used to be housed together in very poor conditions. Following a CPT recommendation, these detainees were spread among the entire prison estate. However, being spread across facilities, there

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are now difficulties with providing detainees living with HIV their regular treatment, and many detainees do not receive screening for HIV or viral hepatitis at admission or regular screening for infectious diseases.¹⁴¹

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Responding to limited sexual and reproductive health-care services in Greek prisons, the NGO “Positive Voice” is offering several sexual and reproductive health-care services. These include HIV and hepatitis B and C screening for detainees in Kordydallos and Thessaloniki, training for detainees on sexual health issues at the Women’s Prison of Thebes and the Rehabilitation Centre in Eleonas Prison, trainings for detainees to be peer-to-peer educators on sexually transmitted diseases at the prisons of Avlonas and Chalkida, as well as an information programme for prison personnel in 12 detention facilities throughout Greece.¹⁴²

Similarly, in Austria, the NGO “Aids Hilfe Wien” regularly gives presentations on the subject of HIV prevention and counselling options in prisons in Vienna and Lower Austria. Detainees can participate if they declare interest themselves or if they are selected by the prison officers. However, it was reported that detainees sometimes participate reluctantly or do not participate altogether out of a fear of appearing to be gay or even being perceived as living with HIV, which still carries considerable stigma.¹⁴³ Experts suggested that this fear may be partly ameliorated by not having a public participant list or framing such presentations in a broader way (e.g., around topics such as health and wellbeing). Nonetheless, a leaflet from the organisation should be placed in the care-package that detainees receive upon admission.

Experts also underscored that information about sexual and reproductive health should also be available in written form and in the languages commonly spoken among the prison population.

With regard to the provision of condoms, there are considerable differences between facilities and countries. In some countries, including Italy and Hungary,¹⁴⁴ no condoms are available in prisons. In the UK, condoms are even forbidden in prisons, as sex is also prohibited in prisons. In other countries, such as Portugal, condoms are available only upon request and for intimate visits. In some countries, as used to be the case in some facilities in Greece, NGOs provide free condoms in prisons.¹⁴⁵ In Austria, practice varies; condoms are sometimes included in the “care package” received at admission in men’s prisons.¹⁴⁶ In some facilities, condoms are also freely and discreetly available in the communal showers or in the toilets in the exercise yard. In other facilities, condoms are solely available at the request from the medical staff or the social and psychological staff.¹⁴⁷

It should be noted that due to the considerable stigma associated with same-sex sexual conduct and being perceived as gay, condom programmes which are not discreet and anonymous are not very effective. For example, experts mentioned that handing out condoms publicly in prisons can be met with some resistance from the detainees themselves, who “resented the implications” tied to the need for condoms. Similarly, it was shared anecdotally, that in Austria, where condoms are part of the package detainees receive at admission to prison, detainees will sometimes demonstratively discard of the condom, as accepting it might insinuate that they would want to engage in same-sex conduct or because the provision of condoms might suggest that they could be at risk of being coerced to have sex in prison.¹⁴⁸

Even in facilities where condoms are available, condom-compatible lubricant may not be. Lubricants are crucial for enhancing sexual health and well-being by reducing friction, reducing the risk of condom breakage and skin irritation. They are especially crucial for anal sex, as the anus lacks natural lubrication. Even when using pre-lubricated condoms, adding extra lubricant is recommended to ensure comfort and safety, particularly for those new to anal penetration.¹⁴⁹ As part of the project, it was frequently inquired whether facilities that provide condoms also provide condom-compatible lubricant, and most of the time, respondents either did not know or replied in the negative. In Austria, one expert explained that in their facility, condoms are available discreetly in the shower rooms and a sachet with a single-use amount of lubricant is attached to each condom.¹⁵⁰

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However, these practices only concern male prisons. The project did not identify any facility where condoms, female condoms or dental dams are available in women’s prisons. In addition, it should be noted that many people may menstruate, and menstrual products may not just be required by cis women.

Gender-affirming health care

Transgender detainees may require gender-affirming medical treatment and care, such as initiation or continuation of hormone replacement therapy or surgeries. Equally, access to hormone treatment can be crucial for intersex persons. Access to such treatments can be limited in places of detention. Many facilities also lack clear policies or resources to ensure consistent access, creating many hurdles in practice.

With regard to hormonal treatment that has been initiated before detention, interruptions can lead to severe negative physical and psychological effects. The project has found that continuing hormone treat-



ment is fairly easy to access in some jurisdictions – according to CPT reports, trans detainees are able to initiate and continue hormonal treatment in **Spain, Portugal, Malta and Scotland**¹⁵¹ – provided detainees can demonstrate existing prescription from their health-care provider on the outside. This means, that detainees who procured their hormones online or through informal means can encounter some difficulties in continuing such treatment. In such instances, prison health-care staff will have to do an assessment for receiving treatment (e.g., regarding the dosage), as they would for initiation of treatment, and in many instances, they are not sufficiently knowledgeable or permitted to do so.

Initiating hormonal treatment in prison in some countries can also be difficult because the process requires many steps – regardless of whether the person is in prison or not – such as completing sessions with a psychiatrist (e.g., in **Greece**¹⁵²) or obtaining necessary medical opinions (e.g., in **Austria**¹⁵³). However, it was reported that even where such an expert opinion has been obtained, this does not guarantee that treatment can be accessed. Access can be difficult in practice as such treatments and therapies whose delay does not have life-threatening consequences are sometimes perceived by prison personnel as an optional preference rather than as a necessary treatment. This was reported, for example, in **Austria and Italy**, where hormone treatment is often perceived as “medically not essential” and as a “whim of the person.”¹⁵⁴ As a result, detainees can face very long delays and inaction with regard to obtaining appointments with specialists and accessing treatment (e.g. in **Hungary**). However, the regional criminal court in Vienna (**Austria**) clarified in a case that access to hormonal therapy must be provided in a case concerning a trans woman. This case was since then used by other detainees to gain access or speed up proceedings.¹⁵⁵ Experts from **Italy** further reported general lack of information regarding the possibility of receiving hormone therapy in prison.

Notwithstanding this, the project has shown that in practice, access to hormone treatment, like many other aspects, varies greatly depending on the particular prison. In **Austria**, it was reported that in some facilities, such requests from a detainee fell on deaf ears, while in other facilities, it is made possible without major obstacles.¹⁵⁶ In such cases, success in achieving access to treatment is often due to very committed staff who were willing to put a lot of effort into finding ways to facilitate it.

In the absence of such support, it can be very difficult to even access reliable and adequate information

about transitioning and gender-affirming procedures in prison.¹⁵⁷ Prison officers, as well as prison health-care staff and social and psychological staff, may not have much awareness of the health needs of trans persons and even less so have the specialised knowledge and training to inform and support detainees who may consider treatment to align their physical appearance with their gender identity. In some countries, civil society organisations provide information and support services in prisons to detainees who may require gender affirming care.

In the Reggio Emilia prison in Italy, special attention is paid to the medical needs of the trans women detained there in a protected unit due to the prison's cooperation with the Trans Identity Movement Association of Bologna (MIT). Through collaborating with local hospitals, timely access to health care, including hormonal treatment, can be ensured. The Association also organised meetings with detainees in the facility in 2022 in the presence of a professional educator, nurses, psychologists and doctors, allowing prison staff to hear and understand the detainees' perspectives on their health and their priorities.¹⁵⁸

On the other hand, in **Hungary**, fee-based health-care services are very difficult, requiring the permission of the Prison Commander and incurring costs that have to be paid by the detainee. Based on this policy, if a detainee pays the costs of the treatment and the transport, gender affirming treatment should be available if it is permitted, who also relies on the opinion of the relevant medical specialist. However, no such cases have been reported.¹⁵⁹

With regard to gender affirming surgeries, obstacles to accessing such health care in prison are even more prevalent. Experts and prison authorities from many countries recounted that such procedures are rarely carried out while the person is detained. The reported reasons are manifold. For one, gender-affirming surgeries are expensive and require high levels of administrative resources and medical supervision. Prison staff have reported that in countries where resources for health-care services in prisons are already stretched very thin (e.g., in **Belgium**), prison administrations have to make decisions on which procedures are most urgent. Also, health-care services in prison might not have sufficient resources and expertise for the specialist aftercare that may be required.

In addition, it was argued that when detainees are in pre-trial detention or serve short sentences, it is advisable to wait to initiate such procedures until they are released because this specialist medical care is more easily available in the community than in prison. However, if a person is sentenced for many years, the

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question arises whether it can be justifiable to deprive them from obtaining a gender affirming treatment. In addition, experts have raised continuity of care as a concern with regard to facilitating gender-affirming treatments in prison. For example, in **Berlin**, a considerable number of trans women in prison may have experienced homelessness before detention or other instability, and many have foreign nationalities, which does not only impact their reintegration but can also create difficulties in ensuring continued medical supervision and care after release.

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In line with official guidelines, in **Malta**, access to trans, gender variant and/or intersex health-care services should be guaranteed to detainees regardless of their legal gender identity. Hormonal treatment which has been prescribed prior to detention is ascertained and recorded in the individual's health records and continued as any other prescription. When a detainee wishes to commence the process of transition, hormonal treatment is initiated in consultation with specialised doctors in the fields of gender reassignment, endocrinology and/or surgery, applying the same principles as would be applied in the community.¹⁶⁰

Mental health care

People in prison generally experience poorer mental health than the general population, with mental disorders being twice as prevalent among prison populations.¹⁶¹ This is due to pre-existing mental health conditions, as well as the negative impact of imprisonment on mental health and limited access to adequate services. In general, mental health-care services in prisons are under-resourced in many EU countries, though there are different levels of coverage in terms of access to psychologists across and between different countries, ranging from regular access and long waiting times to no access at all.¹⁶²

LGBTIQ persons are at an increased risk of experiencing mental health issues, including self-harm and suicide in the community as in prisons, and this is particularly the case for transgender persons.¹⁶³ Transgender persons detained alongside detainees of a different gender are at risk of harassment (see also chapter 'Harassment and violence') and are more likely to experience mental ill-health in prisons. Mental health services in prisons are often not equipped to address these issues effectively and there is often little awareness on the specific mental health burden that the prison environment can place on LGBTIQ persons.

In **Austria**, prisons generally have psychological and social support staff; however, staff might not necessarily be experienced in counselling for is-

suues related to sexual orientation and gender identity. In forensic therapeutic facilities, psychological treatment and therapy is mandatory for the detainees. However, it is mainly aimed at treating offence-related aspects and reducing the perceived dangerousness of the offender. This means that other mental health issues, including any issues linked to the detainee's gender identity or sexual orientation, may not be the subject in therapy. Additionally, psychological support staff change often, making effective therapy very difficult.¹⁶⁴

In the trans women's ward of the Naples Secondigliano prison in **Italy**, in addition to difficulties and delays in accessing hormone therapy, a major issue concerns the abuse of psychiatric medication. A trans woman reported often being in an altered state; although she had never used psychotropic drugs before, she had started taking them in the previous two weeks in order to cope with anxiety. She explained that this is a common trend in the ward: "everyone here becomes addicted." There is a trend among some contemporary prison systems using psychotropic drugs not only for medical purposes but also as a disciplinary control tool for those segments of the prison population who struggle to adapt to the prison environment and its rigid logic, due to their layered vulnerabilities.¹⁶⁵

In **Greece**, mental health-care services are severely neglected in many facilities, impacting the entire prison population. The Korydallos Psychiatric Hospital is the only facility in Greece for male detainees with a mental disorder, either convicted or in pre-trial detention, but it does not have a resident psychiatrist. The facility is characterised by chronic overcrowding, poor material detention conditions, and limited psychological treatment apart from pharmacotherapy. This hospital also houses members of the LGBTIQ community (who are deemed in need of protection). However, there is no specialised training for staff to care for LGBTIQ detainees, and access to psychological and social support is very limited.¹⁶⁶ No psychiatric facility with in-house monitoring and specialised care is currently available for women despite relevant provisions in the law. In the specialised unit for transgender women in the Korydallos prison, no systematic access to mental health-care is provided, and psychologists only visit occasionally. In the absence of sufficient resources for counselling, the overuse of psychiatric medication is a concern.¹⁶⁷

Similarly, in **Hungary**, there is an enormous lack of prison psychologists generally, which especially affects those detainees who are already considered to be at higher risk of psychological distress.¹⁶⁸



RECOMMENDATIONS

People in detention should receive health-care services that are equivalent in quality and scope to those available in the general community. Despite international standards such as the Nelson Mandela Rules and the European Prison Rules, which uphold this principle, the report highlights that in practice, health care in prisons often falls short. This is due to staffing shortages, lack of access to specialists and logistical challenges in accessing external services. It is essential to reinforce the right to non-discriminatory, free-of-charge health care for all detainees, including LGBTIQ persons.

The project has revealed how detainees can face significant barriers in accessing medical histories and prescriptions, especially after transfers or when treatment was previously received abroad. These systemic gaps disrupt treatment continuity and undermine public health both inside and outside of prison. Prison health-care services should be closely aligned with national public health systems to ensure continuity of care—particularly for HIV, hepatitis, tuberculosis and drug use disorders.

Confidentiality
of medical
records

With regard to all health-care service provision, it is essential that medical records remain confidential and accessible only to authorised health-care professionals. The risk of involuntary outing or stigma makes it critical that sensitive information, especially regarding HIV status or gender identity, is protected.

Training
on LGBTIQ
health needs

The project found a general lack of awareness regarding LGBTIQ health issues in facilities across Europe. Health-care staff, including mental health professionals, should receive training in LGBTIQ health needs that addresses gender diversity, confidentiality, respectful communication and the importance of gender affirming care, ensuring that health professionals are equipped to provide inclusive and competent care.

Gender-sensitive
mental health
care

The findings underscore that LGBTIQ detainees, especially trans detainees held in inappropriate or unsafe environments, frequently experience severe mental health distress and lack access to adequate psychological care. Mental health services in prison, including psychological counselling and psychotherapy, must be available to all detainees, with services designed to be gender-sensitive and inclusive of diverse identities and experiences. Mental health services should provide a space to openly discuss sexual orientation, gender identity and gender expression, topics that are often taboo in prison, but discussing them is essential to the emotional wellbeing of LGBTIQ persons.

Collaboration
with community-
based organi-
sations

Prison health services should collaborate with community-based organisations, particularly those with expertise in LGBTIQ health. Examples from the re-

search demonstrate that external partnerships can effectively fill service gaps and deliver essential care and education. These collaborations also help address detainees' distrust in prison health care and can offer culturally competent support.

Sexual and reproductive health services in prison must include confidential access to HIV and STI testing, prevention and treatment. The research found inconsistent condom and lubricant distribution practices and the absence of dental dams. These supplies should be provided anonymously, discreetly and free of charge, for example via dispensers in toilets or shower rooms, to prevent outing and stigma, especially in environments where same-sex sexual activity is taboo.

Comprehensive information about HIV, STIs and reproductive health should be available in written form and in the languages most spoken in prisons. External interventions, such as workshops and materials provided by NGOs are a promising practice, but they also highlight detainees' reluctance to participate in public sessions due to fears of being labelled. Making such information available discreetly and universally, such as in admission care packages, can increase reach and reduce stigma.

With regard to gender-affirming health care, the research found significant disparities in access across countries, with delays often arising from a lack of trained staff, bureaucratic hurdles or a classification of such treatment as “non-essential.” Transgender detainees must be able to access gender-affirming treatment, including hormone therapy and surgeries, on the same basis as in the community.

Initiation or continuation of hormone therapy often requires psychiatric evaluations or expert opinions, which are not always available in-house. Where prison medical staff lack the necessary qualifications, particularly in transgender health care, timely access to external specialists must be ensured to maintain appropriate standards of care and avoid harmful interruptions.

In addition, medical autonomy must be upheld within the prison system. This includes a detainee's right to choose or change their doctor and the requirement that referrals to specialists occur only with the detainee's informed consent. As detainees often lack agency in their health care due to institutional constraints, reaffirming these rights is crucial for ethical and equitable treatment.

Given the complexity and length of procedures related to transition, such as psychiatric assessments and surgery planning, prolonged inaccessibility may violate human rights. The report notes that especially

Discreet
access to
sexual health

Accessible
health
education

Access to
gender-affirming
health care

Involvement of
external medical
specialists

Consent and
autonomy in
treatment

(Temporary) re-
lease for access
to gender-
affirming
care



in long-term sentences, denying such care cannot be justified. Where a facility cannot provide necessary gender-affirming care, authorities should consider (temporary) release as an alternative.

DAILY LIFE IN PRISON

RELEVANT INTERNATIONAL STANDARDS

Daily life in prison comprises many different domains (e.g., detainees engage in work and recreational activities and maintain contact with the outside). For LGBTIQ detainees, especially trans detainees, maintaining their personal appearance in line with their gender identity also comprises an important aspect of daily life in prison. Some international standards also make reference to these issues.

With regard to detainee's **rights to work and recreation**, international standards contain general provisions without specifically mentioning sexual orientation or gender identity. The Nelson Mandela Rules¹⁶⁹ require in Rule 4(2) that "prison administrations and other competent authorities should offer education, vocational training and work, as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social and health- and sports-based nature. All such programmes, activities and services should be delivered in line with the individual treatment needs of prisoners."

Similarly, the European Prison Rules¹⁷⁰ state that "Prison authorities shall strive to provide sufficient **work of a useful nature**" (Rule 26.2). They also make reference to the gender of detainees: "there shall be no discrimination on the basis of gender in the type of work provided" (Rule 26.4). Regarding sports and recreation, the European Prison Rules contain several general provisions, requiring that all prisoners have daily access to outdoor exercise, that prison regimes include structured physical and recreational activities, that special provisions be made for those with specific needs and that prisoners be allowed to associate with others during such activities (Rules 27.1-27.7).

Regarding **access to gender-affirming clothing and personal products** like make-up, wigs and binders, the Yogyakarta Principles recognise that access to such items is important for transgender individuals to maintain their sense of identity and mental well-being. According to Principle 6e of the Yogyakarta Principles, states shall "repeal any law that prohibits or criminalises the expression of gender identity, including through dress, speech or mannerisms, or that denies to individuals the opportunity to change their

bodies as a means of expressing their gender identity." This is also reinforced by Principle 19, which supports the right to freedom of opinion and expression, including the expression of identity through speech and dress.

In the context of **contact to the outside**, the Nelson Mandela Rules also contain some general provisions relevant to all detainees, but they highlight the need to ensure equal treatment of men and women with regard to **conjugal visits**. Rule 58 states:

1. Prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals: (a) By corresponding in writing and using, where available, telecommunication, electronic, digital and other means; and (b) By receiving visits.

2. Where conjugal visits are allowed, this right shall be applied without discrimination, and women prisoners shall be able to exercise this right on an equal basis with men. Procedures shall be in place and premises shall be made available to ensure fair and equal access with due regard to safety and dignity.

The right to conjugal visits is also included in Principle 9e of the Yogyakarta Principles, stating that "equal rights to conjugal visits should be ensured, regardless of the gender of the partner."

Rule 24 of the European Prison Rules highlight the importance of maintaining prisoners' contact with the outside world while ensuring safety and order. Prisoners should be allowed to **maintain contact with family, external individuals and organisations** through communication and visits, subject to necessary security restrictions. Authorities must facilitate family ties, notify prisoners of a relative's death or illness and allow humanitarian leave when possible. Prisoners should be informed of public affairs, able to participate in elections and able to communicate with the media unless this is restricted for security or victim protection reasons.

The Guidance Document to the European Prison Rules also makes specific note of LGBTIQ detainees, highlighting that **facilitating contact with the outside world** should involve proactive efforts on the part of prison management and staff. Prison staff should be aware of particular individuals or groups of prisoners who have no or limited outside contact and whose mental health and reintegration prospects might be at particular risk as a result. This might include life and other long-sentenced prisoners, foreign nationals, members of ethnic or linguistic minorities, LGBTIQ+ prisoners, older prisoners, high-risk prisoners and those with mental health issues.¹⁷¹



NATIONAL CHALLENGES AND PRACTICES

Work and recreational activities

Participation in communal activities, such as sports or education programs, can be limited for LGBTIQ detainees due to such segregation practices or because they may themselves choose not to (or be advised by prison officers not to) partake in certain communal activities in the prison due to a potential risk to their safety (see also chapter 'Harassment and violence'). For example, when LGBTIQ detainees are housed in separate units or wings – as is the case in **Italy** and **Greece** – this segregation not only isolates them from the general prison population; it also sometimes results in detainees being excluded from meaningful activities or communal spaces. For example, in **Greece**, transgender women in the Korydallos special unit do not come into contact with other women held in the prison. Crucially, the isolation from the general prison population, in combination with the understaffing of medical personnel, psychologists, social workers, etc., leads to the de facto exclusion of trans detainees from essential services, such as drug rehabilitation services and recreational activities.¹⁷²

For similar reasons, in several of the protected units in facilities in **Italy**, no recreational, professional or educational activities are available in addition to poor availability of treatment services. However, there are also some positive examples where the practice of placing trans women in a “protected unit” nevertheless allowed for targeted service provision. In the Rebibbia prison of Rome (**Italy**), trans women in the protective unit had access to educational courses and various recreational activities, and an endocrinologist was present to support hormonal therapies. There were job opportunities and activities that included sewing, theatre and volleyball, as well as the possibility of visits and video calls with the outside world. Also, some activities were facilitated together with the male detainees, such as a joint theatre programme.¹⁷³

Another positive practice was observed in the Reggio Emilia facility in **Italy**, where trans women are also held in a separate protective unit, but they are able to associate with other female detainees from the general prison population and complete together, such as hairdressing and barbering training.¹⁷⁴ This possibility has been facilitated by the new director, appointed in 2021, who initiated several projects, including a collaboration with an NGO working specifically on trans rights (MIT, Trans Identity Movement).¹⁷⁵

In **Scotland**, the “SPS Policy for the Management of Transgender People in Custody” recommends that where a trans person is housed in a facility that aligns with their sex assigned at birth, a case conference should be held, which includes deciding on the possibility of the person participating in activities alongside detainees who align with their affirmed gender.¹⁷⁶

Also, it should be mentioned that overcrowding, staff shortages and generally limited resources in many prisons in the EU mean that access to meaningful work and adequate recreational opportunities are often restricted for all detainees. For example, in **Portugal**, where trans detainees are housed in separate wings of prisons, segregated from the general prison population, they are still able to engage in activities alongside the general prison population. However, the number of available activities is very limited for detainees in general.

The project also revealed that there are sometimes (indirect) restrictions for LGBTIQ detainees on exercising in the yard due to safety concerns or isolated accommodation. In **Austria**, a trans woman with experience of detention told us that she was isolated and accommodated separately from other detainees while in pre-trial detention. The prison guards advised her not to exercise her right to go for a walk. The reason given was that this would serve to protect her from other detainees.¹⁷⁷ Similarly, in one case in **Poland**, a trans woman was held in isolation in a unit intended for “dangerous detainees” even though she was not considered to be dangerous. She was without any contact with other detainees, even on her daily walk.¹⁷⁸

Nevertheless, such a perceived risk may also be circumvented; for example, the **French** guidelines state that detainees who are deemed to be at particular risk because of their (presumed) sexual orientation may be allowed separate times for walking in the yard.¹⁷⁹

Gender affirming clothing and products

Access to gender-affirming clothing and personal items like make-up, wigs and binders is important for transgender individuals to maintain their sense of identity and mental wellbeing.¹⁸⁰ However, in practice, access in prisons is often limited. The reason is that certain items are often forbidden by prison regulations, or items are only available for women's facilities (such as make-up) but not for men's facilities. This can contribute to distress for transgender, non/binary or gender-diverse individuals in these facilities.

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In some facilities, for example in **Austria, Spain, Poland**, there have been instances of trans women having been either prohibited or strongly discouraged from wearing women's clothes or accessories, especially when associating with other detainees, purportedly for their own safety.¹⁸¹ The argument by the prison staff was that wearing women's clothing in a men's prison can cause a stir and may expose the persons concerned to the risk of discrimination, abuse and violence. In **France**, a recent ruling of the Conseil d'État acknowledged the freedom to choose one's clothes and what to wear in jail is a fundamental right.¹⁸² This decision may pave the way for many detainees to choose the clothing of their liking.

Though there is great variety between countries and also facilities within a country, access to "gendered" products, such as make-up, wigs, binders, pantyhose, etc., is often quite restricted for trans detainees (especially if they are housed in a male facility). This is either because it is explicitly prohibited or because the items are difficult to obtain for other reasons. For example, it has been reported that access to such items for trans detainees is sometimes perceived not as essential but as "luxury" or as a special treatment or privilege.¹⁸³

In **Hungary**, regarding make-up, experiences vary, the practice is not the same in the different institutions. Some reported that the wearing of make-up is implicitly allowed, some reported it is prohibited and others reported that wearing make-up is only possible with special permission.¹⁸⁴ In some facilities in **Austria**, there are also restrictions on "gender-specific" products such as make-up, as well as tights and similar items. Even if products are available or are procured as part of a temporary leave from prison, this does not mean that they can be used. There have also been reports of cases in which detainees have been banned from wearing make-up outside of their unit or ward.¹⁸⁵

In **Italy**¹⁸⁶ and **Greece**,¹⁸⁷ transgender women who are detained in the protected units are allowed to wear female clothing, but due to restrictions and/or lack of financial resources, transgender women in prison often have problems in obtaining clothes, accessories and make-up to express their gender identity. In this regard, at least at a formal level, a positive example comes from the context of the transgender ward in the Rebibbia Nuovo Complesso prison in **Italy**: to better facilitate such gender expression, cosmetics have been included within the list of products that can be purchased as extra goods by detainees.¹⁸⁸

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In **Malta and Scotland**, all detainees have access to any commodity if such items are permitted in accor-

dance with the prison regulations. This allows transgender individuals access to make-up, tights, chest binders, wigs and similar items. Access to such additional or gender-specific commodities is not considered special treatment; it is rather acknowledged as a form of reasonable accommodation.¹⁸⁹ Similarly, in **France**, the 2024 operational guidelines advocate for flexible and respectful application of rules regarding gendered items; although, the final decision is left to staff discretion based on safety concerns.¹⁹⁰

One key aspect why certain gender-specific items are not available for all detainees is that there are usually different canteen lists for ordering food items and other products for male and female facilities. Hence, if a detainee would like to receive items that are not on the list for their facility, it is up to prison administration to make a special allowance to order and receive certain products, leading to a level of arbitrariness. Hence, a key suggestion from experts has been to create uniform lists that are the same for female and male facilities. This way, certain items are not considered special treatment. This has been introduced, for example, in one prison in **Belgium** where a common list (for male and female units) was introduced, meaning all detainees can in theory purchase the same products regardless of gender. Also, a common list is already provided in practice in some pre-trial detention facilities that house men and women in separate units but within the same facility, such as in **Austria**. However, detainees may still refrain from obtaining certain items that could incite ridicule or harassment from other detainees.

Use of appropriate pronouns

Being addressed by one's chosen name and pronouns is a fundamental aspect of respect and identity affirmation. Instances of "deadnaming"¹⁹¹ can lead to feelings of alienation and distress. While some trans detainees report generally being accepted and referred to by their preferred name by other detainees and staff, experiences are far from uniform. Especially if the legal gender does not conform with the person's affirmed gender, staff are frequently reluctant to address a trans detainee with their chosen name and/or preferred pronouns. This has been reported in **Greece**¹⁹², **Belgium** and **Poland**, for example. In **Hungary**, according to a Ministry of Interior decree,¹⁹³ staff are required to address detainees by their last names, meaning that, theoretically, the chosen first name of transgender detainees is not relevant. However, several of the interviewees noted that, in practice, detainees are often addressed by their first names. In contrast, there are also many instances where the chosen names of transgender



individuals are respected by other detainees and staff as well. Other reports show that LGBTIQ persons in Hungarian prisons, especially gay or transgender men are often called by their nicknames, frequently a (negative) name chosen in an authoritarian manner by peer detainees or the staff. In **Austria**, a trans woman in prison reported that “deadnaming” is becoming increasingly rare, both from other people in prison and from prison officers, and that there is generally increasing acceptance on part of the authorities. If trans people are imprisoned without a change of legal gender, many prison officers are nevertheless willing to address the person by their preferred name, according to interviews. In some facilities, there is also ignorance or malice among staff that leads to refusal to use preferred names of detainees. In **Germany**, there were reports of prison staff referring to trans detainees as “it”, contrary to the preferred pronouns of the detainees.¹⁹⁴ For intersex or non-binary persons, it was pointed out that general language constraints might cause additional difficulties, as most languages are also based on a binary system that make gender neutral language difficult and more complicated.

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In **Scotland** and **Malta**, staff are guided by a clear policy to use detainees’ chosen names and pronouns regardless of their legal gender.¹⁹⁵ Similarly, in **Berlin**, a change in legislation led to the elimination of the reference of “Mister” and “Miss” as formal ways to address detainees; policies now refer to persons and prison staff now actively asking detainees about their preferred names and pronouns.

Contact with the outside world

Maintaining contact with loved ones and support networks in the community should be an important aspect of life in detention, as it is essential for detainees’ wellbeing and reintegration prospects. Yet, it can come with unique challenges for LGBTIQ detainees. While the project has not found overt discrimination in this regard, certain aspects of contact with the outside world entail some limitations or challenges for LGBTIQ detainees.

For instance, it has been reported that in some instances, trans detainees may not receive a letter if it is addressed to the “wrong name.” For example, in a case in **France**, a trans woman could not receive a letter that was addressed to her chosen name.

With regard to visits, the project did not identify many cases of LGBTIQ detainees being discriminated against or restricted in their rights to receive visitors, with the exception of a case in **Hungary**, which concerned a gay detainee who was not allowed to be vis-

ited by his partner (who had already been released). The case was also reported to the Equal Treatment Authority, who concluded that this denial constituted discrimination.¹⁹⁶

According to **Hungarian** law, members of a same-sex couple, regardless of their relationship status, cannot jointly adopt a child. They may only do so as individuals, and it is not possible to adopt the partner’s child either. However, the notion of a family member applied by the prison system is quite vague, so co-habiting same-sex partners and children of these co-habiting partners qualify as relatives. Therefore, family visits of same-sex partners and jointly raised children are possible in theory.¹⁹⁷

However, it has been found that in many cases, LGBTIQ detainees may restrict their visits of partners on their own accord in order to forego a risk of potentially outing themselves to other detainees or staff. For example, in many countries, married and registered partners and the children of LGBTIQ detainees are permitted to visit under the same provisions as spouses and children of cis and hetero detainees. However, practical circumstances render this possibility more complicated, especially for fear of bullying, intimidation or physical violence from other detainees, as was reported from **Greece**.¹⁹⁸ Therefore, it has been reported that during visits in common rooms, some LGBTIQ detainees will refrain from showing affection to their partner and will refer to them as “a friend” to others.

This also relates to conjugal visits, where they are possible. For example, it was reported that in **Austria**, LGBTIQ detainees are not treated unfavourably in terms of such long-term visiting opportunities. However, people who do not want their sexual orientation to be known in prison do not make use of the possibility of long-term visits to avoid being outed.¹⁹⁹ In **Greece**, on the other hand, conjugal visits are not regulated and consequently not allowed for any detainees.

An essential part of contact with the outside world is also constituted through members of civil society visiting prisons. Civil society organisations play an important role in enhancing the wellbeing of LGBTIQ detainees and they provide multifaceted services to LGBTIQ persons in detention. These organisations offer resources, facilitate communication and advocate for improved policies. However, often, access by civil society or even access to information about relevant civil society organisations can be difficult for detainees, as was reported to some extent in **Austria**,²⁰⁰ **Greece**, **Italy**²⁰¹ and **France** but especially so in **Hungary**. In Hungary, civil society’s access to prison



has been severely curtailed and prisons have become increasingly securitised.²⁰²

While positive examples were reported in **Austria** regarding the organisation **COURAGE**, which provides information and support for trans detainees in their transition process, the national research showed that overall presence of civil society in prisons was limited and detainees very often were not aware of possible support from outside.²⁰³

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In **Berlin**, the NGO **Mann-o-Meter** provides one-on-one counselling, especially for gay men in prisons. This programme was initiated more than ten years ago and has since gained general acceptance among the prison authorities. Information about the organisation and their services is provided to detainees, which enables them to get in contact. In **France**, the NGO **SOS Homophobie** offers an anonymous telephone helpline in prisons where detainees can call for support regarding any questions they might have about their gender identity or sexual orientation. Phone hotlines for support services – including specifically for LGBTIQ detainees – are broadcasted on an information screen on TVs in one prison in **Belgium**.

In addition to counselling during imprisonment, experts also noted that there is a need for increased support during the release process. Specific support during the release process is crucial for all detainees to strengthen reintegration and enhance post-release prospects. However, specific attention to the needs of LGBTIQ detainees may be warranted. Especially in cases where further medical treatment is required (e.g., as part of a transition), it should be ensured that treatment and care continue after release. Detainees are often left alone at the release stage; support is usually only provided if, for example, probation assistance has been ordered. However, this assistance naturally does not include specific counselling with regard to sexual orientation or gender identity. At this stage, enhanced cooperation with civil society organisations and networks on the outside can be beneficial.

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A promising practice was identified in **Italy**, where in 2017 a support desk for LGBTIQ detainees was established in the **Naples Poggioreale Prison**. The continuous work of the support desk expanded to the **Naples Secondigliano prison**, where in 2021 the section for trans women, previously housed in **Poggioreale**, was moved. Beyond daily listening and support activities, the initiative developed over time, leading to the signing of memoranda of understanding with other external bodies and local businesses, and to the implementation of projects aimed at creating work plans and providing meaningful support for the social reintegration of detainees. It also actively works to identify commu-

nity placements that would allow individuals to access alternatives to detention, which are almost non-existent in **Italy** for trans people, who are often forced to serve their entire sentence in prison even when they could be released under the care of other entities.²⁰⁴

RECOMMENDATIONS

No matter where they are housed, LGBTIQ detainees should have full access to education, vocational training, recreation and work programmes, as well as purposeful activities at the same level as other detainees without discrimination. Staff should ensure that LGBTIQ people feel protected and respected in communal areas and during leisure and recreational activities. Any protective measures that are put into place must not subject LGBTIQ detainees to harsher restrictions than other detainees. If detainees, for security reasons or otherwise, are not housed alongside detainees of the gender they identify with, it should be ensured that they can nevertheless partake in work, leisure and recreational activities together with detainees of the gender they identify with.

Equal access to activities

Access to gender-affirming items such as clothing, products and personal items can be immensely important for detainees' wellbeing and should be available for all detainees, regardless of gender identity or sexual orientation, and regardless of their facility placement. Access to gender-specific products (e.g., make-up, hygiene products and clothing) must be facilitated without discrimination across all prisons and must not be treated as a "privilege," arbitrarily restricted or subject to staff discretion. Ideally, supply list/canteen product lists should be unified across male and female facilities to ensure equal access for all.

Access to gender-specific products

Conjugal visits should be available for all detainees, including LGBTIQ detainees, regardless of marital status or sexual orientation. They should be facilitated in a manner that protects detainees' privacy.

Conjugal visits

Research revealed the importance of cooperation with LGBTIQ organisations as well as experts with knowledge on sexual orientation, gender identity and gender expression, enabling detainees to access information, support and counsel. However, currently, prisons rarely have institutionalised cooperations with civil society; information about specialised organisations is often not available to detainees. Prisons should set up and strengthen collaborations with LGBTIQ civil society organisations to provide support, advocacy and other programmes within detention facilities, including with regard to preparation for release. Civil society and NGOs should have access to all facilities of deprivation of liberty: an official list of all organisations working in different areas, includ-

Strengthen cooperation with civil society



ing on LGBTIQ issues, should be prepared in cooperation with the prison administration to be accessible and available for detainees in all facilities. It could be advertised through brochures, posters or information screens.

Anonymous and free-of-charge counselling

Some civil society organisations also provide counselling to LGBTIQ detainees, providing essential services not otherwise available in prison. Due to fear of repercussions (e.g., insults or other forms of discrimination by other detainees), LGBTIQ detainees may be hesitant to talk about their situation or needs in a setting that does not provide for anonymity. A dedicated, free-of-charge telephone hotline for LGBTIQ detainees could be considered; this should be advertised in an accessible manner for all detainees, such as on information screens or posters throughout the facility.

Release support

Issues may arise not only while in detention but also concerning release and challenges connected to the outside. Preparation for release must therefore be specifically tailored to the realities of LGBTIQ people's lives, including enabling the continuation of any ongoing medical and psychological treatment, contact with external support networks or civil society organisations and legal advice.

Principle 10 obliges states to:

a) Take all necessary legislative, administrative and other measures to prevent and provide protection from torture and cruel, inhuman or degrading treatment or punishment, perpetrated for reasons relating to the sexual orientation or gender identity of the victim, as well as the incitement of such acts;

b) Take all reasonable steps to identify victims of torture and cruel, inhuman or degrading treatment or punishment, perpetrated for reasons relating to sexual orientation or gender identity, and offer appropriate remedies including redress and reparation and, where appropriate, medical and psychological support.

Additionally, Principle 28(d) underscores the importance of ensuring that detainees have access to all necessary information about processes for seeking remedies and redress.

Furthermore, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment stated that “[a]uthorities have a responsibility to take reasonable measures to prevent and combat violence against lesbian, gay, bisexual and transgender detainees by other detainees.”²⁰⁸

SAFETY AND SECURITY

HARASSMENT AND VIOLENCE

Relevant international standards

International and regional standards emphasise the absolute prohibition of torture and cruel, inhuman or degrading treatment or punishment.²⁰⁵ This entails also the obligation to prevent violence and abuse against detainees, ensuring their protection and access to redress mechanisms.²⁰⁶ These standards also place responsibility on prison authorities to ensure the safety and security of detainees and staff at all times.

Furthermore, there is specific reference to the heightened vulnerability of LGBTIQ individuals in detention and the obligation of states to safeguard them from harm. This entails proactive measures to protect LGBTIQ individuals from violence, including harassment by other detainees or staff, as well as to provide access to legal remedies.

The Yogyakarta Principles²⁰⁷ call for robust measures to protect LGBTIQ detainees from torture and other cruel, inhuman or degrading treatment. Principle 9 ensures that “individuals are not marginalized or exposed to violence, ill-treatment or abuse based on their sexual orientation or gender identity”.

In a similar vein, the UN Committee Against Torture gave more concrete guidance and recommended to “pay attention to protection of prisoners from inter-prisoner violence, in particular those belonging to the lesbian, gay, bisexual and transgender group, and to the psychosocial profile of the prisoners and those who engage in violence, investigate and sanction incidents.”²⁰⁹ It also recommended states to collect data on complaints received alleging torture and ill-treatment by law enforcement and other public officials, including of lesbian, gay, bisexual and transsexual persons and persons belonging to ethnic minorities.²¹⁰

Similarly, the European Commission in their Recommendation (C(2022) 8987) further stated that:

Member States should take all reasonable measures to prevent any violence or other ill-treatment, such as physical, mental or sexual abuse, against persons because of their sexual orientation, racial or ethnic origin, religious beliefs or on the basis of any other ground by staff in the detention facility or other detainees. Member States should ensure that special protection measures are applied where there is a risk of such violence or ill-treatment.²¹¹



Highlighting the specific vulnerability of trans detainees, the CPT recommended that particular attention should be given to the risks of discrimination and exclusion faced by transgender persons in closed institutions, stating that “[p]rison authorities must protect prisoners in a proactive manner to prevent violence and bullying of prisoners, especially of those who might be considered more vulnerable in a prison setting, such as transgender prisoners.”²¹²

Similarly, in their Recommendation CM/Rec(2010)5, the Council of Europe Committee of Ministers recommends that Member States “should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.”²¹³

With regard to compensation, the Committee Against Torture made specific reference to LGBTIQ detainees, stating that:

States parties shall ensure due attention to gender in providing all the elements cited above in the process of ensuring that everybody, in particular members of groups made vulnerable, including lesbian, gay, bisexual and transgender (LGBT) people, must be treated fairly and equally and obtain fair and adequate compensation, rehabilitation and other reparative measures which respond to their specific needs.²¹⁴

National challenges and practices

Prisons are not only part of the community—and thus subject to prevailing negative attitudes toward LGBTIQ persons—but also places where the challenges faced by LGTIQ persons are often intensified. Being part of the LGBTIQ community, or being perceived as such, can entail risks of ostracism, harassment and even violence. This has also been found by international human rights bodies, highlighting that LGBTIQ detainees face a higher risk of violence than the general prison population, both from other detainees and staff.²¹⁵

Overall, experts in the framework of the project reported that any person-specific characteristics or identity traits that are perceived as “weak” within the prison context increase the risk of experiencing violence and harassment of any kind. Overcrowding and

staff shortages—as many prison systems across the EU are experiencing²¹⁶—can also contribute to an atmosphere of violence for all detainees.

This project has echoed such findings; several incidents of violence against LGBTIQ detainees were recollected by experts. As an example, the CPT considers that Greek prisons do not provide a safe and secure environment for detainees in general.²¹⁷ Instances of inter-prisoner violence, including severe injuries resulting in hospitalisation, continue to occur, albeit appearing reduced in recent years. However, much of the inter-prisoner violence and intimidation remains unreported. Some areas that are not monitored, such as shower rooms or detention rooms themselves, can harbour a risk of violence and assaults. In Hungary, there were some reports of LGBTIQ detainees being harassed and abused by other detainees; for example, a trans woman who was placed in a male facility was physically abused by another detainee while taking a shower, at which point the prison staff intervened. In another case, a gay detainee had complained that a prison staff had disclosed his sexual orientation to his fellow detainees, and as a result, he had been sexually abused by one of the detainees.²¹⁸ Similarly, according to a CPT report, in Italy, a transgender woman had been sexually abused and assaulted by other detainees.²¹⁹ Another severe act of violence was reported in Italy, where a trans woman reported a sexual assault by four male detainees, and she was shortly after transferred to the hospital. Two months earlier, she had been transferred from the protected mixed unit for trans women at the Reggio Emilia facility to the protected section at the Ferrara Prison. Despite having expressed serious fears for her safety and having reported episodes or insults and harassment, prison administration failed to protect her from the assault.²²⁰ Incidents of severe sexual abuse and physical victimisation were also recounted by an expert from Belgium.

The fact that same-sex sexual contact occurs in most prisons is well established and was confirmed by experts in the project (see also chapter ‘Sexual orientation, gender identity and gender expression in prison’). However, in the framework of the consultations, experts also reported that prison staff were aware that such conduct may often not be consensual within the prison context. It has been reported that gay men are at an increased risk of sexual assault, as it is sometimes assumed among detainees that they “want [sexual activity] anyway”.²²¹ For prison officers, maintaining safety and security is the highest priority, and the project has shown that if the impression arises that a detainee is at risk of sexual assault, or indeed staff are aware that sexual assault has already taken place (which may not always be the case), im-



mediate steps are taken usually to protect the victim from harm. Often, the approach is to segregate or isolate detainees deemed to be vulnerable (see also chapter ‘Separate units and isolation’). If an incident occurs, a common practice is that the detainee who is responsible for the threat, abuse or violence is not removed, but the victim/detainee who complained is removed to another unit or facility. As a result, the victim may be stigmatised and at risk of further retaliation by other detainees for “snitching.”

While such instances reflect extremely distressing experiences of some LGBTIQ detainees—and it must be noted that violence remains under-reported and undocumented, due in part to fear of retaliation or lack of trust in reporting mechanisms (see also chapter ‘Complaint mechanisms, access to justice and monitoring’) —the project did not reveal a widespread pattern of systemic physical or sexual violence against LGBTIQ detainees in EU prisons. Notwithstanding, the project has shown that harassment, bullying, homophobic or transphobic insults and verbal abuse might be “the norm” in many prisons in the EU. Homophobic insults and slurs are also not only targeted at openly gay detainees. Detainees who are merely perceived to be gay or part of the LGBTIQ community—or just perceived as “weaker” in the harshly hierarchical and hypermasculine prison environment (see also chapter ‘Sexual orientation, gender identity and gender expression in prison’)—experience derogatory comments and insults hurled at them.

In the context of **Hungary**, the general homo- and transphobia found in Hungarian society finds its way into prisons and detainees try not to be perceived as gay; they avoid being associated with LGBTIQ persons for fear of repercussion. Gay detainees are (as in many prison systems) on the bottom of the prison hierarchy (along with detainees perceived as “snitches” and those considered paedophiles).²²² Similarly, in **Italy**, detainees are not usually openly gay, either out of fear of harassment or violence, or to avoid being transferred to a protected unit (see also chapter ‘Separate units and isolation’).²²³ In **Austria**, several trans and gay detainees have also reported that other detainees keep their distance from them for fear of being associated with them, leading to feelings of isolation and loneliness.²²⁴ Even if incidents do not rise to the level of violence, it is apparent that pervasive intolerance and ignorance in many prisons are harmful for LGBTIQ detainees’ wellbeing and their ability to safely express their identity.

However, it is important to mention that such experiences of LGBTIQ detainees are far from homogeneous. Both detained persons and experts from within and out-

side the justice system noted the level of perceived victimisation depends on many different factors, including on the character of the individual person. Some LGBTIQ detainees throughout the project have expressed feeling safe and even accepted by other detainees or unbothered by occasional crude jokes.

LGBTIQ detainees may also experience harassment and violence at the hands of those who are tasked with safeguarding them. The project has shown that there is considerable variety in how prison staff treat LGBTIQ detainees, often even within facilities. The project has revealed that there are a number of individuals among prison staff and prison authorities who endeavour to create safe and respectful environments for LGBTIQ detainees, taking care to protect them from mistreatment and striving to accommodate their specific needs. For example, it was reported that in **Austria**, an openly gay man with an intellectual disability who expressed fear of showering alongside other detainees was given the opportunity to have separate shower times without much difficulty.²²⁵ Other examples are individual staff members who go to great lengths to support trans detainees with accessing gender affirming products or necessary gender affirming procedures.

While some staff members are sensitised to the needs of LGBTIQ detainees and approach them with as much empathy and care as other detainees, others engage in verbal or physical harassment and contribute to a hostile and unsafe environment. This is also related to the finding that only a handful of countries have implemented clear guidelines and training on the treatment and care of LGBTIQ individuals in detention. The lack of such guidelines not only leaves room for discriminatory practices but also enables an environment where harassment and abuse can go unchecked.

According to CPT country visits, in some countries (including **Austria, Czech Republic, France, Germany, Greece and Italy**) there are certain complaints about behaviour by prison staff. In their country visits, the CPT reported some incidences of verbal abuse and insults because of presumed sexual orientation, as well as cases of homophobia and transphobia in several countries. Transgender detainees are especially likely to experience harassment by prison staff. This can sometimes take the form of deliberately misgendering trans detainees, calling them by their deadname (see also chapter ‘Sexual orientation, gender identity and gender expression in prison’) or even abuse by the hands of prison staff. In **Hungary**, a general hostile attitude of the penitentiary personnel towards LGBTIQ detainees was reported. One case



that was disclosed concerned a gay couple, who after making their relationship public in prison, were harassed by both other detainees and guards. However, the attitude largely depends on the institution: a female former detainee reported no difficulties in openly living in a same-sex relationship in prison.²²⁶ In Italy, there were reports of prison staff racially abusing a transgender woman after drinking while on duty.²²⁷

It is also important to mention that the behaviour of prison staff can indirectly lead to violence. Condoning insults and offensive jokes on part of the prison staff can signal to detainees that such attitudes are acceptable. Furthermore, inadvertent or intentional disclosure of a detainee's LGBTIQ identity to other detainees can put the individual at considerable risk. In Hungary, it was reported that prison staff had disclosed to detainees that one detainee was gay, leading to him being sexually assaulted by another detainee.²²⁸

However, detainees often do not have effective options for recourse at their disposal, or do not want to make use of them for fear of reprisals. It has been reported that detainees may refrain from complaining about treatment by prison staff as this could have repercussions, such as their benefits being cancelled and relaxation levels being downgraded, transfers being arranged or other measures that are disadvantageous for them (see also chapter 'Complaint mechanisms, access to justice and monitoring').

BODY SEARCHES

Relevant international standards

Recognising that body searches can be extremely invasive, humiliating and distressing experiences, several international standards regulate such procedures to ensure the safety and dignity of detainees. Though there are few standards specifically on body searches of LGBTIQ detainees, some acknowledge the particular risk that such procedures can entail for transgender individuals.

The Nelson Mandela Rules capture in Rules 50 - 52 the general principles of legality, necessity and proportionality regarding (body) searches of prisoners, calling for **respect for the dignity and privacy of the detainee being searched**. Searches shall "not be used to harass, intimidate or unnecessarily intrude upon a prisoner's privacy." Additionally, they emphasise the need to keep appropriate records of searches for the purpose of accountability, including the reasons for the search, the identities of those who conducted the search and the results of the search. Lastly, they emphasise the principle of "last resort" for intrusive searches, including strip and body cavity searches.²²⁹

Additionally, the European Prison Rules provide some guidance on how body searches should be carried out, including that persons being searched shall not be humiliated by the searching process (Rule 54.4), persons shall only be searched by staff of the same gender (Rule 54.5), there shall be no internal physical searches of prisoners' bodies by prison staff (Rule 54.6) and an intimate examination related to a search may be conducted by a medical practitioner only (Rule 54.7).²³⁰ While the European Prison Rules themselves do not mention how persons who do not fit into a binary gender system should be searched, the Guidance Document on the European Prison Rules specifies that **LGBTIQ persons should be given a choice of being searched by a female or male prison officer**.²³¹

According to the CPT, strip or pat-down searches are very invasive, potentially degrading and can magnify the risk of humiliation. Thus, they "should only occur when absolutely necessary and based on a justifiable risk."²³² During a search, **every effort should be made to minimise embarrassment and maintain dignity**. Individuals, including transgender and cisgender persons, should not be required to remove all their clothing at once. For example, clothing above the waist should be removed and replaced before removing further clothing. Searches should generally be conducted by a prison officer of the same self-identified gender as the person being searched, with a second officer of the same gender present for protection of both the detainee and staff. Strip or pat-down searches for the purpose of identifying anatomical sex should be prohibited.

In the case of transgender detainees, the CPT has highlighted that during the initial admissions process, admissions staff **should discuss with the individual the gender of the officer** who would conduct the body searches, in line with the transgender detainee's identity and preference, which should be recorded. If the detainee does not declare a preference, they should in principle be searched in line with their gender identity (i.e., a trans woman should be searched by a female officer).²³³ Staff should also receive training to ensure searches are conducted professionally and respectfully.

National challenges and practices

Body searches or strip searches are an integral part of security in places of detention but can be particularly invasive and distressing. The three main types of body searches are pat down or frisk searches, strip searches and body cavity searches. Humiliating and invasive body searches may constitute torture or ill-treatment, particularly for transgender detain-



ees.²³⁴ Invasive searches can trigger trauma, particularly for individuals with past experiences of abuse or discrimination.²³⁵ Ensuring that these procedures are conducted with respect for individuals' dignity, gender identity and human rights is critical.

As with decisions regarding classification, placement and accommodation, body searches of trans detainees (as well as non-binary, gender-diverse and intersex detainees) are also an area where the strict gender binary of a prison regime is challenged.

A lack of gender-sensitive and human-rights based protocols on body searches, as well as insufficient staff awareness or support can lead to prison officers handling the situation with insufficient sensitivity and respect. As a result, officers often default to disregarding self-identified gender and self-determination of trans detainees, which can exacerbate a detainee's discomfort, insensitivity and feelings of being unsafe and dehumanised. Instances were also reported, for example in **Belgium**, where trans detainees were deprived of any privacy during searches as multiple officers were present "standing around like a circus."

In general, while body searches pose similar risks and challenges with regard to trans detainees as to non-binary, gender-diverse or intersex detainees, the project revealed little information as to practices or experiences with gender-diverse or intersex detainees. This may be partly because their numbers in prisons are very low and because their identity is not known to prison staff.

Across EU countries, there are different approaches regarding body searches of trans detainees. In many countries, such as **Austria, Hungary, Portugal, and Poland**,²³⁶ sex at birth is still used as a decisive factor to determine the gender of the searching officer, with transgender detainees not being consulted on their preference. In **Austria**, in principle, if there has been a change in the civil status register, the recognised legal gender should also be considered for body searches. However, practice varies. It was reported that a trans woman who had not had gender affirming surgery but had changed her legal gender had her lower body examined by a male prison officer and the upper body by a female prison officer, without asking the detainee about her preference.²³⁷ Another trans woman reported that she refused to be examined by a man, and as a consequence, the search was carried out by medical staff.²³⁸ Hence, in **Austria**, if the examination is carried out by a professional doctor (instead of a prison officer), the gender of the person carrying out the examination is no longer considered.²³⁹ In **Hungary**, the legal gender is considered. If the detainee acquired legal gender recognition when it was

still possible (i.e., before May 2020), then the gender recorded is used for placement and consequently for body searches as well.

However, in some countries, such as **Malta**,²⁴⁰ the gender of the officer conducting the body search is determined based on the detainee's gender identity, which is recorded at admission. Other prison systems, including in **France, Greece, Italy, Scotland and Berlin**, place the preference and choice of the detainee at the centre of the decision on the gender of the searching officer. In these countries, it is either stipulated in guidelines or common practice to ask a trans detainee for their preference with regard to the gender of the searching officer. Some jurisdictions, such as **France**, allow detainees to request searches by officers of a gender they feel most comfortable with. In accordance with the French policy, transgender persons should be asked about their preference regarding the gender of the officers conducting searches during the admission phase, with their preference being recorded in writing. The central penitentiary reviews the request, considers the detainee's preference and decides on suitable search procedures in each case. As part of best practices, prisons housing transgender detainees may also use an individual memo to establish and document the most appropriate search methods for each person. Similarly, in **Scotland**, new guidelines posit that searching arrangements should be considered on an individualised basis as far as possible. Trans detainees should be searched in line with their affirmed gender unless they request otherwise and/or unless there are overriding risks or concerns, including the detainee's or the officer's health, safety or welfare.²⁴¹

However, even though such protocols may exist as guidelines in some countries, practice may diverge. For example, in **Italy**, the Penitentiary Law also states that trans persons should be able to choose the gender of the officer conducting the search. However, in practice, this provision seems to be relegated to discretionary choices. Similarly, in **Greece**, trans detainees are also asked about their preference for the gender of the officer searching them but it has been reported that some female officers have refused to conduct body searches on trans women.²⁴² Indeed, instances of discomfort by female officers in searching trans detainees has been reported in several countries.²⁴³ Sometimes, these situations are resolved in such a manner that the transgender detainee is searched by two officers in two stages: the area above the waist is examined by a female officer and the area below the waist is examined by a male officer. This method is also often prescribed as a standard for strip-searches of trans detainees in internal regulations of facilities

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in Switzerland. However, experts have noted that this process is much less preferable, as being searched by two officers is inherently more invasive and uncomfortable.

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Experience has shown that discomfort by prison staff regarding searches of trans detainees can be successfully addressed by providing training and sensitisation. For example, in Berlin prison facilities, transgender detainees are asked about their preference with regard to the gender of the staff conducting body searches. While there are also instances of prison staff who refuse to perform body searches in these cases (especially when the detainee has the sex characteristics of another gender), this apprehension could be generally overcome by additional training and sensitisation of staff. Similar experiences were shared in Malta and Switzerland.

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Body searches can be distressing procedures for all detainees regardless of their gender identity or sexual orientation. Experts have highlighted the need to ensure that all such searches are conducted with respect for the detainee's dignity and privacy. To circumvent risks of invasive procedures and discomfort by detainees or staff, body scanners have been introduced in some jurisdictions as an alternative to body searches. Over-the-clothes magnetic sensors or similar scanners can alleviate the need for detainees to strip down. For example, in Malta, body scanners are utilised for detecting contraband, and detainees are provided a choice as to whether they prefer to be searched by an officer or via a body scanner.

RECOMMENDATIONS

Protective measures

Guaranteeing the safety and security of all detainees is a key responsibility for prison facilities, including taking relevant measures to ensure the protection of individuals due to specific circumstances or threats, or taking into account the specific needs of individuals. Research revealed that for LGBTIQ detainees, measures such as providing individual accommodation and separate shower times can be useful for protection against violence or harassment by other detainees. Such protective measures should be available and considered while ensuring that they do not impose undue restrictions on their rights.

Prevent sexual abuse and violence

Non-consensual sexual contact continues to be an issue in many prisons, especially for LGBTIQ detainees. Besides any specific measures to protect, prisons should also have procedures in place to detect and prevent sexual abuse and violence. This should also include measures to sensitise and train prison staff to identify and detect any non-consensual

practices while not unduly restricting consensual sexual contact.

Prisons should establish clear protection and intervention plans for incidents of violence and abuse. These plans should consider the situation of LGBTIQ detainees and ensure that detainees are informed of them. In case of violence, it is important to assess the situation carefully and take protective measures, including especially separation of victim and offender. This should not, however, automatically lead to the transfer/removal of the victim. Access to legal assistance throughout the process should be provided and psychosocial aftercare should be ensured following incidents of assault, including access to therapeutic support.

Protection and intervention plans

LGBTIQ detainees may not only experience harassment and violence at the hands of other detainees, but may also be subjected to ill-treatment by prison staff. The research revealed a lack of sufficient and effective protection and intervention plans for incidents of violence and abuse by prison staff. Staff should be held accountable for discriminatory or abusive behaviour as well as any failures to protect LGBTIQ detainees from harm. This requires the establishment and enforcement of clear disciplinary sanctions against staff who engage in or enable such conduct. In addition, efforts should also be made to eliminate any repercussions by prison staff when detainees raise allegations, and legal assistance should be provided to detainees.

Accountability of prison staff

As regards body searches, the research showed that body searches vary greatly, and processes for body searches (particularly of transgender detainees) are sometimes unpredictable and arbitrary. This can be very stressful for detainees. Prison administrations should provide clear guidance for body searches, including specific rules for LGBTIQ detainees in line with international standards to ensure performance in a professional and respectful manner; full undressing should be avoided wherever possible. Invasive strip searches and body cavity searches should only be conducted when absolutely necessary and justified. Alternatively, less invasive search methods should be prioritised where possible (e.g., over-the-clothes magnetic sensors).

Lawful and sensitive body searches

In order to ensure that body searches are conducted as prescribed above and guarantee detainees' rights to contest how a body search was carried out, all body searches, the reasons for the body search, the frequency, the prison officer conducting the body search and the outcome must be documented.

Appropriate documentation of body searches



Training on
body searches

Body searches can be invasive and distressing procedures and it is essential to ensure they are conducted with respect for individuals' dignity, gender identity and human rights. Prison officers should undergo comprehensive training on how to conduct body searches of trans, intersex and non-binary detainees with sensitivity and professionalism.

Gender identity
of the searching
officer

Body searches should be conducted by officers whose gender matches the detainee's gender identity, taking into account the preferences of trans detainees in particular. On admission, trans detainees should be asked about their preference for the gender of the officer conducting body searches. This preference should be recorded, respected and revocable on the part of the detainee. A second officer of the same gender should also be present for protection and accountability reasons during searches.

COMPLAINT MECHANISMS, ACCESS TO JUSTICE AND MONITORING

RELEVANT INTERNATIONAL STANDARDS

There are several international standards on the right of detainees to make complaints about detention conditions and their treatment in detention. Complaints are an essential tool of remedy for the violation of the rights of detainees. The Nelson Mandela Rules include a right to complain by detainees, including both internally (to the prison director and the prison administration) as well as externally (to judicial or other competent authority and independent national authorities).²⁴⁴ The right to complaint also encompasses the right to information about complaint procedures and the obligation of states to ensure the respect of the right of the detainee to information.²⁴⁵

Other standards further emphasise the independence, impartiality, perceived fairness, effectiveness, promptness and confidentiality of the complaint procedure.²⁴⁶ Effective complaint mechanisms should be transparent and non-discriminatory.²⁴⁷ Additionally, the right to submit a complaint and an effective complaint procedure includes the protection from any form of reprisal, intimidation or any negative consequences (e.g., threats, solitary confinement or other measures) for submitting the complaint.²⁴⁸

Similarly, the European Commission in its Recommendation (EU) 2023/681 also emphasised the importance of the right to submit a complaint and guarantee inspections and monitoring.²⁴⁹

The UN Committee Against Torture further stated that states should **collect data on complaints** received alleging torture and ill-treatment by law enforcement and other public officials, including of lesbian, gay, bisexual and transsexual persons and persons belonging to ethnic minorities.²⁵⁰

In addition to access to adequate and timely complaints procedures, inspections and oversight are crucial aspects to safeguard detainee's rights. Several international standards require prisons to be subject to inspections and oversight to ensure human rights compliant detention conditions. However, there is little specific mentioning of monitoring with regard to sexual orientation or gender identity. Concerning inspections and monitoring, the Nelson Mandela Rules require a two-fold system:²⁵¹ **internal inspections** by prison authorities and **external inspections** by independent bodies, potentially including international or regional actors. Inspectors must have full access to detention information, be able to make unannounced visits, interview detainees confidentially and provide recommendations. External inspection teams should include qualified professionals, including health-care experts, and aim for gender balance. Each inspection must result in a written report submitted to the relevant authority, and external reports should be made public where possible.

On the national level, monitoring carried out by National Preventive Mechanisms (NPMs) established under the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)²⁵² play an important role in the independent monitoring and further guidance on the independence, frequency, reporting, etc. of monitoring may be drawn from the OPCAT. In addition to monitoring by NPMs, regional and international bodies, including CPT and SPT, conduct regular visits to detention facilities.

The European Prison Rules echo these provisions and state that "[a]ll prisons shall be subject to regular government inspection and independent monitoring" (Rule 9). Furthermore, they state that "[t]he conditions of detention and the treatment of prisoners shall be monitored by an independent body or bodies whose findings shall be made public" (Rule 93.1).

The Yogyakarta Principles contain specific reference to monitoring with regard to sexual orientation and gender identity and state in Principle 9f that States shall "[p]rovide for independent monitoring of detention facilities by state and non-governmental organizations including organisations working in the spheres of sexual orientation and gender identity."²⁵³



With the Yogyakarta Principles plus 10, the list of obligations for States was extended, calling to “**provide effective oversight of detention facilit[ies].**” According to the additional obligations relating to Principle 9 of the Yogyakarta Principles, States shall:

J. Provide for effective oversight of detention facilities, both with regard to public and private custodial care, with a view to ensuring the safety and security of all persons, and addressing the specific vulnerabilities associated with sexual orientation, gender identity, gender expression and sex characteristics.

NATIONAL CHALLENGES AND PRACTICES

As outlined in the previous chapter, LGBTIQ detainees may experience multiple forms of harassment and violence in prisons, though many cases remain under-reported and undocumented.

The project has shown that while, in theory, access to justice and complaint mechanisms are generally available to LGBTIQ detainees on an equal basis, fear of attracting more attention or other repercussions as well as a general lack of trust in the system often limits their use. For example, it has been reported that detainees may fear that their complaints will become known to other detainees or even the perpetrator and they might experience retaliation, deterring them from issuing complaints in the first place. For example, in Greece it was reported that lack of confidentiality in hearings within prison can lead to an unwillingness to bring forward complaints.²⁵⁴ The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has also noted that lesbian, gay, bisexual, and transgender individuals in custody often refrain from reporting abuse due to fear of retaliation and a lack of confidence in existing complaint mechanisms.²⁵⁵

Complaints about treatment by prison staff are even rarer, as detainees may fear negative repercussions and (accurately) perceive themselves at the lower end of a power imbalance. For example, in Italy, a trans woman revealed that she intentionally does not report (verbal) harassment by prison officers in order to not escalate the level of tension that already exists between detainees and staff.²⁵⁶ Also, LGBTIQ detainees may sometimes be unaware of internal prison regulations or guidelines aimed to protect them from non-discrimination and harassment. It was reported that in Portugal, a new manual for prison staff exists on support for transgender people deprived of their liberty; however, trans detainees are largely unaware of it and have not been informed

about their rights; hence, there are very few complaints about their treatment (see chapter ‘National laws, guidelines and policies’). Of course, this issue pertains to all detainees: in order to be able to access justice, detainees must be aware of their rights, which is sometimes not the case. This can be particularly challenging for detainees who do not speak the language commonly spoken in the country or have limited reading abilities.

Regarding the lack of trust in the complaint mechanisms, detainees have reported choosing not to pursue complaints, believing that the system is flawed, that nothing will be done and that they might not receive relief or remedies anyway. In Greece, complainants often face severe delays even in the assessment of complaints. Also, in cases where decisions were issued following complaints, barely any decisions were in favour of the detainee concerned.²⁵⁷ Indeed, the perception that complaints might not be taken seriously is sometimes correct. For example, it has been reported in Austria that, in some incidents, complaints regarding insults and harassment were ignored or even belittled by prison staff.²⁵⁸ In Hungary, a case of a trans woman was reported who was continuously ill-treated, harassed, and threatened by other detainees in the male unit of a prison. She also reported these instances to the prison authorities, but no steps were taken to protect her.²⁵⁹

The project has shown that the role of prison staff and administrations is imperative here; as an expert from Belgium highlighted, if prison staff clearly show – through dealing with incidents in respectful and empathetic manners and issuing disciplinary sanctions when appropriate – that such behaviour is not acceptable, this can create more supportive environments for detainees to come forward with complaints. Some interviewed LGBTIQ detainees (e.g., in Austria²⁶⁰) have also recounted prison staff taking swift and decisive action in cases of harassment and physical violence, which was greatly appreciated.

However, another issue regarding complaints is that incidents that do not rise to the level of violence are frequently unreported. This is either because (in countries such as the UK) there exists no category in the complaint mechanisms to report verbal incidents or (in countries such as Poland and Greece) verbal incidents are dealt with on the level of the prison regime and only escalated further if the insults are of a racist nature. Also, as an expert from Malta noted, many different forms of insults in prison are somewhat “culturally accepted” and perceived by detainees to be the norm and not deemed serious enough to issue a complaint.



Even when complaints about ill-treatment are made, it is often not clear whether these complaints are followed up by the prison administration. For example, in some countries, there is either no systematic recording of complaints or follow-up procedures and their outcomes at prison level, or this information is not accessible to external bodies such as NPMs (as has been reported in the **UK**). Also, there is frequently no data being collected on the nature of the complaints (i.e., how many complaints pertain to discrimination, harassment or abuse based on gender identity or sexual orientation), making it difficult to gain a comprehensive understanding of the issues faced by LGBTIQ detainees in order to identify patterns or respond effectively.

As regards access to justice and legal protection in prison, considerable challenges exist in many countries, not only for LGBTIQ detainees but for all detainees. In **Greece**, access to a lawyer and effective legal representation has emerged as a key issue. Identifying lawyers who are knowledgeable on LGBTIQ rights in the criminal justice context is difficult.²⁶¹ In **Austria**, persons with detention experience also shared that there is usually a big difference in legal protection depending on whether one has a lawyer. Until recently, legal aid was only available up until the final judgment and not for any proceedings while serving a sentence, e.g., complaint proceedings. Following a recent judgment of the Constitutional Court, however, legal aid is now also available for any proceedings while serving a prison sentence.²⁶²

In the framework of the consultations, experts further shared that detainees are hesitant to take any legal action or file complaints for fear of reprisals or repercussions from prison staff. Here too, civil society organisations can play an important role in bridging the distrust towards institutional reporting mechanisms.

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In **Italy**, the organisation Antigone provides support and legal orientation tools with the aim of facilitating access to justice for people deprived of liberty. It provides information, assistance in drafting petitions or complaints and reports to the competent authorities. In prisons where Antigone has a help desk—such as the NC prison in Rebibbia, Rome—the team regularly conducts interviews with trans women detained in the dedicated protected section.

In **Hungary**, the organisation Hungarian Helsinki Committee provides human rights legal counseling, and until 2017, it also carried out monitoring visits in prisons.²⁶³

In **Austria**, no such service from an NGO or civil society organisation is currently available in prisons. However, persons deprived of liberty can also lodge complaints with the Austrian Ombudsman Board either in writing or also during NPM visits in prison.²⁶⁴

Regarding independent monitoring, the research revealed that some regional and national monitoring bodies have increasingly been focusing on the situation of LGBTIQ detainees in prison. Their efforts include monitoring the detention conditions, receiving and processing complaints, as well as raising awareness about specific relevant standards. On the national level, NPMs have raised relevant issues and drafting recommendations to strengthen the rights of LGBTIQ detainees in the recent years.²⁶⁵ This work can constitute an important part in advancing the treatment and detention conditions of LGBTIQ detainees. For example, in **Poland**, experts shared that the NPM was an important ally with a view on ensuring the protection of LGBTIQ detainees in practice.

However, representatives of NPMs also reported some challenges with regard to monitoring the detention of LGBTIQ detainees, particularly in gathering first-hand experiences from LGBTIQ detainees about their specific situation, because individuals may not wish to out themselves. In addition, representatives of NPMs may themselves not be experts on the specific challenges of LGBTIQ individuals in detention. For this reason, in **Austria**, the NPM invited an expert on gender identity and particularly transgender topics to a workshop to share some important insights.

RECOMMENDATIONS

Effective complaints procedures are a crucial safeguard for identifying and addressing rights violations and ensuring accountability. The research showed that prison systems often lack transparency in this regard, without sufficient information about the nature and grounds of complaints. This makes it difficult to assess systemic problems or develop targeted solutions. In line with relevant international standards, authorities should therefore systematically collect and analyse data on complaints, disaggregated by relevant grounds—including sexual orientation, gender identity and gender expression—to better understand the scope, nature and frequency of such complaints and to inform targeted responses. Complaints must be properly documented, investigated and, where appropriate, sanctioned.

Improve data collection and transparency



Strengthen complaint mechanisms	While most countries have formal complaint procedures in prisons, these are often difficult to access, and decisions on complaints are subject to significant delays, undermining their effectiveness. For complaint systems to be effective, they must be low-threshold, confidential and timely, with options for both internal and external complaint channels. All detainees should be informed upon admission and on an ongoing basis of the available mechanisms to issue complaints, with information provided in the languages commonly spoken in the prison.	TRAINING AND SENSITISATION
Support through staff	The research also made clear that many detainees, especially LGBTIQ detainees, hesitate to file complaints for fear of not being taken seriously, being ignored or ridiculed or facing severe reprisals. Such legitimate fears often prevent detainees from voicing grievances at all. Prison staff can play a critical role in countering this dynamic; they should actively encourage detainees to use complaint mechanisms and ensure that no retaliation will occur.	<u>RELEVANT INTERNATIONAL STANDARDS</u>
Ensure access to external, independent complaints procedures	In addition to effective internal complaint mechanisms, there must also be external inspections/monitoring by independent bodies. Additionally, the capacity of NPMs should be strengthened to ensure the wellbeing of LGBTIQ detainees through their regular monitoring activities.	International standards consistently underline the importance of training and sensitising prison staff to uphold the rights and dignity of all detainees, including LGBTIQ individuals. Proper training is essential to ensure that staff are equipped to prevent discrimination, respond appropriately to the specific needs of LGBTIQ detainees and fulfil their duty of care in line with human rights principles.
Access to legal advice	Without adequate legal advice, detainees are often unaware of their options or unable to pursue their cases, if they have experienced discrimination, harassment or violence. Given the heightened vulnerability of LGBTIQ detainees, targeted legal aid programmes should be made available that provide access to lawyers trained in SOGIESC-sensitive issues.	The Nelson Mandela Rules recommend staff training shall include education on national and international legislation and policies. Furthermore, the Rules state that staff working with prisoners in situations of vulnerability shall receive specialised training. ²⁶⁶ Though this does not explicitly mention LGBTIQ detainees, the Rules can be understood to imply that staff should be trained to work with LGBTIQ detainees.
Regional and international monitoring bodies	Regional and international monitoring bodies should continue to address the situation of LGBTIQ persons in detention to identify challenges and provide guidance on how to protect individuals from discrimination on the basis of sexual orientation or gender identity.	The Yogyakarta Principles ²⁶⁷ on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity state in Principle 9 that States shall: <p>g) Undertake programmes of training and awareness-raising for prison personnel and all other officials in the public and private sector who are engaged in detention facilities, regarding international human rights standards and principles of equality and non-discrimination, including in relation to sexual orientation and gender identity.</p> <p>Additionally, the Principles state in Principle 10 concerning the right to freedom from torture and cruel, inhuman or degrading treatment or punishment that States shall:</p> <p>c) Undertake programmes of training and awareness-raising for police, prison personnel and all other officials in the public and private sector who are in position to perpetrate or prevent such acts</p> <p>Staff trainings should involve raising awareness regarding international human rights standards, especially in relation to gender identity and sexual orientation. The Association for the Prevention of Torture (APT) recommends:</p> <p>All prison staff should be trained on protecting the rights and meeting the needs of LGBTI</p>



detainees, including the differences between sexual orientation and sexual identity and the specific sub-groups included in the LGBTI acronym. This training should raise awareness on issues of gender identity and sexual orientation and dismantle prejudices and assumptions about LGBTI persons and detainees. Prison staff should be trained on the absolute prohibition of torture or other ill-treatment of LGBTI detainees; considerations relating to LGBTI detainees in the conduct of operational procedures (classification, placement, searches); appropriate measures to protect LGBTI detainees from victimisation (e.g. from violence and abuse by other detainees).²⁶⁸

Additionally, the Guidance Document on the European Prison Rules highlights the importance of training staff on the needs of LGBTIQ detainees, including prison officers as well as other staff (e.g., medical staff).²⁶⁹

NATIONAL CHALLENGES AND PRACTICES

Training and sensitisation of staff

Prison staff play a crucial role in ensuring that detention facilities uphold the dignity, identity and rights of all individuals in prison. Yet, the level of awareness and understanding for the rights and situation of LGBTIQ detainees can vary considerably among staff. In many countries, prisons face a lack of resources and are often understaffed and overcrowded, which exacerbates the burden placed on staff. Maintaining safety and security is usually the highest priority for staff and is a key focus in their training. However, other aspects related to dynamic security and the treatment and care of detainees are often given less attention. It is therefore unsurprising that detainees have reported that there is often more awareness of LGBTIQ detainees' challenges and needs in prison among social workers and psychologists than among the prison officers. This might also be related to the different training that officers receive, and it thus shows the importance of proper staff sensitisation for the treatment and care of LGBTIQ detainees.

While many countries have general human rights modules as part of the education and training of prison staff, which usually encompass aspects related to non-discrimination, the modules usually do not contain any specific segments on sexual orientation or gender identity. Besides this lack of specific training, there are often no documents or guidance available for the management, treatment and care of LGBTIQ detainees (see also chapter 'National laws, guidelines

and policies'). For example, in Hungary, there are basic training courses on non-discrimination, human rights and human dignity. However, none of them are specific to LGBTIQ persons. Furthermore, an interviewee reported that there is such a taboo in Hungary that topics such as homosexuality could not even be mentioned during these lectures.²⁷⁰

Nevertheless, there are some countries which have trainings of prison staff on matters related to sexual orientation, gender identity and gender expression. Several countries have recently developed national guidelines or documents on the care of LGBTIQ persons in deprivation of liberty (see also chapter 'National laws, guidelines and policies').²⁷¹ These documents serve as a guide for prison administration and prison staff on how to care for LGBTIQ detainees who may be exposed to particular risks in prison and may have specific needs. Training on such documents can be very useful to avoid differential treatment, ensuring that all staff are on the same page with regard to the management, treatment and care of LGBTIQ detainees, their rights in detention and their specific needs. Indeed, it has been argued many times, without training on practical implementation, that such documents remain lofty but theoretical ideals. Also, experts have stressed that such trainings should not be a one-off occasion; as an expert from Malta stated, staff may change and they need regular reminders of standards, policies and legal obligations.

In Malta, the Trans, Gender Variant & Intersex Inmates Policy for Correctional Services was issued in 2016 and recently updated.²⁷² Since then, all prison staff, including management, correctional officers, social workers, counsellors and health staff receive training on the treatment and care of transgender detainees to empower prison staff to prevent, identify and respond to discrimination and harassment on the grounds of sexual orientation, sex characteristics, gender identity and gender expression.²⁷³

It has been mentioned throughout the project that training for prison staff should not just address a knowledge gap regarding LGBTIQ issues but also aim to actively break down prejudicial and discriminatory attitudes among staff and foster tolerance and acceptance. Beyond knowing rules and regulations around the treatment of LGBTIQ detainees (e.g., the correct search procedures for trans detainees), trainings can also help staff resolve their discomfort and deconstruct attitudes towards LGBTIQ individuals, including expectations around gender and gender expression. For example, trainings may address becoming comfortable with individuals who identify in a way that does not fit into a rigid binary system and with fluid forms of gender expression. As an expert

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from **Berlin** mentioned, such sensitisation can involve addressing and breaking down expectations around gender norms and views around things like what trans women are “supposed to look like” (e.g., a trans woman may have a beard and identify as a woman).

For such sensitisation trainings, the project found that involving civil society in conceptualising and facilitating the trainings has proven beneficial. Involving LGBTIQ civil society organisations, NPMs and external experts in the field in the implementation of trainings can fill gaps in the training resources of prison administrations and also ensure that the content and curriculum of the trainings are in line with current standards regarding the management, treatment and care of LGBTIQ individuals.

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In **Greece**, a newly structured training for prison officers was introduced in 2024. The programme includes various modules, including modules on inclusion, fundamental rights and core values, as laid down in the Nelson Mandela Rules and the European Prison Rules.²⁷⁴ However, concerns were shared about the programme being overly theoretical and without the necessary practical depth. Additionally, the NGO Positive Voice co-organised awareness-raising trainings for prison staff on working with transgender women together with trans activists.

In **Berlin**, the NGO Mann-O-Meter was involved in general training of prison staff. The NGO works closely with gay and trans detainees and thus has good insights into what issues LGBTIQ detainees are facing. These local trainings positively influence the situation for LGBTIQ detainees in Berlin’s prisons. Unfortunately, due to budget cuts, the participation of the NGO in the basic training curriculum was recently discontinued.

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In **Italy** the NGO Arcigay started training and awareness-raising sessions for prison directors and staff, including prison police in two prisons in Naples. The training sessions covered the different aspects of sexual identity, raised awareness on how to appropriately care for detainees (e.g., during searches, ensuring that female or male officers are present according to the needs of the person being searched) and addressed the need to develop awareness around the gender identity of transgender and non-binary detainees, highlighting that prisons must always guarantee their dignity.²⁷⁵

In **France**, the NPM recommended in-depth modules on discrimination against gender minorities and access to up-to-date information regarding the care for transgender persons. It also emphasised the need to include the voices of trans people. The NPM suggested that

these modules could be organised together with associations focused on the rights of trans people.²⁷⁶

In **France** the association FLAG! fights discrimination against gay, lesbian and transgender people within the Ministry of Justice and the Ministry of Interior, and it supports victims internally and externally in the criminal justice system.²⁷⁷ The association was first established to support gay and lesbian police officers and it later expanded to the Ministry of Justice. It works within the Ministry of Justice, including in prison administration bodies. It has created an awareness module for police officers and Ministry of Justice employees on homosexuality and homophobia together with the NGO SOS Homophobie. The module is an interactive two-hours course presenting concrete cases to initiate a discussion among the employees.

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In addition, experts have noted that for maximum impact, trainings on LGBTIQ issues should be compulsory or mainstreamed in the general trainings that prison staff receive as part of their vocational training and throughout their employment.

Training and sensitisation of detainees

Though it has been reported that in several facilities, tolerance for LGBTIQ detainees appears greater among detainees than among staff (as has been mentioned by an expert from **Berlin**), the project has revealed many accounts of intolerance and harassment on part of other detainees (see also chapter ‘Harassment and violence’) and a great need for sensitisation among detainees.

Several examples of such sensitisation efforts in various countries have been reported throughout the project. In order to enhance acceptance and sensitisation among detainees, an officer of a women’s department in a pre-trial facility in **Austria** reported that a one-day workshop on the topic of “Gender and Diversity” had been organised to raise awareness among detainees.²⁷⁸

In one prison in **Belgium**, an informal working group was established, comprising of detainees, prison staff and members of an external support service. This group came to be through a bottom-up approach, where a detainee who had become aware of many challenges that LGBTIQ detainees in prison face approached a staff member from the support service. The group discussed what the current issues in prison were and what actions could be done to address them at the level of the facility. This model was reportedly working quite well, but after the detainee that initiated the group was released, the group lost traction.

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It has also been reported by various experts that the uptake and efficacy of trainings can be enhanced if they are delivered by an NGO. For one, detainees might find it easier to talk to “outsiders” than the staff they see every day and who are tasked with regulating their daily activities. Besides trainings and raising awareness for prison staff, the Italian NGO Arcigay plans specific events to foster interaction between LGBTIQ detainees and the rest of the prison population.²⁷⁹

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The project also revealed some positive practices with regard to trainings, not specifically on LGBTIQ issues but on broader themes around masculinity. For example, trainings conducted in Belgium by an NGO (which have now ceased due to a lack of funding) addressed issues such as masculine identity, what it means to be a man, relationships, grief, anger, how to relate to others, how to deal with one's emotions and so on. Invariably, such topics that address narratives and discourses around masculinity and aim to break down “macho” attitudes often also veer towards discussing homophobia and dismantling it. According to experts, such trainings help to engender more tolerant attitudes among detainees towards others who are different to them generally, and LGBTIQ individuals specifically.

Such trainings that are framed broadly around themes of “masculinity” and manhood, identity, social relationships or wellbeing also have the advantage of not alienating potential participants from the outset. It has been reported by various experts that detainees often refrain from voluntarily participating in trainings expressly on “LGBTIQ issues” for fear of ridicule or being perceived as part of the LGBTIQ community themselves. As an expert from Berlin mentioned, detainees sometimes first react with scepticism about such trainings, opposing them through questions such as: “Why are you talking to us about that? Do you want us to be gay?” Moreover, issues around masculinity, manhood and identity can be highly relevant to detainees in male facilities, as such ideas and the way they manifest can influence detainees’ wellbeing and their relationships with other detainees.

In addition to framing trainings more broadly, experts have also mentioned that it could be good to incentivise participation in such trainings. To motivate detainees to participate, trainings could be part of other activities, including sports and fitness (e.g., a rugby group). Sports activities could be accompanied by a general discussion about health, physical health, tolerance towards other people's private space, etc. Another positive example shared by an expert was the creation of a theatre group, which was open for everyone, and which was a good opportunity to bring

detainees together and share experiences. This could also open up discourse about important topics (e.g., through the choice of plays to perform). Of course, such initiatives also depend on considerable resources being available within the facility. Also, “gamification” or a credit system where participation in such trainings is rewarded was suggested as a potential incentive by experts. Though, experts have noted that while this might engage participants “for the wrong reasons,” detainees would still reap the benefits by participating.

In order for trainings to be relevant for detainees, it has been suggested that trainings should also be tailored to the specific facility, and the curriculum should be continuously updated to reflect the facility's specific characteristics and operational realities.

RECOMMENDATIONS

International human rights standards emphasise the importance of ensuring that prison staff receive appropriate and ongoing training and sensitisation on the topic of sexual orientation, gender identity and related issues. The research revealed that, across countries, there is still a significant lack of such training opportunities, both during the initial training for prison staff and as part of continuous professional development. In order to increase sensitisation and ensure the respectful treatment of all detainees, prison staff (including administrative staff, medical staff and social/psychological staff) should receive regular, specialised training on sexual orientation, gender identity, gender expression and the needs of LGBTIQ detainees.

Training of prison staff

The research also highlighted various promising initiatives in some countries where targeted training programmes have successfully increased staff sensitivity to LGBTIQ issues. Building on these examples, certain principles should guide the design and delivery of effective training.

Build on promising initiatives

For example, training sessions should be developed and facilitated in collaboration with external experts, including LGBTIQ advocates, civil society organisations, NPMs and, importantly, LGBTIQ persons with lived experience of detention. This ensures that the content is accurate, relevant and grounded in real-life experiences.

Involve external expertise

LGBTIQ specific topics should be embedded and mainstreamed within the general vocational training programmes for prison staff. This could include dedicated sessions during initial trainings as well as easily accessible online e-learning modules, ensuring that awareness and sensitisation are not limited to ad-hoc

Integrate LGBTIQ topics into core training



workshops but become a routine part of professional training. Sexual orientation, gender identity and gender expression should be seen as part of all modules of the training curriculum and should therefore be integrated into other relevant modules as well to ensure that relevant approaches are also covered there.

Address
prejudice
and build
practical
skills

Trainings for staff should go beyond theoretical concepts to also tackle internal attitudes and unconscious biases. They should provide staff with specific practical tools, such as how to respectfully ask detainees about their gender identity, preferred names and pronouns and how to address them appropriately in daily interactions.

Sensitisation
of detainees

While the sensitisation and training of prison staff are essential, the research also showed that there is a lack of awareness about issues around sexual orientation and gender identity among detainees themselves. Misunderstandings and prejudice within the prison population can lead to disrespectful or harmful behaviour, or in some cases, violence towards LGBTIQ detainees. Prison administrations should collaborate with civil society organisations to deliver sensitisation sessions for detainees, encouraging broad participation among all detainees. To maximise attendance, such trainings can be framed broadly around themes of identity, diversity and wellbeing and may include incentive schemes.

Strengthen
cross-border
exchange

Peer-to-peer exchange is a successful tool for stakeholders to build on the positive experiences and the knowledge from other countries. At the regional level, initiatives to exchange regarding training and sensitisation strategies on SOGIESC should be further strengthened.



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- 6 The decision in which specific detention facility a convicted person/ person in pre-trial detention is assigned to (e.g., male or female facility). Usually, the allocation is closely linked to the classification of the detainee, which includes a comprehensive risk assessment. This term is used interchangeably with “placement”.
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- 12 All national reports are available in English and the national languages at: <https://gmr.lbg.ac.at/research/lgbtiq-in-haft-staerkung-der-rechte-von-lgbtiq-personen-in-haft-in-der-eu/?lang=en>.
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- 265 E.g. the Hungarian NPM suggested in its 2021 report that law enforcement officials were biased regarding LGBTIQ persons, see The Ombudsperson’s report no. AJB- 1774/2019 on the visit to Nógrád County police holding facilities, p. 28., see: <https://www.ajbh.hu/documents/10180/2936606/SAJ%C3%81T+N%C3%93GR%C3%81D+ME-GYE+>; the Austrian NPM also included relevant issues, including e.g. body searches in their 2024 report, see Austrian Ombudsman Board, Annual Report on the activities of the Austrian National Preventive Mechanisms 2024, https://volksanwaltschaft.gv.at/fileadmin/user_upload/Annual_Report_2024_-_Activities_of_the_NPM_bf.pdf; similarly the Greek NPM recently visited the Korydallos Female Prison in 2024, interviewing also trans women detained there, see National Report Greece, page 35.
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