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# Protecting human rights during transfers of prisoners

**Report**[1]
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Emanuel MALLIA, Malta, Socialists, Democrats and Greens Group

*Summary*

International standards, including the case law of the European Court of Human Rights and other standards such as the European Prison Rules and recommendations from the European Committee for the Prevention of Torture, are increasingly clear on the conditions in which prisoners can be transported with due respect for their health and human dignity.

Yet, the Committee on Legal Affairs and Human Rights notes that these standards are either insufficiently known and understood, or inadequately applied or monitored in a number of Council of Europe member States.

This report aims to recall some basic standards on issues such as the amount of space that should be available to each prisoner; lighting, heating, ventilation; safety measures; provision of food, water and comfort breaks; access to sanitary facilities; possibility of uninterrupted sleep with appropriate bedding; special provisions for the needs of prisoners depending on their condition, age and gender; the use of force and means of restraint; prevention of the use of repeated and lengthy transfers as disciplinary measures; and provision of information to family members or other designated persons.

1. Reference to committee: Doc. 14368, Reference 4325 of 13 October 2017.

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## A. Draft resolution[2]

1. Prisoners are among those most vulnerable to violations of their fundamental rights. The European Court of Human Rights ("the Court") has stressed that authorities have a "duty to protect" people in custody at all times.

2. Unacceptable conditions during transfers of prisoners may amount to inhuman or degrading treatment or punishment, contrary to Article 3 of the European Convention on Human Rights (ETS No. 5, "the Convention"), or in extreme cases to enforced disappearance (Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance).

3. International standards relating to the conditions in which prisoners can properly be transported with due respect for their human dignity, including the Court's case law, the 2006 European Prison Rules, the 2015 United Nations Standard Minimum Rules for the Treatment of Prisoners and reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), are increasingly clear. Yet, the Court's judgments and relevant CPT reports, as well as the work of national preventive mechanisms and non-governmental organisations, show that these standards are either insufficiently known and understood, or inadequately applied in a number of Council of Europe member States.

4. In order to guarantee that all prisoners are protected from inhuman or degrading treatment during transfers, the Parliamentary Assembly urges the Council of Europe member States to:

4.1. bring their national legal frameworks and practices into line with existing international standards on transfers;

4.2. avoid any substandard or discriminatory treatment of prisoners during transfers, by ensuring that:

4.2.1. prisoners' exposure to public view is as limited as possible, and their anonymity is safeguarded;

4.2.2. suitable material and safety standards are respected in all means of prisoner transport;

4.2.3. adequate space is provided for transport in humane conditions, in accordance with CPT recommendations;

4.2.4. basic needs and comfort breaks are provided as appropriate;

4.2.5. prisoner transfers are strictly limited in time and use the shortest routes available, avoiding unnecessary delays;

4.2.6. where necessary, adequate cells are made available in prisons for prisoners in transit;

4.2.7. all transfers are carried out on the basis of an order or decision issued by a competent authority following a thorough assessment and planning of each individual case;

4.2.8. the health of prisoners during transfers is safeguarded;

4.2.9. certain categories of prisoners are separated from others during transport, where appropriate;

4.2.10. a suitable escort is provided, when necessary including medical, female and child-friendly staff, as appropriate;

4.3. ensure that any restrictions placed on prisoners during transportation are limited to what is strictly necessary and proportionate to the legitimate objective for which they are imposed, including by guaranteeing that:

4.3.1. the use of force and of instruments of restraint are always limited to what is strictly necessary, for the shortest possible time, while ensuring that individual risk assessments are performed in the case of use of restraints;

4.3.2. means of restraint prohibited under Council of Europe or other international standards, such as chains, irons and electric stun body belts, or devices aimed at obstructing prisoners' vision, are never used;

2. Draft resolution adopted unanimously by the committee on 21 January 2019.

4.4. ensure that detailed, up-to-date information is kept on the location of all prisoners during transfer and made available to third parties, as appropriate, including by ensuring that:

4.4.1. advance notice and sufficient information is given to any prisoner subjected to a transfer, in a language he or she understands;

4.4.2. prisoners are allowed to inform their families immediately of their transfer to another institution;

4.4.3. an official, up-to-date register of prisoners is maintained and kept easily accessible to any judicial or other competent bodies, and that relevant information from this register is made available to families and legal counsel seeking to trace the whereabouts of prisoners;

4.4.4. communication with the outside world in relation to transfers may be subject only to restrictions and monitoring necessary for the requirements of safety and security and that any such restrictions nevertheless allow an acceptable minimum level of contact;

4.5. train all law-enforcement, prison or any other criminal justice staff, as well as any private contractors dealing with prisoner transport, to respect prisoners' dignity and human rights during transfers;

4.6. ensure that conditions during transfers of prisoners are subject to monitoring by national preventive mechanisms and other suitably qualified bodies, and that all prisoners have access to an effective remedy in case of alleged violations of their rights during transfers;

4.7. sign and ratify, if they have not yet done so, the International Convention for the Protection of All Persons from Enforced Disappearance.

## B. Draft recommendation[3]

1. The Parliamentary Assembly recalls its Resolution … (2019) on protecting human rights during transfers of prisoners.

2. The Assembly invites the Committee of Ministers to take concrete steps to enhance the protection of human rights during transfers of prisoners, in particular by including appropriately detailed provisions in its work on revising the European Prison Rules.

3. Draft recommendation adopted unanimously by the committee on 21 January 2019.

## C. Explanatory memorandum by Mr Emanuel Mallia, rapporteur

### 1. Introduction

1. As noted in the motion underlying this report, prisoners are amongst those most vulnerable to violations of their fundamental rights.[4] The European Court of Human Rights ("the Court") has stressed that authorities have a "duty to protect" people in custody at all times.[5] One area in urgent need of improvement concerns conditions during transfer and transportation of prisoners, which may amount to inhuman or degrading treatment or punishment, as found in judgments of the Court. Reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), National Preventive Mechanisms (NPMs) or other bodies with similar powers on their visits on the ground have shown that prisoners are frequently at risk of arbitrary decisions and ill-treatment during transfers. Such violations of the prisoners' human rights, by law-enforcement, prison or other criminal justice staff, or by private contractors, can take place during any transportation between different domestic locations (e.g. another prison, police station, hospital, court).[6]

2. During transfer, prisoners may find themselves confined in extremely small spaces within the transport vehicle, shared with an excessive number of other prisoners, in poor and unsafe conditions, sometimes for prolonged periods. In extreme situations, prisoners have found themselves in transit for a month or more, deprived of contact with family and lawyers. Even shorter incommunicado periods can amount to violations according to the United Nations Committee on Enforced Disappearances. Such isolation increases prisoners' vulnerability, since they are denied access to any effective remedy for violations and can less reliably be visited by monitoring bodies. This report aims to call on member States to ensure that transportation is "always carried out in a humane, secure and safe manner".[7]

3. For the purposes of this report, I sent a questionnaire to national parliaments to examine the situation across the Council of Europe member States.[8] Twenty-eight countries replied and I would like to thank those parliaments (Andorra, Albania, Armenia, Austria, Belgium, Croatia, Cyprus, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Latvia, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, Norway, Poland, Slovak Republic, Slovenia, Sweden, Ukraine, United Kingdom) for providing their valuable feedback. The Committee on Legal Affairs and Human Rights also held a hearing in June 2018 with the participation of Mr James McManus, CPT expert and former Professor of Criminal Justice at Glasgow Caledonian University (United Kingdom), and Ms Heather McGill, Researcher on Amnesty International's Eastern Europe and Central Asia Programme (London, United Kingdom), whom I thank for their contributions.

### 2. International standards: general overview

#### *2.1. The European Convention on Human Rights and other general international human rights standards*

4. The primary norm regulating conditions in which prisoners are held during transfers is the prohibition of torture and inhuman or degrading treatment or punishment, enshrined in Article 3 of the European Convention on Human Rights (ETS No. 5, "the Convention"). The Court has found violations of Article 3 in a number of

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4. Doc. 14368, Reference 4325 of 13 October 2017. I was appointed rapporteur on 12 December 2017.
5. *Enache v. Romania*, Application No. 10662/06, judgment of 1 April 2014.
6. The report does not cover transportation by health-care services or international transfer of sentenced persons.
7. CPT, Factsheet on Transport of detainees, CPT/Inf(2018)24, June 2018.
8. The questionnaire, sent through the European Centre for Parliamentary Research and Documentation, contained the following questions:

1. Is there a domestic legal framework specifically regulating the material conditions in which detainees are transferred between places of deprivation of liberty? If so, please provide information on its main provisions (preferably a copy of the text, in English or French) and the legal standards (such as the European Convention on Human Rights and recommendations of the Committee for the Prevention of Torture, CPT) on which it is based.

2. What are the regulations on provision of information to lawyers or family members concerning transfers of detainees, whether before or during the event? Are detainees able to contact the outside world during transfers?

3. How are conditions in which detainees are transferred between places of deprivation of liberty monitored at the domestic level? Please provide details of any reports or recommendations on this issue that have been published by domestic monitoring mechanisms and of any action taken in response to them.

4. Have there been adverse findings by Council of Europe bodies (notably the European Court of Human Rights and the CPT) or by other international mechanisms concerning conditions of prisoner transfers in your country? If so, please provide references/ links to the relevant documents and information on any action taken in response to these findings.

judgments illustrating the different problems that may arise during the transfer of prisoners. Several of these cases involve a range of circumstances individually or cumulatively constituting violations of Article 3, which I will describe later in more detail.

5. All member States of the Council of Europe have also ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the International Covenant on Civil and Political Rights (ICCPR). Both of these instruments aim at protecting everyone from torture and inhuman treatment and ensuring that those detained are treated with humanity and dignity.

### *2.2. Sources of specific international standards applicable to the situation of prisoners and other persons deprived of their liberty*

6. The European Prison Rules (EPR), adopted by the Committee of Ministers in its Recommendation Rec(2006)2, contain various provisions of immediate relevance to the present report. The Committee of Ministers Recommendation Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures (ERJO) also apply in relevant cases. Member States are also all Parties to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126), which set up the CPT which has frequently made specific recommendations to address these issues.[9]

7. The 2015 United Nations Standard Minimum Rules for the Treatment of Prisoners ("the Nelson Mandela Rules") contain various provisions relating to the transport of prisoners, which are very similar to the European Prison Rules. Other UN standards remain valid, including the 1988 UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the 1990 Basic Principles for the Treatment of Prisoners. For vigilance with respect to the specific situation of children, juveniles and women, who are deprived of their liberty, general principles, applicable at all times, are referred to in the 2011 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ("the Bangkok Rules") and the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("the Beijing Rules"). Furthermore, the 1979 United Nations Code of Conduct for Law Enforcement Officials acknowledges law-enforcement officials' responsibility to "uphold human rights of all persons" (Article 2) in the performance of their duty, including taking "immediate action to secure medical attention whenever required" (Article 6).

## 3. Ensuring adequate, safe and humane conditions of transfers

### *3.1. General remarks*

8. If one is to help prisoners "lead a responsible and crime-free life" (EPR 102.1), national authorities, including prison administrations and all officers immediately involved in the treatment of prisoners, must guarantee that the "regime for sentenced prisoners shall not aggravate the suffering inherent in imprisonment" (EPR 102.2). The State has a positive obligation to ensure that prisoners' dignity, health and well-being are adequately secured during imprisonment.[10] Prisoners shall be provided with living conditions which respect human dignity (EPR 49), including during transfers outside prison facilities. Material and safety conditions of transport have been identified as essential areas of concern to the dignity of prisoners (EPR 32.2 and Article 99.2 of the ERJO). The frequency and duration of transport also have a direct impact on the level of stress of prisoners. Other conditions pertaining to the personal circumstances of prisoners shall be closely observed; regular and comprehensive assessments on a case-by-case basis being essential to addressing personal considerations, which are essential to protecting prisoners from undue strain.

9. A large majority of countries (21) indicated that their national legislative or administrative frameworks included some legal provisions and regulations on transfers of prisoners, while only three (Slovenia, Hungary, Poland) indicated having none. The situation across Europe remains uneven however: only a third of the countries mentioned in some detail material requirements of transfers.

9. CPT/Inf(2018)24, op. cit.
10. *Kudla v. Poland,* Application No. 55477/10, judgment of 4 May 2017.

### *3.2. Basic material and safety conditions*

#### *3.2.1. Protection from public view and anonymity*

10. The EPR indicate, in particular regarding transfers, that "while prisoners are being moved to or from a prison, or to other places such as court or hospital, they shall be exposed to public view as little as possible and proper safeguards shall be adopted to ensure their anonymity" (EPR3 2.1). Respect for anonymity and privacy of juveniles is also required during transfers in the ERJO (Article 99.3). According to the replies to the questionnaire, this aspect of transfers is covered for example by Austria, Belgium, Finland, France, Latvia and Malta.

#### *3.2.2. Suitability of conveyances*

11. The Court indicated in several cases that unsuitable material conditions of prisoner transport would violate Article 3. These included, for example in *Kavalerov and others v. Russia*, transport in compartments without windows, fresh air, natural light or ventilation; insufficient number of sleeping places; no bedding or bed linen and air heavy with tobacco smoke. In *Guliyev v. Russia*, the Court also referred to various circumstances relating to a 65-hour transfer during which the applicant was alone in a 2 m² compartment. Every two hours he was checked and forced to change his position; sleeping conditions were further aggravated by the constant lighting in the compartment. The Court found that, "having regard to the cumulative detrimental effect which conditions of the transport, in particular the duration of the journey, confined space, sleep deprivation, insufficiency of food and possibly inadequate ventilation and lighting, must have had on the applicant, … conditions … amounted to 'inhuman' treatment within the meaning of Article 3".[11]

12. The EPR state that "the transport of prisoners in conveyances with inadequate ventilation or light, or which would subject them in any way to unnecessary physical hardship or indignity, shall be prohibited" (EPR 32.2). The CPT has frequently reported adverse findings[12] on material standards of prison vehicles and provided relevant guidance to member States concerned. It recalled for example that "transport vehicles should be equipped with suitable means of rest (such as appropriate benches or seats)". It added that for "overnight transport by train, compartments should be equipped with beds or sleeping platforms, and inmates should be provided with mattresses and sheets or blankets during the journey". Hygiene should also meet minimum standards and, for instance, any toilets within vehicles, boats or trains should be clean. These recommendations led to a number of improvements in national practices, such as the cleaning of prison vehicles or ending the use of unsuitable prison vehicles and/or acquiring new vehicles.[13]

#### *3.2.3. Safety requirements*

13. Vehicles transporting prisoners can quickly become "death traps", in the words of the CPT (Lithuania, 2000), in the event of accidents or other emergencies, if they fail to meet relevant safety standards. This includes the availability of safety belts,[14] functioning intercoms (CPT, Slovenia, 2001), fire extinguishing devices and emergency evacuation systems such as doors of secure cubicles/compartments equipped with a device that automatically (and/or rapidly) unlocks the doors in the event of an emergency.[15] For example, while referring to a boat crossing in Malta, the CPT added that "the detainees should not remain inside the escort van, if this contravenes the safety rules of the ferry authorities" and that the van used to transfer prisoners from Gozo prison to the court on the main island, should be replaced having been found to be "filthy and dangerous", with only a wooden bench without safety belts for seating.[16] The CPT criticised further the practice of transporting prisoners in Scotland in vehicles without safety belts or the possibility for prisoners to communicate with escort staff, which could be dangerous in case of emergency (United Kingdom, 2012).

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11. Application No. 24650/02, judgment of 19 June 2008.
12. See, for instance, CPT reports on visits to Azerbaijan (2002), Azerbaijan (2006), Ireland (2006), Romania (2006), Greece (2005), Spain (2003), Ukraine (2000), Ukraine (1998) and Bulgaria (1995).
13. CPT/Inf(2018)24, op. cit., and CPT report on its visit to Slovenia (2012). See also 2016 Annual report, Slovenian Human Rights Ombudsman.
14. CPT reports on visits to Lithuania (2000), United Kingdom (2012), Greece (2013) and Malta (2015).
15. CPT report on its visit to Lithuania (2000); OSCE/ODIHR and Penal Reform International, Guidance on the Nelson Mandela Rules, 2018, p. 40.
16. CPT report on its visit to Malta (2015).

14. It is essential that the legal framework and practice ensure that road safety rules are respected and that all prison vehicles, other means of conveyances when necessary, are fitted with seatbelts and prisoners wear them at all times. This would also guarantee that individual spaces are defined, minimising risks of overcrowding.

*3.2.4. Space and occupancy rates*

15. Overcrowding can be a serious concern for safety and further to the dictum in *Kavalerov* (above), lack of space alone may be the crucial factor for the Court to find a violation of the Convention's Article 3. In this case, the applicant underwent multiple transfers in a single compartment of 0.3 m².[17] In *Khudoyorov v. Russia*, transfers took place in an "individual" one square metre van compartment shared by two occupants, who took turns sitting on one another's lap during a journey lasting up to one hour. The Court noted that "such transport arrangements are impermissible, irrespective of the duration".[18] The applicant in *Idalov v. Russia* had been transferred within prisoner compartments of 11.28 m², occupied by 36 prisoners, and 8.93 m² occupied by 25. It was not conceivable for the Court that this provided adequate seating and space for transport under humane conditions; this amounted to inhuman and degrading treatment in breach of Article 3.[19]

16. Many CPT reports have also raised issues relating to the size and occupancy rates of conveyances used for prisoner transport, including the following. The CPT called on the Lithuanian authorities "as matter of urgency … to significantly reduce" occupancy rates in railway carriages used to transport up to 16 prisoners in 3.5 m² compartments and 6 in 2 m² compartments (Lithuania, 2000). The CPT similarly called on Ukraine to remedy overcrowded railway carriages transporting prisoners (Ukraine, 2000). Amnesty International reported that in Russia the overcrowding is exacerbated by the fact that each prisoner must carry with him or her all their belongings during transfers, and there is no provision for baggage on the trains.[20]

17. The CPT has also frequently called for the number of prisoners transported in trucks, buses and vans to be reduced. It reported for instance that trucks in Azerbaijan used to hold up to 30 persons in two 3 m² cubicles and that Romanian prison vehicles were occupied at times by 40-50 prisoners, while actually suited for the transportation of 24-30 people. It also criticised overcrowding of Greek prison vehicles, with 1 m² cubicles intended for two prisoners in fact holding four, while indicating that "detainees should not have to stand up during a journey due to a lack of seating space". It also found that prisoners in the Republic of Moldova could be transported in spaces with ceilings as low as 1.3 meters for as much as half an hour every day. The CPT called for an end to the use of 0.44 m² van compartments to transport prisoners in Luxembourg and of 0.4 m² cubicles in vans and trucks in Lithuania, stating that "such a confined space is unsuitable for custody purposes, no matter how short the duration".[21]

18. Following these CPT visits, some member States have taken action, yet this remains often only partially satisfactory. For example, following a 2000 visit by the CPT, the Ukrainian authorities have taken action to withdraw from service the vehicles which had 0.5 m² compartments for prisoners. However, in 2009, the CPT found individual compartments in police vans which continued to be substandard. Following visits in 2016 by both the United Nations Subcommittee on the Prevention of Torture (SPT) and the CPT, the Government of Ukraine has taken further measures to ensure that vehicles used for prisoner transport provide a proper level of comfort and security. A 2017 ministerial decree envisaged full substitution of old vehicles by modern ones.

19. Surprisingly only Germany and Latvia indicated that they had specific regulations on the provision of space for prisoners in prison vehicles. Further to the above findings, the CPT has indicated that "when vehicles are equipped with secure compartments, individual cubicles measuring less than 0.6 m² should not be used for transporting a person, no matter how short the duration. Compartments or cubicles intended to transport more than one inmate for short distances should offer no less than 0.4 m² of space per person, and preferably more. As regards longer journeys, compartments should offer at least 0.6 m² of personal space". Moreover, "compartments or cubicles should be of a reasonable height". These indications by the CPT should give member States sufficient guidance.[22]

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17. See also *Sayerov v. Russia*, Application No. 33071/12, judgment of 7 February 2017, which involved *inter alia* a single occupancy cell of 0.25 m².
18. Application No. 6847/02, judgment of 12 April 2006.
19. Application No. 5826/03, judgment of 22 May 2012.
20. See also *Vasilyev v. Russia*, Application No. 56201/13, judgment of 22 March 2016.
21. CPT reports on visits to Azerbaijan (2002), Azerbaijan (2006), Romania (2006), Greece (2005), Greece (2013), Republic of Moldova (2007), Lithuania, (2000), Lithuania (2004) and Lithuania (2008).
22. CPT/Inf(2018)24, op. cit.

*3.2.5. Access to sanitary facilities, comfort breaks, water and food*

20. Additional circumstances have been considered by the Court (see judgments against Russia: *Idalov, Kavalerov* and *Guliyev* above) in reaching its findings of violations of Article 3, including the failure to provide for basic needs such as adequate meals or water, access to a toilet, or seasonally appropriate clothing (see next section on the latter). The EPR states that "food shall be prepared and served hygienically" (EPR 22.3) and necessary arrangements should be made to provide prisoners with drinking water as required and, for long journeys and distances, with food at appropriate intervals.[23] At all times, prisoners should be "provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work" (EPR 22.1). In *Moiseje v. Latvia*, the applicant, on days when he was transported to court, was given a lunch that was clearly insufficient to support the body's functional requirements, especially given that participation in court hearings created additional mental stress, and received only a piece of bread for dinner after returning to prison. In the circumstances, this amounted to "degrading treatment".[24]

21. The CPT has recommended that in the context of long journeys, arrangements, including regular stops with an adequate number of escorting officers, should be made to allow detainees to have access to sanitary facilities or to satisfy the needs of nature in conditions offering sufficient privacy, hygiene and dignity.[25] Therefore, when security considerations or the short itineraries do not allow for comfort breaks, vehicles should be equipped with adequate toilet facilities. For long transfers, prisoners should also be provided with access to open air and physical exercise. The 2017 report by Amnesty International reported that prisoners in Russia deliberately restricted their intake of food and water in the days before a transfer because they knew they would have no access to toilets.

22. When analysing the replies to the questionnaire, I took note that only six countries had rules on the provision of food during transfers (i.e. Armenia, Austria, Georgia, Montenegro, Netherlands, the Slovak Republic and Ukraine); Georgia and the Netherlands were the only ones to report rules on the provision of water. Very few countries have actually regulated the provision of breaks during long journeys. The United Kingdom provides for adequate comfort breaks. The Netherlands does not allow for breaks unless there is a genuine urgency for food and drink. Armenia and Ukraine make provisions for breaks in the case of long transfers. Provisions are often security oriented rather than aimed at ensuring that the basic needs of those transferred are cared for. Montenegro and Belgium for example require that breaks take place near a penal institution or a police station.

*3.2.6. Clothing and personal property*

23. Inadequate clothing can also be considered as a breach of prisoners' dignity. While the Court opined that clothes must be appropriate for seasonal conditions, the CPT stated that prisoners must have an opportunity to wash or change their clothes before court appearances (Lithuania, 2000). Ensuring that prisoners can wear non-prison issue clothing during transfers can also help authorities ensure that prisoners are "exposed to public view as little as possible and proper safeguards [are] adopted to ensure their anonymity" (32.1 EPR). This is mostly relevant when the prisoners have to travel the distance to and from the prison conveyances.

24. Furthermore, according to the "Nelson Mandela" Rule 67, prison administrations shall ensure that the prisoners' property is protected from loss or damage during the transfer. Given the above-mentioned reports on overcrowding in prison transport, authorities shall in particular take care to ensure space is provided for prisoners' luggage and avoid any situations where prisoners must carry their property in confined spaces.

25. The Criminal Enforcement Code of Ukraine makes provisions to ensure that prisoners are transferred with seasonal clothes and footwear (Article 88). In the United Kingdom, Her Majesty's Inspectorate of Prisons (HMIP) recommends that prisoners do not have to "wear prison clothing outside the prison at, for example, court appearances".[26] Austria and Malta have similar provisions on clothing. Additionally, Greece, Sweden and Ukraine have indicated that prisoners may bring personal property during transfers, some indicating weight limits.

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23. CPT reports on visits to Greece (2013) and Ukraine (2000), as well as the report on the 2017 Follow-up visit to the Central Holding Facility of the Budapest Metropolitan Police by the Hungarian National Commissioner for Fundamental Rights.
24. Application No. 64846/01, judgment of 15 June 2006.
25. CPT reports on visits to Greece (2013) and Ireland (2014).
26. HMIP, Expectations, Criteria for assessing the treatment of and conditions for women in prison.

### *3.3. Duration and frequency of transfers*

#### *3.3.1. Duration of transfers*

26. Ensuring that prisoners are not kept in vehicles for longer than is necessary is essential.[27] In *Andrii Yakovenko v. Ukraine,*[28] "regard being had to the total length of [a period of some two months] spent either in prison vans, trains or transit points, at least two of which offered conditions of detention proscribed by Article 3", the Court considered that the conditions of the applicant's transit amounted to inhuman and degrading treatment. In *Sayerov v. Russia* (above), although the journey itself lasted only 35-40 minutes, the applicant was made to wait in the van for two hours before departure and again on arrival. The Court noted in particular that "the negative effects of the [cramped] conditions of transport must have increased in proportion to the time the applicant stayed inside the vehicle".[29] Amnesty International has reported on excessively long transfers in Russia; one example from 2001 was as long as four months.[30] A recent transfer of two Russian prisoners took over a month in overcrowded and inadequate conditions and during which the families and lawyers had very little knowledge of their whereabouts. While the distance could have been covered in 24 hours by train, this situation made the prisoners extremely vulnerable to inhuman and degrading treatment.[31]

27. Some countries provide in their legislation that transfers should use the shortest routes available (e.g. Belgium, Denmark) without creating unnecessary delays (e.g. Finland, United Kingdom). Member States are also highly advised to invest in the renovation or building of adequate holding cells at courts and other facilities used for temporary custody.[32] Amnesty International in a 2017 report on "Prisoner Transportation in Russia: Travelling into the Unknown" has also advised that a maximum travel time of seven days for prisoner transport should be introduced.

#### *3.3.2. Frequency of transfers*

28. As understood from some of the above cases and reports, the frequency of transfers in inadequate conditions may also violate Article 3 of the Convention. The CPT has observed that the "constant transfer of prisoners from one institution to another is disruptive both for the person in question as well as for other prisoners and staff; moreover, it prevents social integration and promotes a sense of alienation within the individual, which is likely to lead to the prisoner becoming more and more difficult to manage". The CPT also acknowledged that the authorities may have to deal with exceptional considerations of overcrowding and order within the penitentiary facility, but stressed that countries should "avoid as far as possible the needless uprooting of prisoners" (Greece, 2005). Certainly, prison transfer should never be a disciplinary measure, discrimination or punishment "in disguise", nor a means to punish family members (see also ERJO Article 97). In *Orchowski v. Poland*, the Court stated that "frequent transfers of a person … may create a problem under the Convention [and may] increase the feelings of distress".[33]

29. In *Khudoyorov v. Russia* (above),[34] the applicant had been transferred between prison and a courthouse "no fewer than 200 times" during a four-year period. The Court found that the frequency of transfers, along with lack of food or exercise on the days in question and lack of space during the journey exceeded the minimum level of severity to amount to a violation of Article 3. In *Bamouhammad v. Belgium*, the applicant had to undergo 43 transfers between 2006 and 2013, because of his "disruptive behaviour". The Court ruled that the transfers resulted from individual prejudice, which had very negative consequences on the prisoner's psychological well-being and created and exacerbated his anguish, and did not strike a just balance between the imperatives of security and the obligation to provide humane conditions of detention.[35]

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27. OSCE/ODIHR and Penal Reform International, Guidance on the Nelson Mandela Rules, 2018, p. 40.
28. Application No. 63727/11, judgment of 13 June 2014.
29. See also *Yaroshovets and others v. Ukraine*, Application No. 74820/10, judgment of 3 March 2016.
30. Amnesty International, Prisoner Transportation in Russia: Travelling into the Unknown, 2017, p. 26.
31. See Amnesty International's call for urgent action, 3 August 2018. The prisoners were reportedly transferred to an undisclosed location on 20 July 2018 and delivered to their destination on 22 August 2018.
32. See for example, Irish Government response to CPT, CPT/Inf(2015)39.
33. Application No. 17885/04, judgment of 22 October 2009. See also *Khider v. France*, Application No. 39364/05, judgment of 9 July 2009.
34. See also *Yakovenko v. Ukraine*, Application No. 15825/06, judgment of 25 January 2008.
35. Application No. 47687/13, judgment of 17 February 2016. According to its 2016 report, the Belgium Observatoire International des prisons also noted that transfers were "sometimes decided as a sanction". See also CPT report on its visit to Ireland (2014).

30. Nearly half of the member States that replied indicated that there were arrangements within the penal system to assess the reasons for transfers of prisoners, involving frequently a written order, and most often personalised plans, to be issued before any transfer takes place. These safeguards should limit the frequency of transfers to the strict minimum and any potential abuses.

### *3.4. Requirements pertaining to personal considerations*

31. Special provisions may be required when transferring certain categories of prisoners, including pregnant women, persons with disabilities, elderly prisoners and those with particular physical or mental health conditions. For instance, "authorities shall pay particular attention to the requirements of women such as their physical, vocational, social and psychological needs when making decisions that affect any aspect of their detention" (EPR 34.1) and women should always be accompanied by female staff during transfers. Likewise, specific arrangements should be made for the transportation of juvenile offenders and the children of prisoners (CPT, United Kingdom, 2001 and 2008), including the provision of specifically trained escorts. Furthermore, "juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status" (article 10-3 of the ICCPR). When considering the separation of children from adults in prison, the EPR advise authorities to always assess whether the situation is in the best interests of the child (Rule 35.4). When transferring inmates, authorities should always take into consideration "the needs of prisoners who belong to ethnic and linguistic minorities" (EPR 38.1). The separation of different types of prisoners by reference to their sex, age, criminal record, legal reason for detention and treatment needs, as stipulated in the "Nelson Mandela" Rule 11, also applies during prisoner transfer.

32. Prison authorities are required to "safeguard the health of all prisoners in their care" (EPR 39) and ensure that transport conditions are appropriate to the prisoners' medical condition (EPR 41).[36] For instance, officers, taking over the responsibility of prisoners being transferred shall ensure that ill prisoners continue to receive their required medication and that, whenever needed, sanitary items are provided during transfers, vehicles are suitably equipped for medical transportation (e.g. provision of a wheelchair ramp, medical bed) of persons with disabilities if need be, and prisoners are accompanied by medical staff if their medical condition so requires.[37] In preliminary observations made by a CPT delegation following a 2018 visit to Greece, it was considered that inmates transferred to an establishment for psychiatric assessment should be, primarily, transported by health care staff.

33. In *Topekhin v. Russia*, the applicant, who was bedridden and suffered from a serious back condition and bladder problems, complained about the conditions of his 300 km transfer in standard train carriages and prison vans with no special equipment installed to meet his needs. The authorities treated "with indifference his complaints of acute pain when he was lying on the hard floor of the prison van or being carried around on a blanket used as a stretcher". The Court found that "the cumulative effects of the material conditions of the applicant's transfer, and the duration of the trip, were serious enough to qualify as inhuman or degrading treatment within the meaning of Article 3".[38] In *Hüseyin Yildirim v. Turkey*, the transport by unqualified escorts of an invalid prisoner on the floor of a vehicle while other prisoners were trying to keep him stable was found to amount to degrading treatment, in breach of Article 3.[39] In *Elefteriadis v. Romania*, exposing a prisoner with chronic pulmonary disease to other inmates' tobacco smoke in unventilated railway carriages contributed to a violation of Article 3.[40] Amnesty International has recently reported that prisoners in Russia "with chronic health conditions such as diabetes and asthma are denied access to necessary medication during transportation".

34. Physical and psychological health and stress assessments (EPR 42.3) are essential when considering the need to provide specific medical arrangements or isolate prisoners from others. When appropriate, prisoners "suspected of infectious or contagious conditions" (EPR 42.3-f) should be isolated.[41] In *Kavalerov* (above), the Court found that transport alongside prisoners infected with tuberculosis in its open form amounted to a violation of Article 3 of the Convention. This need for isolation of prisoners suffering from diseases should be assessed in relation to the specific characteristics of the disease and the prisoner in question: the CPT has indicated that there is "no medical justification for the segregation of prisoners solely on the grounds that they are HIV-positive" (CPT, Lithuania, 2004; see also EPR 42.3-g).

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36. The CPT also indicated that the means of transport used for transfers to hospitals should take into account the prisoners' state of health (Spain, 1991).
37. OSCE/ODIHR and Penal Reform International, Guidance on the Nelson Mandela Rules, 2018, p. 40.
38. Application No. 78774/13, judgment of 10 May 2016.
39. Application No. 2778/02, judgment of 3 May 2007.
40. Application No. 38427/05, judgment of 25 January 2011.
41. Belgium and Georgia have made provisions for the transfer of contagious prisoners for example.

35. Some member States (including Belgium, Finland, France, Georgia, Greece, Montenegro, Netherlands, the Slovak Republic, Sweden and Ukraine) have already indicated in their respective national legal frameworks the importance of carrying out pre-transfer risks assessments of health statuses and any other special considerations, which often lead to the obligation to devise adequate individualised plans. Georgia and Ukraine make provisions for medical escorts if need be. France's Criminal Procedure Code (Article D292), for example, states that the prisoner's state of health can be a reason to postpone the transfer. The Swedish Ombudsperson advises that "when transferring persons with problems of substance abuses, body and bag searches should always be undertaken prior to such transfer unless it is evidently unnecessary. Items that could be harmful to the detainee, such as medicine, should be stored in such a way that the detainee cannot access them". Some member States (e.g. Estonia, Georgia, Greece, Netherlands, Ukraine) have also made specific provisions on the separation of certain categories of prisoners during transfers. In Greece, Presidential Decree 141/1991 states that transfers of men and women with the same escort should be avoided, but if it is necessary, women should be detained separately and should be accompanied by female police officers. Likewise, minors under the age of 17 are accompanied by specially trained police officers; the Assembly recommended in Resolution 2010 (2014) on child-friendly juvenile justice that member States shall "ensure that all actors involved in the administration of juvenile justice receive appropriate training, with a view to guaranteeing an effective implementation of children's rights in this context".

### 4. Use of force and means of restraint

36. The "general approach to good order" defined by the EPR is that "requirements of security, safety and discipline" shall be taken into account, "while also providing prisoners with living conditions which respect human dignity" (EPR 49). "Security measures applied to individual prisoners shall be the minimum necessary to achieve their secure custody" (EPR 51.1), and address risks of escape (Rule 51), or the threats to the safety of others or the prisoners themselves (Rule 52).[42] For example, in general, night-time transfers should be avoided unless absolutely necessary.[43]

37. While prison administrations shall be responsible for the "safety and security of prisoners, staff, service providers at all times" ("Nelson Mandela" Rule 1), member States should maintain an adequate staff to prisoner ratio, which allows them to respond to the needs of the prisoners during transfers. According to the CPT, prisoners being transferred should always be escorted (Switzerland, 1996). This also applies where transportation is outsourced to other State agencies or private companies.[44] Regarding escorts, governments shall ensure that training and information, on the prohibition of torture and inhuman and degrading treatment and relevant international human rights standards, are fully included in the training of persons involved in the treatment of detainees (EPR 81).

38. The amount of force (EPR 64-67) and instruments of restraint (EPR 68) used shall always "be the minimum necessary and shall be imposed for the shortest necessary time". These rules apply to transfers as well. As a general rule, handcuffs, restraint jackets and other body restraints shall not be part of a systematic practice, nor be used except a) "if necessary, as a precaution against escape during a transfer" or b) "if other methods of control fail, in order to protect a prisoner from self-injury, injury to others or to prevent serious damage to property" (EPR 68.2; see also ERJO Article 91.1). The CPT has advised member States to ensure that the use of force and restraints become exceptions which are strictly regulated following systematic tests of proportionality and, in the case of the use of restraints, individual risk assessments of all prisoners being transferred.[45] There is no need to use means of restraint "when detainees are locked inside secure cubicles or compartments" (Ireland, 2006) nor in most transfers to hospitals (France, 2015). The CPT has also warned against handcuffing prisoners behind the back when without seatbelts, "given the potential for discomfort for the prisoner concerned and the risk of injury in case of an accident, or if the vehicle had to suddenly come to a[halt]".[46] Prison staff should be trained and encouraged to use methods other than handcuffs and body belts for controlling prisoners, such as verbal instruction and manual control techniques (CPT, Hungary, 2005).

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42. See also the CPT report on its visit to Lithuania (2004).
43. OSCE/ODIHR and Penal Reform International, Guidance on the Nelson Mandela Rules, 2018, p. 39.
44. Guiding principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, United Nations 2011, Principles 1 and 5.
45. See for example CPT reports on visits to Ireland (2006 and 2014), the United Kingdom (2016), Hungary (2009), Serbia (2015) and Slovenia (2012). In Slovenia, for example, now the necessary restraining measures are to be ordered and justified by a senior prison official, in accordance with the risk assessment done on a case-by-case basis, according to information provided in the framework of a questionnaire sent to Parliaments in 2014 at the initiative of the Dutch Parliament.
46. See for example CPT reports on visits to Andorra (2011) and Slovenia (2001).

39. In *Mouisel v. France*, the Court found that "having regard to the applicant's health, to the fact that he was being taken to hospital, to the discomfort of undergoing a chemotherapy session and to his physical weakness, … the use of handcuffs was disproportionate to the needs of security".[47] In reports on France (visits of 2015 and 1991), the CPT highlighted that some prisoners with disabilities or illnesses indicated being restrained at their hands and legs during their transfer to hospital. In 2017, Amnesty International reported that prisoners in Russia were even handcuffed while accessing toilets. These types of practices should be prohibited by all means and never should the law treat transportation as a sufficient reason for the use of handcuffs or other restraining measures.

40. Additionally, some means of restraint are absolutely prohibited. These include chains and irons (EPR 68.1), electric stun body-belts (CPT, Hungary, 2009), or devices used on detainees to block their vision – for example, by means of opaque or image-distorting glasses or blindfolding them – while they are being transported from one location to another. In the context of its 2009, 2013 and 2017 visits, the CPT also criticised the use in Belgium of "acoustic" helmets that played loud music, which – in combination with the forced wearing of opaque or image-distorting glasses – was intended to prevent certain categories of prisoners from identifying the route taken, speaking among themselves or overhearing radio communications during transportation; such techniques of spatio-temporal disorientation did not comply with use of force principles, and could be considered as inhuman or degrading treatment. Furthermore, in the event of escort staff ill-treating them, it would be difficult for the prisoners to identify the perpetrators. I call on all member States to ensure no such practices exist in their national settings.

41. Several countries that replied to the questionnaire indicated that coercive measures were permitted where absolutely necessary, including Armenia, Austria, Denmark, Finland, France, Greece, Norway, Montenegro, Slovenia, Sweden and Ukraine. For instance, in Denmark, handcuffs may only be used if, in each case, it is specifically assessed to be necessary in order to 1) avert imminent violence or overcome violent resistance; 2) to prevent suicide or self-mutilation; or 3) to prevent escape. For long transfers, the Danish authorities are asked to consider whether transport belts with handcuffs should be used as an alternative to ordinary handcuffs, in order for the transfer to be carried out with as little discomfort as possible for the detainees. Moreover, a provision is made for handcuffs to be hidden under the prisoner's clothing for discretion. The law also requires that staff checks whether handcuffs are not too tightly fitted. In Sweden, the person in charge of transport has to make notes, which include the grounds for the action taken, the nature of the instrument of restraint and information on the duration of the measure. It should further be recorded if the person has been examined by a doctor. In the Netherlands, according to the national rules governing the use of force in penal institutions (Geweldsinstructie penitentiaire inrichtingen), staff members or employees are authorised to use force and measures intended to restrict freedom, such as handcuffs and leg restraints, providing that they have sufficient skills to do so. Also, the Norwegian Execution of Sentences Act requires authorities to attempt less invasive measures. If those are unsuccessful or clearly inadequate, more coercive measures can be used. It adds that "the Norwegian Correctional Service shall continually assess whether there are grounds for maintaining the measure," to ensure that the process does no unnecessary harm or suffering to the persons involved.

### 5. Provision of information and contacts with legal representation, families and the outside world

42. Prisoners shall always be informed in writing and orally in a language they understand of their rights and duties during transfers (EPR 30.1 and 38.3). They should be informed in advance of the reasons for transfer, the scheduled date and time of the transfer and the place they will be going to.[48] Moreover, "prisoners shall be allowed to inform their families immediately of their imprisonment or transfer to another institution …" (EPR 24.8); furthermore, "[u]pon … the transfer of a prisoner to a hospital, the authorities shall, unless the prisoner has requested them not to do so, immediately inform the spouse or partner of the prisoner, or, if the prisoner is single, the nearest relative or any other person previously designated by the prisoner" (EPR 24.9). The immediacy of information provision is essential to avoid any undue hardship. In cases where the form of communication is not immediate, such as with postal services, sufficient time should be given so that the family receives the communication before the transfer takes place.[49] There is a positive duty imposed on prison authorities to facilitate contacts with the outside world (EPR 24.5), which should apply to transfers as well. "Communication may be subject to restrictions and monitoring necessary for the

47. Application No. 67263/01, judgment of 14 November 2002.
48. See also OSCE/ODIHR and Penal Reform International, Guidance on the Nelson Mandela Rules, 2018, paragraph 185.
49. Ibid., paragraph 135.

requirements of … maintenance of good order, safety and security …, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact" (EPR 24.2).

43. The right to inform family or other contact persons about any transfer is a key safeguard against torture and other ill-treatment, incommunicado detention and enforced disappearance. Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance defines "enforced disappearance" as "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law".[50] In *Yrusta v. Argentina*, in which a detainee spent seven days in transit without his family receiving any information on his whereabouts or even being informed of the transfer, the Committee on Enforced Disappearances found a violation of the aforementioned Convention's provisions on prohibition of secret detention, access for family members to information on a detainee's whereabouts and the right to a judicial remedy for obtaining information on whereabouts.[51]

44. Imprisonment far from the place of residence may amount to a violation of Article 8 of the European Convention on Human Rights (right to family life); in the case of *Khodorkovsky and Lebedev v. Russia*,[52] the Court found a violation where the applicants were sent to prisons 6 800 km and 4 000 km away from their families' places of residence. The 2017 Amnesty International report described the quasi-systematic dispersal of prisoners to detention facilities far from their homes as "a unique penal culture in Russia that combines imprisonment and exile". Although Article 73 of the Russian Criminal Executive Code states that prisoners should serve their sentence "in penal institutions within the boundaries of the territorial unit … in which they had been living or were sentenced", it also provides for exceptions, including when there is no appropriate penal institution in that region; for women and juveniles, who are sent wherever there are appropriate institutions; and for those convicted of particularly serious crimes, who serve their sentences at the discretion of the Federal Penitentiary Service. As a result, journeys often take a month or more. The Amnesty report also notes that neither prisoners nor their families or lawyers are informed of the final destination before the transfer begins; indeed, under the Criminal Executive Code, they need only be informed within ten days of arrival. In the meantime, they are deprived of contact with the outside world, which may amount to "enforced disappearance" and one can imagine the "disorienting effect" of such practice on the prisoners.[53]

45. As explained by the commentary of the EPR, "to adhere to the limits set by Article 8.2 of the Convention on interference with the exercise of [the right to respect for private and family life] by a public authority, restrictions on communication should be kept to the minimum. … The rules according to which restrictions are imposed must be spelt out clearly, "in accordance with law" as required by Article 8.2 and not be left to the discretion of the prison administration (see *Labita v. Italy)".*[54]

46. Keeping proper records of prisoners' transfers is an important safeguard against enforced disappearance (Rule 7, Nelson Mandela Rules). The UN Declaration on the Protection of all Persons from Enforced Disappearance also states that "an official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention. Additionally, each State shall take steps to maintain similar centralized registers". The relevant information contained in these registers shall be made available to families and counsel, to any judicial or other competent and independent national authority and to competent international bodies, seeking to trace the whereabouts of a detained person (Article 10). A good practice worth citing here is the United Kingdom's "prison location service" which is available to families and other persons searching for the location of prisoners who have agreed to share this information. I would recommend that such services be made available in other member States.

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50. A/RES/61/177, 20 December 2016. This convention has been ratified by 21 Council of Europe member States and 19 others have signed (most of them more than ten years ago) but not ratified. No action has been taken by Andorra, Estonia, Hungary, Latvia, the Russian Federation, San Marino and the United Kingdom.
51. *Yrusta v. Argentina*, UN Committee on Enforced Disappearance, Communication No. 1/2013, paragraph 10.4.
52. Applications Nos. 11082/06 and 13772/05, judgment of 25 July 2013.
53. See the case of Ildar Dadin described by the Amnesty report, "Prisoner Transportation in Russia: Travelling into the Unknown, 2017, p. 25.
54. Application No. 26772/95, judgment of 6 April 2000; Commentary on Committee of Ministers Recommendation Rec(2006)2 on the European Prison Rules, p. 52. See also CPT standards on prisoners' contact with the outside world (for example the section on remand detention in the CPT's 26th General Report, paragraphs 59-63).

47. In response to the questionnaire, a third of the countries that replied (for example Estonia, Greece, Hungary, Lithuania, Netherlands, Norway, Poland, Slovenia) noted that they had no specific rules on the provision of information to prisoners, lawyers or families concerning the transfer of prisoners. While some countries' legislation suggests that it would be possible to prevent information from being provided to prisoners before the transfers (for example Belgium, France, Germany, Sweden), it is essential that countries guarantee that prisoners are informed before any transfers (as in Albania, Austria, Croatia, Denmark, Estonia, Finland, Norway, Sweden, and the United Kingdom). The United Kingdom's national preventive mechanism will assess whether women, children and young people "understand where they are going and what to expect when they arrive, … are given sufficient notice of planned transfers, and are able to make a telephone call to their family, next of kin and/or legal advisor (subject to well-evidenced security considerations)". A majority of member States have made provisions for families or legal representatives to be informed before and after the transfer, as an obligation imposed on the authorities or through the prisoner's right to communicate. While this right to communicate may be restricted in some countries before the transfer (for example Estonia, Norway and the Slovak Republic), it is capital that member States have legal provisions ensuring that prisoners' families are informed immediately after they reach their destination (such as in Albania, Belgium, Denmark, Finland, France, and Germany). Some countries, however, allow for the provision of information to be delayed even after arrival, such as Armenia (three days), Ukraine (up to three days) and Georgia (one day). Furthermore, more than half of the replies indicated that prisoners were allowed no contacts with the outside world during transfers, which creates a risk for prisoners to be kept away from their families and legal representatives' close observation. Only Norway replied that it allowed for some contact with the outside world during transfers, on certain conditions.

48. National legal frameworks and practices on the provision of information clearly need to be improved. Member States should strive to adequately regulate any restrictions on provision of information to prisoners and contacts with lawyers and close relatives. Such restrictions should never create unnecessary suffering, nor be left to the unfettered discretion of the prison administration.

### 6. Oversight on conditions of transport and treatment of prisoners

49. Complaint mechanisms are essential safeguards against inhuman and degrading treatment during transfers. Victims of any such abuse should obtain redress and have an enforceable right to fair and adequate compensation (Article 11-16 CAT; also Article 13 of the European Convention on Human Rights, right to an effective remedy). As explained by the CPT's 27th General Report (2018), "the proper handling of complaints made by persons deprived of their liberty, irrespective of the place or situation in which they are held and the legal framework applicable to their deprivation of liberty, requires the observance of certain basic principles: availability, accessibility, confidentiality/safety, effectiveness and traceability". Finland and Denmark informed me that their authorities were required to provide prisoners with adequate information on complaint mechanisms.

50. Independent monitoring of conditions of treatment of prisoners during transfers must be facilitated and reports made public (EPR 93). In the replies to the questionnaire, 10 countries indicated that they have internal inspection mechanisms. In fact, most member States have functioning national preventive mechanisms.[55] In the United Kingdom, Section 81 of the Criminal Justice Act 1991 sets out a very interesting monitoring process for prisoner escorts, which includes a "prisoner escort monitor, that is to say, a Crown servant whose duty it shall be to keep the arrangements under review and to report on them to the Secretary of State" and "a panel of lay observers whose duty it shall be to inspect the conditions in which prisoners are transported or held in pursuance of the arrangements and to make recommendations to the Secretary of State". Any allegations made against prisoner custody officers and any alleged breaches of discipline on the part of prisoners for whose delivery or custody such officers so acting are responsible" will be investigated. A list of criteria for assessing the expected treatment of and conditions for men in prisons has been drawn up by the national preventive mechanism in 2017 in which prisoners are expected to "travel in safe, decent conditions, are treated with respect and attention is paid to their individual needs".[56] A similar expectation can be found in the equivalent document on prisons for women and institutions for children and young people.

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55. Nine member States (Andorra, Belgium, Iceland, Ireland, Latvia, Monaco, Russian Federation, San Marino and Slovak Republic) are not States Parties to the OPCAT, and therefore have not designated an NPM. Bosnia and Herzegovina is a State Party to the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) but has not designated an NPM, as indicated in the OPCAT database.

56. HM Inspectorate of Prisons, Expectations: Criteria for assessing the treatment of and conditions for men in prisons, Version 5, 2017.

51. Several national monitoring bodies have developed expertise on human rights issues for prisoners during transfer, through internal research programmes and co-operation with relevant independent experts, non-governmental organisations (NGOs) and competent international monitoring bodies. In Sweden, for instance, the parliamentary ombudsman has decided to focus, in 2018-2019, research on transfer of prisoners, as it was a regular concern raised during interviews and coincided with legislative changes on transportation. This reflects the work undertaken by the CPT in preparing the recently published factsheet on transport of detainees.[57]

## 7. Conclusions and general policy recommendations

52. As can be seen from the foregoing, inadequate conditions of prisoner transport is a problem that affects or has affected a number of Council of Europe member States. International standards, including the Court's case law and Council of Europe and other standards such as the EPR and CPT recommendations, are increasingly clear on many important aspects relating to the conditions in which prisoners can properly be transported with due respect for their human dignity. Basic standards can readily be identified on issues such as the amount of space that should be available to each prisoner; lighting, heating, ventilation and air-conditioning; safety measures; provision of food and water; access to toilet facilities; allowance for uninterrupted sleep with appropriate bedding; special provisions for the needs of sick prisoners and prisoners with disabilities; prevention of the use of repeated and long transfers as disciplinary measures; and provision of information to family members or other designated persons. Nevertheless, it appears from the Court's judgments and the CPT's reports that these standards are either insufficiently known and understood, or inadequately applied, in a number of Council of Europe member States.

53. On the basis of the foregoing analysis of standards and assessment of the factual situation across Council of Europe member States, I would propose a series of conclusions and recommendations as set out in the attached draft resolution and draft recommendation.

57. CPT/Inf(2018)24, op. cit.