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## The impact of the Covid-19 pandemic on prison population in Europe

### Report<sup>1</sup>

Committee on Legal Affairs and Human Rights

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### Summary

Emergency measures taken within prison settings in response to the pandemic must respect human rights and be limited to the extent and duration necessary. Important sanitary and health measures, including medical screening, vaccinations and booster programmes, should be put in place to help plan for, and respond to, health crises such as the Covid-19 pandemic. Appropriate priority must be given to identifying and taking steps to protect at-risk groups in prisons.

Overcrowding in prisons can facilitate the spread of disease. Through deploying alternatives to detention countries reduced these risks. States should better deploy these techniques as a longer-term tool for tackling overcrowding in prisons.

The justification for restrictive measures must be clearly communicated to prisoners. Compensatory measures should be put in place to the extent possible, as these can be crucial to the mental health and well-being of detainees. Positive developments during the pandemic have led to improved access to telecommunications for prisoners to maintain contact with family – however, this is not a replacement for meaningful human contact.

The impact of the strained conditions imposed on prison staff during the pandemic must be recognised and addressed as they have been made necessary to maintain the overall welfare of all within a prison system.

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1. Reference to committee: [Doc. 15224](#), Reference 4566 of 19 March 2021.



<b>Contents</b>	<b>Page</b>
A. Draft resolution .....	3
B. Draft recommendation .....	6
C. Explanatory memorandum by Mr Givi Mikanadze, rapporteur .....	7
1. Introduction .....	7
2. Overview of the situation in member States of the Council of Europe .....	7
2.1. Studies on the Covid-19 situation in prisons in member States .....	7
2.2. Results from the questionnaire circulated to national parliaments .....	10
3. The response of the Council of Europe to Covid-19 in prisons .....	11
3.1. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment .....	11
3.2. The European Court of Human Rights .....	12
3.3. The Parliamentary Assembly .....	14
3.4. The Commissioner for Human Rights .....	15
3.5. The Secretary General .....	15
3.6. The Council for Penological Co-Operation (PC-CP) .....	16
4. The response of other international bodies to Covid-19 in prisons .....	16
5. Conclusions .....	16
Appendix .....	18

## A. Draft resolution<sup>2</sup>

1. The Parliamentary Assembly recalls its work carried out in response to the Covid-19 pandemic and its concerns about the impact of restrictive measures on the human rights and fundamental freedoms of persons deprived of their liberty, including its [Resolution 2329 \(2020\)](#) on “Lessons for the future from an effective and rights-based response to the Covid-19 pandemic”, [Resolution 2338 \(2020\)](#) on “The impact of the Covid-19 pandemic on human rights and the rule of law”, and [Resolution 2424 \(2022\)](#) “Beating Covid-19 with public health measures”. Notably, in [Resolution 2338 \(2020\)](#), the Assembly called on member States to “ensure that the health and safety of persons deprived of their liberty are protected and they are not subjected to inhuman or degrading treatment or punishment, taking full account of the expert guidance given by bodies such as the CPT [European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment]”.
2. The Assembly notes that during the Covid-19 pandemic, Council of Europe member States imposed various preventive sanitary measures as well as measures restricting the rights, freedoms and well-being of prisoners – and sometimes prison staff – in order to control the spread of the pandemic within the prison population.
3. Some countries took active steps to reduce the number of prisoners, given the clear links between prison overcrowding and the spread of coronavirus in prisons. Some countries prioritised vaccination for prisoners and prison staff, given the risks of contamination in a closed environment.
4. Social distancing measures, whilst often necessary, arguably had the greatest impact on the well-being of prisoners. These included restrictions on contact with the outside world as well as restricting contacts and activities within prisons. The necessity and justification of these measures was not always clearly communicated to prisoners. Some compensatory measures were put in place, such as improved opportunities for telecommunications in order to contact family, but the impact on the well-being of prisoners was still significant, with a likely corresponding increase in self-harm and suicide attempts.
5. The Assembly recalls that, in accordance with the European Convention on Human Rights (ETS No. 5, “the Convention”), States Parties to the Convention have a positive obligation to take appropriate measures to protect the life and health of those within their jurisdiction, especially under Article 2 of the Convention, enshrining the right to life, and its Article 8, enshrining the right to respect for private life. These positive obligations are particularly pronounced for those in detention settings who are reliant upon State action to secure their well-being.
6. In relation to the restrictions imposed as a result of the Covid-19 pandemic, the Assembly recalls that protecting public health may constitute a legitimate purpose justifying restrictions on the rights to respect for private life (Article 8), and freedom of assembly and association (Article 11), provided such restrictions are “prescribed by law”, “necessary in a democratic society” and proportionate to the legitimate aim pursued.
7. However, the Assembly notes that the prohibition on torture or inhuman or degrading treatment or punishment (Article 3) is absolute. Therefore any measures that cross this threshold cannot be justified. The Assembly similarly notes the statements as well as the informative and authoritative reports of the CPT in relation to standards in detention settings, and in particular as concerns the challenges posed by Covid-19 in detention settings.
8. The Assembly notes that sanitary conditions in prisons were key to preventing the spread of Covid-19 into, and within, prisons. Prison health should be an integral part of public health and adequate health treatment must be available in all detention settings. Given the specific risks for the spread of disease for those within closed settings such as prisons, and the responsibility of the State for detainees, prison health must be given the priority that it deserves. In particular, vaccines and boosters should be offered to prisoners and prison staff – with appropriate information campaigns so that prisoners are fully informed of medical information relating to the vaccines.
9. The Assembly notes that problems of over-crowding in certain prisons existed before the pandemic, as noted by the CPT in a number of reports as well as by the European Court of Human Rights in multiple judgments. Such overcrowded conditions meant that it was difficult to adequately separate people infected with Covid-19 from the rest of the prison population in order to stop the uncontrolled spread of the virus. As a result, efforts to reduce the prison population have been seen as one of the most effective and sustainable measures for preventing and controlling Covid-19 in prisons by providing space for physical distancing

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2. Draft resolution unanimously adopted by the committee on 13 October 2022.

between prisoners. The Council of Europe's Annual Penal Statistics project concluded, among other things, that because of Covid-19, the prison population in Europe was significantly reduced between January 2020 and 2021. This decrease was mainly attributed to: the reduction in certain types of crimes in the context of the restrictions of movement during the pandemic; the slowing down of the judicial systems; and the release schemes used in some countries to prevent or reduce the spread of the pandemic.

10. Alternatives to detention were discussed before the pandemic. The increased risks of Covid-19 due to prison overcrowding provided States with an opportunity to put in place alternatives to detention, such as home detention or community service orders. Some States decreased the use and length of pre-trial detention, others released, or temporarily released, prisoners considered to present a low level of risk to the public. Other States (for example Georgia and Portugal) adopted amnesty laws. As Europe moves out of the pandemic crisis, useful lessons can be drawn from this experience so as to continue to use alternatives to detention to reduce the prison population to the minimum necessary, and to help to ease risks of overcrowding within prisons.

11. The Assembly is also aware that different conditions and models exist within prisons in Council of Europe member States, necessitating a Covid-19 response that best responds to the risks presented in that specific setting. Similarly, the design of some prison structures facilitates efforts to separate prisoners from inter-mingling, which can help to contain the spread of the virus within a facility. It is therefore important to ensure that the practices adopted in a given prison are adequately adapted to the challenges present in those facilities, to best protect both prisoners and prison staff, whilst also enabling prisoners to benefit from social and other activities to the maximum extent possible in the circumstances.

12. The Assembly notes that restrictions on visits from friends and family or even lawyers, as well as restrictions on social engagement and activities within the prison setting can have a profound effect on a prisoner's well-being. Such situations risk leading to an increase in self-harm and suicide attempts. States and prison authorities should find creative options to fill the void created by such restrictions. The Assembly therefore welcomes that in many prisons, visiting restrictions were accompanied by significant improvements in telecommunications to enable prisoners to contact family members through phone and video calls. Phone and video calls should not be seen as an adequate long-term alternative to meaningful in-person visits and contact with family. But they can be a useful and important addition, enabling prisoners to retain important family and community links to better enable their successful reintegration in the community towards the end of their prison sentence.

13. The Assembly equally recognises the significant impact that the Covid-19 pandemic and the measures taken to prevent the spread of Covid-19 within prison facilities has had on prison staff. In order to limit the spread of Covid-19, prison staff were sometimes required to spend lengthy periods of time living in the prison environment as well as undergoing significant quarantine periods in order to prevent the virus being introduced from exposure in the outside community. Such measures necessarily had a significant impact on the quality of life, especially the family life, of staff, and on their health and morale, with consequent impacts on all those in a prison setting.

14. In the Assembly's view, there have been some useful practices and experiences across member States in managing disease outbreaks within a closed prison environment and in facilitating alternatives to detention. Nevertheless, overcrowding and other factors continue to pose a risk to the containment of the virus. In imposing restrictions on prisoner's freedoms, the right balance must be struck between preventing the uncontrolled spread of the virus and limiting prisoners' freedoms only to the extent necessary. The pandemic is not yet over. Best practices should therefore be shared and implemented to prevent the spread of Covid-19 and other similar communicable diseases, whilst ensuring that restrictions are only imposed to the extent and the duration strictly necessary.

15. The Assembly calls on Council of Europe member States to:

15.1. develop emergency response plans for each country and for each prison, tailored to the particular specificity and needs of that detention setting;

15.2. take all reasonable steps to ultimately eliminate overcrowding in prisons, having regard, in particular, to the options that States have deployed during the Covid-19 pandemic, including establishing systems for alternatives to detention, and putting in place systems to allow for early release or release for the most vulnerable prisoners;

15.3. ensure that robust health care provision, including mental health care provision, is available to all those in detention settings;

- 15.4. strengthen the epidemiological oversight for prisons (and all detention facilities) in close collaboration with the public health agencies, including by ensuring that adequate medical screening processes are in place in detention settings;
- 15.5. ensure that quarantine or isolation is only used where strictly necessary, and that all prisoners in quarantine or otherwise in isolation are offered access to outdoor exercise as well as meaningful human contact, including phone calls;
- 15.6. ensure that prisoners and prison staff are offered the vaccination and boosters, whilst ensuring appropriate prioritisation, having regard to the particular risks posed to those in detention settings as well as to vulnerable prisoners;
- 15.7. ensure that special measures are taken to identify those at higher risk of catching or becoming seriously ill from Covid-19 and then to take steps to protect vulnerable groups within the prison population, for example through temporary release, specific medical care, or shielding from the wider prison population;
- 15.8. ensure that any restrictions on the rights and freedoms usually available to prisoners are only introduced to the extent and duration necessary and interfere as little as possible with their overall well-being;
- 15.9. in particular, ensure that access to prisons by those providing legal services or by monitoring bodies should not be restricted – in closed cultures such as prisons, external monitoring is essential to ensure that prisoners' rights are respected;
- 15.10. reflect on alternative means for compensating prisoners for restrictions that may be necessary due to the Covid-19 crisis, such as through improved access to telecommunications to maintain family relationships;
- 15.11. ensure that improvements to access to telecommunications for contacts with family are maintained after the pandemic as a useful means of enabling more successful rehabilitation towards the end of a prison sentence – whilst bearing in mind that such contact should not replace meaningful fact-to-face contact;
- 15.12. ensure that, even when physical movements to court are restricted on public health grounds, online hearings are available (where appropriate), along with the necessary telecommunications to support such online hearings, to ensure that prisoners have adequate and timely access to court and to court hearings;
- 15.13. ensure good communication and co-ordination between the various agencies and bodies responsible for responding to a crisis affecting the prison population, such as health ministries, health advisers, justice ministries, prison authorities and probation authorities;
- 15.14. undertake information and communication campaigns to ensure that prison staff receive all relevant information and training on best practice to spot and to stop the spread of Covid-19;
- 15.15. carry out information and communication campaigns to inform prisoners about the risks of Covid-19 and other communicable diseases, best practice in combating such risks, as well as to provide detainees with useful information about vaccination options;
- 15.16. ensure adequate data is maintained on the prison and probation populations, supporting studies for penal and criminological research to learn how best to reduce recidivism and to encourage successful reintegration of offenders into the community;
- 15.17. establish procedures that take full account of the dangers and risks faced by prison staff in the context of the Covid-19 pandemic as well as the impact on their welfare caused by the various measures introduced such as additional quarantine requirements, and to put in place adequate measures to compensate prison staff for such impacts, including leave, financial compensation, rest and respite and rehabilitation activities such as psychological support;
- 15.18. take all necessary steps to implement, as swiftly as possible, the recommendations of the CPT in this area, including the ten principles set out in its "Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (Covid-19) pandemic";
- 15.19. ensure that the rising costs of living in Europe, including energy and food prices, do not disproportionately affect living conditions in prisons.

**B. Draft recommendation<sup>3</sup>**

1. Referring to its Resolution .... (2022) “The impact of the Covid-19 pandemic on the prison population in Europe”, the Parliamentary Assembly recommends that the Committee of Ministers:

1.1. establish guidelines setting out human-rights compliant and effective practices to enable prison settings to respond effectively to disease outbreaks, building on the various practices and experiences of States in different prison settings during the Covid-19 pandemic and well as the advice and expertise of the World Health Organisation, the Committee for the Prevention of Torture as well as other bodies with appropriate expertise;

1.2. undertake further work to consider how best to promote alternatives to detention as a useful tool to combat prison overcrowding, building on the recent experience of States in deploying different alternatives to detention during the Covid-19 pandemic.

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3. Draft recommendation unanimously adopted by the committee on 13 October 2022.

## C. Explanatory memorandum by Mr Givi Mikanadze, rapporteur

### 1. Introduction

1. Following a motion for a resolution tabled by myself and other signatories on 12 February 2021 and referred to the committee for a report on 19 March 2021,<sup>4</sup> the committee appointed me as rapporteur on 19 April 2021.

2. The motion for a resolution recalled that the Covid-19 pandemic had created extraordinary challenges for the authorities of all member States of the Council of Europe as regards the protection of the prison population and the staff working in places of deprivation of liberty. It stressed that any action taken to ensure such protection during the pandemic should “never result in inhuman or degrading treatment of persons deprived of their liberty”. Therefore, the Parliamentary Assembly should examine the legal basis, necessity, and proportionality of restrictive measures taken by member States of the Council of Europe to prevent the spread of the pandemic towards persons deprived of their liberty; it should also check whether those measures were “respectful of dignity” and limited in time. In addition, the motion proposed to examine special measures required to meet the specific needs of detained persons, with a particular focus on vulnerable groups, to pay special attention to the necessity of restrictions on contact with the outside world and to “consider the issue of reinforcing staff availability, as well as professional support, health and safety protection and professional training that prison staff should receive”.

3. As part of this work I sent a questionnaire to national parliamentary research services through the European Centre for Parliamentary Research and Documentation (ECPRD) to ask about relevant Covid-19 measures taken in Council of Europe member States that had an impact on the prison population. A summary of the responses to that questionnaire can be found in the appendix to this report. On 5 September 2022, during its meeting in Bern, the Committee held a hearing with the participation of Professor Marcelo Aebi, School of Criminal Sciences, University of Lausanne, Switzerland; Professor Hans Wolff, Vice-President of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Professor of Medicine at Geneva University and physician in chief at Geneva University Hospitals, Switzerland; and Ms Triona Lenihan, Policy and International Advocacy Manager, Penal Reform International, London, United Kingdom.

## 2. Overview of the situation in member States of the Council of Europe

### 2.1. Studies on the Covid-19 situation in prisons in member States

4. In March 2020, most European countries introduced lockdowns of their populations to reduce the spread of the pandemic. Almost instantly, Council of Europe member States started implementing various measures to prevent the spread of the Covid-19 in prisons and other detention facilities. These measures have been listed and analysed in various reports.

5. The [Council of Europe Annual Penal Statistics](#) (acronym SPACE for *Statistiques Pénales Annuelles du Conseil de l'Europe*) – a project conducted by the Council of Europe’s Council for Penological Co-operation (PC-CP) in co-operation with the University of Lausanne – provides an overview of the use of prison (known as SPACE I project) and non-custodial measures (known as SPACE II project) in all member States of the Council of Europe, based on the statistics collected from the prison administrations and the probation agencies (SPACE II). The SPACE I – Covid-19 project has measured the effects of the pandemic on prison populations since March 2020.<sup>5</sup> The [first report](#) produced in this context evaluated the trends from 1 January 2020 to 15 April 2020 (therefore, roughly the first month of European lockdowns). The [second report](#) assessed the first nine months of 2020, using four points in time as references: dates before the pandemic (1 January), after the first months of the lockdowns (15 April), by the end of the lockdowns (15 June) and by the end of the summer (15 September). The last SPACE I report, published on 6 April 2022, contains conclusions on the impact of Covid-19 on the prison population covering all these reference dates and the period up to 15 December 2021.<sup>6</sup>

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4. [Doc. 15224](#).

5. [“Prisons and Prisoners in Europe in Pandemic Times”, unil.ch](#).

6. SPACE I, “Prisons and Prisoners in Europe 2021”, Key Findings of the SPACE I report, Annual Penal Statistics on Prison Populations for 2021.

6. This project concluded, among other things, that because of Covid-19, the prison population in Europe was significantly reduced between January 2020 and 2021. The decrease was mainly attributed to the following three key factors: the reduction in certain types of crimes in the context of the restrictions of movement during the pandemic; the slowing down of the judicial systems; and the release schemes used in some countries to prevent or reduce the spread of the pandemic. Professor Marcelo Aebi (University of Lausanne), who co-authored the latest SPACE I 2021 report, and was heard by the committee, attached special importance, when preventing the spread of Covid-19 in prisons, to the importance of measures taken to address overcrowding in places of detention and to protect the older prison population. In his opinion, “testing, releasing and isolating” are key measures preventing the spread of the pandemic in prisons.<sup>7</sup>

7. In relation to overcrowding, Professor Aebi noted that overcrowding was decreasing before the pandemic and that this trend continued during the Covid-19 crisis, but he noted the challenges of comparisons – for example, Denmark allocated one cell per prisoner, whereas other countries had many prisoners in a given room; Finland had very small prison cells but prisoners spent most of the day out of the cell whereas elsewhere prisoners might have bigger cells but have to spend much of the day locked in them. He further noted that probation services were forced to work in exceptional ways during lockdown – often working primarily remotely – and yet the overall outcomes of probation did not seem to be significantly impacted.

8. Reflections on the impact of the Covid-19 on the situation in prisons has also been conducted within the European Union (EU). The European Parliamentary Research Service examined the measures taken by EU member States from March until June 2020 to prevent the pandemic in prisons and protect detainees’ health. Thus, several containment measures had been adopted by EU member States: suspending all visits and regular activities in order to limit contact among detainees and also with the outside world, putting on hold transfers of prisoners between EU countries, and improving sanitary measures. EU member States also tried to reduce overcrowding in detention facilities by limiting entries and increasing exits, including by postponing the execution of sentences or using alternatives to detention.<sup>8</sup>

9. Moreover, the EU Fundamental Rights Agency (FRA) examined measures taken during the Covid-19 pandemic in its report entitled “The Coronavirus pandemic and fundamental rights: a year in review”, analysing the developments which had occurred in the year 2020.<sup>9</sup> It refers to restrictive measures such as restrictions on visits (including total bans, also on lawyers’ visits) and on time granted outside detainees’ cells, sport and other external activities, prison transfers, preventive quarantine (imposed mainly on new detainees) and stresses that these measures “affected the rights of detainees and put a severe psychological strain on them”, leading even to revolts in detention facilities in Italy.<sup>10</sup> After the first phase of the pandemic, the EU member States had gradually lifted some restrictions. They put in place many alternative arrangements to ensure access to lawyers and family members (for example, using protective screens during visits) and extensively used early release as a means to reduce prison population and prevent the spread of Covid-19. Thus, France had decreased its prison population by over 13 000, Germany had released prisoners held for minor offences, Portugal provided for an amnesty for prisoners with shorter prison sentences and vulnerable inmates aged 65 or more, Italy had extended “special leaves” from prison and allowed the execution of lighter sentences in home custody, and Cyprus had reduced its prison population following an intervention by the Ombudsperson.<sup>11</sup>

10. Other studies have been carried out by non-governmental organisations (NGOs) specialising in monitoring detention facilities. The European Organisation of Prison and Correctional Services (EuroPris) has become a centre for expertise and sharing knowledge about various measures and regulations to prevent the spread of Covid-19 in prisons. EuroPris gathered information on measures taken by 33 prison administration bodies in numerous Council of Europe member States (Albania, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Hungary, Italy, Ireland, Latvia, Lithuania, Luxembourg, Republic of Moldova, Netherlands, Norway, Poland, Portugal, Romania, Slovak Republic, Spain, Sweden, Türkiye and the United Kingdom), including some of their regional entities, including Catalonia (Spain), England, Wales, Northern Ireland, and Scotland (United Kingdom), and beyond Europe (Israel).<sup>12</sup> It collected and shared between these bodies good practices on restricting visits, granting leave for inmates,

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7. Marcelo Aebi, “Coronavirus : Health and Safety in Europe’s Prisons”.

8. European Parliamentary Research Service, “Coronavirus and Prisons in the EU. Member-State Measures to Reduce Spread of the Virus”, 2020.

9. FRA, “The Coronavirus Pandemic and Fundamental Rights: A Year in Review”, Publications Office of the European Union, 2021, Section 4.8.

10. Ibid, p. 31.

11. Ibid, p. 32.

12. EuroPris, Covid-19: “Promoting Professional Prison Practice”.

managing new arrivals, exits, transfers, reducing overcrowding, using new technologies, introducing laws and regulations, testing and vaccination policies, improving hygiene and health protocols, offering compensation etc. EuroPris has not compiled a report with overall conclusions, but its materials provide a solid basis for further research.

11. The European Prison Observatory, a project co-ordinated by the Italian NGO Antigone with EU's financial support, has quantitatively and qualitatively analysed the condition of national prison systems and the related systems of alternatives to detention, while comparing these conditions to international norms and standards relevant for the protection of detainees' fundamental rights. It has specifically analysed the measures to fight the pandemic in prisons implemented by prison administration bodies from some Council of Europe member States (Austria, Germany, Greece, Hungary, Italy, Portugal, Romania and the United Kingdom) from March to October 2020.<sup>13</sup> As with EuroPris, the European Prison Observatory has reported its work in progress and has not issued conclusions.

12. Other studies and journalistic investigations have also revealed some fundamental problems in European States when dealing with the spread of Covid-19 in prisons. For example, overcrowding was more severe than reported, thus making physical distancing impossible to maintain; prison administrations manipulated data by under-reporting deaths or infections; many prisons faced structural problems, were underfinanced, ill-equipped and lacked staff and were therefore unable to implement minimum sanitary requirements.<sup>14</sup>

13. It remains unclear how detainees were provided with medical assistance during this period and treated in case of illness. As the World Health Organisation (WHO) has acknowledged, despite improving their reporting capacity, some countries had difficulties in separating Covid-19 data attributable to prisons or staff from the larger public health datasets. Disaggregating data would allow for a more specific evaluation of the situation of the Covid-19 pandemic within prisons.<sup>15</sup>

14. As concluded in a joint report, "Covid-19 vaccinations for prison populations and staff: Report on global scan" by the NGOs Penal Reform International and Harm Reduction International, lack of transparency, lack of resources, and sometimes logistical difficulties hinder not only medical care in prisons but also prevent the collection and publication of accurate data on Covid-19 testing and vaccination in many countries.<sup>16</sup> In that report they raised concerns that people detained and working in prisons around the world continue to be left behind in Covid-19 responses despite their heightened risk of infection.

15. The Council of Europe's Criminal Law Cooperation Unit commissioned a study into "the Covid-19 pandemic in prisons and its impact on prison reform priorities", comprising a comparative analysis of six countries – Albania, Armenia, Georgia, Ireland, the Netherlands and Portugal.<sup>17</sup> The study was undertaken by Penal Reform International and two international consultants, Sharon Critoph and Vicki Prais, and sought perspectives from a wide range of stakeholders concerned with prison administration. In this study they noted different types of State responses to the covid-19 crisis:

- Most countries implemented some sort of emergency release of prisoners and/or measures to reduce new admissions to prison, including to pre-trial detention;
- Court trials/hearings were widely suspended for a time;
- Covid-19 screening, testing and risk assessments were put in place;
- Quarantine and isolation were set up within prisons or in other locations;
- Activities and transfers within and between facilities were suspended in most places;
- Visits from families and lawyers were either suspended or limited;
- Physical distancing was implemented within facilities;
- Hygiene and sanitation measures were put in place, including the use of personal protective equipment;
- Priority vaccination programmes were implemented in prisons.

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13. European Prison Observatory, "Covid-19: What Is Happening in European Prisons?"

14. Alternatives Economiques, "Quand le Covid-19 fait trembler les prisons européennes", 21 December 2021.

15. WHO, "Covid-19 Weekly Epidemiological Update", 2021, Edition 53, p. 7.

16. Penal Reform International, "Covid-19 Vaccinations for Prison Populations and Staff: Report on Global Scan", 2021, p.4.

17. The report is not yet published at the time of writing.

16. The committee heard from Ms Triona Lenihan, Policy and International Advocacy Manager at Penal Reform International, that the study found that the ability of prison systems to respond effectively to Covid-19 and to implement any necessary measures largely depended on how the prison system was functioning pre-Covid; Covid-19 was easier managed in facilities that were well-resourced, well-managed, and were supported by good governance arrangements, streamlined decision making and respect for international human rights standards. She noted that States tended to be able to respond more nimbly to the challenges of overcrowding if they already had existing legal mechanisms to enable alternatives to detention. Moreover, measures were better accepted by prisoners where the necessity for these measures was communicated clearly by trusted interlocutors, such as health officials.

## **2.2. Results from the questionnaire circulated to national parliaments**

17. All member States who responded introduced sanitary measures to protect prison inmates and staff. Examples were the regular disinfection of surfaces, the provision of protective gear, the ventilation of rooms, the installation of Plexiglas dividers in visiting rooms, and other basic hygiene measures to prevent contamination with the virus.

18. In many countries, measures against the Covid-19 pandemic took the special needs of vulnerable persons into account (Albania, Austria, Croatia, Denmark, Estonia, Finland, France, Ireland, Latvia, North Macedonia, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden, Switzerland and the United Kingdom), for example through measures to facilitate their separation from others for their protection.

19. The countries that actively undertook measures to reduce the number of prisoners were Armenia, Austria, Belgium, Denmark, Finland, France, Georgia, Germany, Ireland, North Macedonia, Norway, Portugal, Slovenia, Switzerland, Türkiye and the United Kingdom. Most of these countries used conditional or temporary or early release of prisoners as a means to reduce the number of detainees.

20. In some countries (Austria, Denmark, Finland, France, Ireland, North Macedonia, Norway, Portugal, Slovenia, Switzerland) the reduction in the number of prisoners seemed to be directly related to the introduced measures. In others, the cause of the reduction was less clear, for example because of the impact of other factors, such as the changing number and nature of crimes committed during the pandemic or the speed of the criminal justice system.

21. In all responding member States, social distancing measures were conducted, which limited prisoners' contacts with the outside world, with staff and with other prisoners by limiting visits, activities and transfers. These restrictions had the capacity of severely affecting prisoners' daily life and physical and mental well-being. Private visits (family, relatives, etc.) were temporarily suspended in Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, Georgia, Germany, Ireland, North Macedonia, Romania, Sweden and the United Kingdom. Generally, prisoner's access to the outside world has been restricted in all responding States. The most severe restrictions were usually temporary and limited to the first phase of the Coronavirus outbreak from March 2020 to around May 2020. It is, however, not clear, to what extent current visiting rights are equivalent to the pre-Covid phase.

22. Prisoners' contacts within the facilities were also restricted. Most countries made mention of several and sometimes all activities outside of prison cells being suspended. Some countries stated that activities were reconfigured to prevent close contact (for example Romania) or limited regarding the number of participants (for example Finland). Shift systems in wards (Türkiye) or canteens (Finland and Portugal) were introduced. Work, training programmes, sport and educational activities were suspended or reduced in Austria, Bulgaria, Denmark, Estonia, Finland, Germany, Ireland, Latvia, Luxembourg, North Macedonia, Norway, Poland, Portugal, Romania, Spain, Türkiye and the United Kingdom.

23. In many States leave or temporary leave was suspended or restricted (for example Albania, Austria, Belgium, Bulgaria, Finland, Latvia, Lithuania, North Macedonia, Norway, Poland, Spain, Sweden, United Kingdom), sometimes without any exception such as urgent personal matters (Hungary and Switzerland), which for many prisoners would have meant considerably less time for socialisation outside of the prison.

24. Usually, prisoners were able to use the existing complaints mechanisms (Ombudsman, administrative courts, prison administration etc.) to contest restrictions of their rights or to gain compensation (Austria, Croatia, Estonia, Finland, France, Hungary, Latvia, Lithuania, Norway, Poland, Romania, Slovenia, Sweden, Türkiye and the United Kingdom). Most States did not offer prisoners any automatic monetary compensation for the restriction of their rights during the pandemic, although Austria, Germany and Finland responded that in the event of discontinued / restricted work opportunities, work salaries or allowances continued to be paid to

prisoners. In Georgia eligible prisoners could be released, or their sentences reduced, as compensation for the restrictions during the pandemic. Overall, measures seem to vary depending on the local prison facilities and seem to mainly have been focused on providing more or better means of telecommunication.

### 3. The response of the Council of Europe to Covid-19 in prisons

#### **3.1. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**

25. The CPT issued two statements related to the Covid-19 pandemic. The first statement – of 20 March 2020 – recalled the absolute character of the prohibition of torture and inhuman or degrading treatment whilst acknowledging the imperative to combat Covid-19 and the intense challenges for the staff working in various places of deprivation of liberty. It included the following 10 principles:

- all possible action must be taken to protect the health and safety of prisoners and staff;
- WHO and clinical guidelines must be respected;
- staff should be reinforced, supported and protected;
- any restrictive measure must have a legal basis, be proportionate and communicated;
- there should be a wide application of alternative measures to detention;
- vulnerable and/or at-risk groups require special attention;
- while suspending non-essential activities, fundamental rights must be respected – such as access to hot water and soap, the right of daily access to the open air and access to contact with the outside world, including through alternative means of communication;
- meaningful everyday human contact must be maintained for infected prisoners held in quarantine;
- fundamental safeguards against ill-treatment must be fully respected – this concerns in particular access to a lawyer, to a doctor and notification of custody;
- monitoring by independent human rights bodies should continue.<sup>18</sup>

26. In its follow-up statement of 9 July 2020, the CPT welcomed a number of measures taken by the member States to protect persons deprived of their liberty from infection, including the use of alternatives to detention and improved medical screening. As regards prisoners, it stated that “it [was] witness to a pandemic crisis taking place against the background of pre-existing flaws in various criminal justice systems”, and that “(...) resolute action [was] only now being taken – in crisis mode – on some issues that [had] been the subject of CPT recommendations for very many years”. It urged the member States’ authorities to “progressively move from the management of risks to seizing opportunities that the pandemic [had] created”, stressing that certain emergency measures already put in place, such as the increased use of alternatives to deprivation of liberty, must be made sustainable. It also stressed that limitations on arrangements for detained persons to contact the outside world and reductions in the range of activities available to them should be lifted as soon as possible.<sup>19</sup>

27. In its 2021 Annual report (published in April 2022), the CPT stressed that the pandemic had exposed and accelerated the detrimental effects of prison overcrowding in a number of Council of Europe member States.<sup>20</sup> It noted that in the early months of the pandemic the number of persons held in prison had diminished because of an increased use of non-custodial measures (in particular, conditional or temporary release).<sup>21</sup> Nevertheless, with the end of the stricter measures to prevent the spread of the Covid-19, the number of prisoners increased again in certain countries, which might result in a larger number of overcrowded prisons in the future.<sup>22</sup>

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18. CPT, “Statement of Principles Relating to the Treatment of Persons Deprived of Their Liberty in the Context of the Coronavirus Disease (Covid-19) Pandemic” (CPT/Inf(2020)13).

19. CPT, “Follow-up Statement Regarding the Situation of Persons Deprived of Their Liberty in the Context of the Ongoing Covid-19 Pandemic” (CPT/Inf (2020) 21).

20. The 31<sup>st</sup> General Report of the CPT for the period of 01 January – 31 December 2021 (CPT/Inf(2021)5), para. 92.

21. Ibid, para. 94.

22. Ibid, para. 96.

28. In its recent country reports the CPT has raised issues relating to the impact of prison overcrowding on the spread of Covid, as well as the adequacy of sanitary, health and vaccination measures taken in prisons in order to limit the risks of the spread of Covid-19.<sup>23</sup> The CPT has furthermore noted that some Covid-19 restrictions have the result of reducing violence within prisons and called on States to both ensure a return to social activities for prisoners as covid-restrictions are lifted, whilst also ensuring levels of violence within prisons do not increase as such restrictions are eased.<sup>24</sup> Other CPT Reports note the impact of the pandemic on conditions for prison staff, as well as significant restrictions on activities for prisoners.<sup>25</sup> One concern relates to persons being placed in quarantine upon entry to prison (or other detention settings) for prolonged periods of time without being offered access to outdoor exercise or to phone calls.

29. The CPT has similarly focussed on vaccination policies for prisoners. On 27 May 2021, the President of the CPT sent a letter to the national authorities of all member States requesting them to provide information regarding their Covid-19 vaccination policy vis-à-vis persons held in prisons and other places of detention, as well as staff working in such establishments. In their replies, many authorities indicated that detained persons and staff working in detention places were considered to be at particular risk and were therefore classified as one of the priority groups for vaccinations. The CPT welcomed the proactive approach followed by the relevant authorities to prevent the spread of the Covid-19 virus in various places of detention. The CPT encouraged all authorities to pursue efforts to ensure that detained persons and staff benefit from effective vaccination programmes (including booster vaccinations).<sup>26</sup>

30. We heard from Professor Hans Wolff, Vice-President of the CPT, Professor of Medicine at Geneva University and physician in chief at Geneva University Hospitals, that the incidence of Covid-19 in prisons was much higher than for the general population, although there were sometimes difficulties in acquiring comparative data. He highlighted that prison health was part of public health and should be taken seriously. The density of prisoners was the main challenge for controlling the spread of Covid-19 within prisons. However, he also recalled the diverging approaches of States in considering prisoners as a priority population for vaccination, with some prioritising prisoners due to the high risks of the disease spreading in closed environments, whilst others were more reticent to prioritise offenders. He considered that identification and protection of vulnerable persons as well as access to testing and vaccination was crucial to containing and minimising the impact of Covid-19 outbreaks.

31. Professor Wolff noted the impact of visiting restrictions on the well-being and the mental health of prisoners and their families, sadly noting the increase in suicide attempts during periods of isolation. He similarly highlighted that communication with prisoners was essential to ensuring that prisoners understood the health risks and understood the reasons for the exceptional measures being put in place. In settings where the necessity for these restrictions was communicated clearly by those whom prisoners trusted, prisoners were more likely to accept the exceptional measures, with fewer risks of the sorts of prisoner protests as were seen in Italy.

32. Professor Wolff similarly highlighted the challenges faced by prison staff, some of whom had been obliged to stay in prison for up to two weeks at a time; often with only one week home before having to undergo a week of quarantine before another two-week shift of living in the prison. When prison staff were obliged to live in prisons – often in makeshift accommodation in workshops – this not only negatively impacted on the prison staff with reports of staff exhaustion, but also on the prisoners who were then deprived of access to those workshop and activity areas. This added to the cumulative impact of the various restrictions and exceptional measures on both prisoners and prison staff. Finally, Professor Wolff suggested that the Covid-19 outbreak had also presented opportunities for prison authorities to further improve and operationalise the solutions prison authorities had deployed in combating the pandemic, for example in reducing overcrowding and for ensuring improvements to healthcare provision.

### **3.2. The European Court of Human Rights**

33. In its case law concerning Article 3 of the European Convention on Human Rights (ETS No. 5) (prohibition of torture, inhuman or degrading treatment or punishment), the European Court of Human Rights has consistently recognised the special situation of detainees because of their dependence on the authorities when it comes to their living conditions, including access to medical care. It also stressed that State authorities' omissions are likely to have a greater impact on the prisoners' physical and psychological well-

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23. See, for example, the CPT [Report on Greece](#) published 2 September 2022.

24. See, for example, the CPT [Report on the UK](#) published on 7 July 2022.

25. See, for example, the CPT [Report on Georgia](#), published on 16 June 2022.

26. CPT/Inf(2021)5, op. cit., para. 15.

being.<sup>27</sup> As stressed in the judgment *Kudła v. Poland*, the State must ensure that “(...) a person is detained in conditions which are compatible with respect for his human dignity (...) and that (...) his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance (...)”.<sup>28</sup> The authorities must also ensure prompt and accurate diagnosis and, where necessitated by the nature of a medical condition, regular and systematic supervision involving a comprehensive therapeutic strategy aimed at ensuring the detainee’s recovery or at least preventing deterioration of his or her condition.<sup>29</sup> However, the assessment of the “adequacy” of medical assistance is not always easy to determine, and the Court is here guided by a “due diligence test, since the State’s obligation to cure a seriously ill detainee is one of means, not of result.”<sup>30</sup> Moreover, in order to reach the threshold of Article 3 of the Convention any ill-treatment resulting from a lack of appropriate medical care must attain a minimum level of severity. The assessment of this minimum is relative and depends on all the circumstances of the case, such as the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the detained person.<sup>31</sup> In case of a detainees’ death, the lack of appropriate medical care may also entail a violation of Article 2 of the Convention (right to life), under its substantive and/or procedural limb.<sup>32</sup> According to the Court, the Convention does not compel the States Parties to release a detainee on health grounds or place them in a public hospital, even if he/she is suffering from an illness that is particularly difficult to treat.<sup>33</sup> However, in severe cases, the proper administration of criminal justice might require “humanitarian measures”.<sup>34</sup>

34. The Court has also acknowledged that specific issues may arise from the risk of spreading infectious diseases in prisons and when such an illness has been contracted in prison. According to the Court, States retain a positive obligation to take efficient measures to detect and prevent the spreading of contagious diseases.<sup>35</sup> Irrespective of the fact whether or not a detainee became infected while in detention, the State has a responsibility to ensure adequate medical assistance for prisoners in its charge. This responsibility is even more apparent when the disease has been contracted in detention.<sup>36</sup>

35. The Court has applied these principles in the recent cases related to Covid-19 issues in prisons, *Fenech v. Malta*<sup>37</sup> and *Feilazoo v. Malta*.<sup>38</sup> In its judgment in *Fenech v. Malta*, the Court examined the complaint of a detainee who alleged that the State had failed to preserve his health and well-being in view of the Covid-19 pandemic. Under Article 3, the Court stressed that, in order to protect the physical well-being of prisoners, the authorities must put certain measures in place aimed at avoiding infection, limiting the spread once it reached the prison, and providing adequate medical care in the case of contamination. The Court held that preventive measures had to be proportionate to the risk at issue but should not pose an excessive burden on the authorities in view of the practical demands of imprisonment, particularly when the authorities were confronted with a novel situation such as a global pandemic to which they had to react in a timely manner. The Court acknowledged that “it would be unrealistic to expect that a detainee would never come in contact with a positive person, even more so given that certain measures could only be kept in place for as long as reasonably necessary (such as, for example, the suspension of family visits).”<sup>39</sup> It considered that the Maltese

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27. See, for instance, Thematic Report, “Health-Related Issues in the Case-Law of the European Court of Human Rights” (2015), p. 13.

28. *Kudła v. Poland*, application no. 30210/96, judgment of 26 October 2000 (Grand Chamber), para. 94.

29. *Pitalev v. Russia*, application no. 34393/03, judgment of 30 July 2009, para. 54.

30. *Goginashvili v. Georgia*, application no. 47729/08, judgment of 4 October 2011, para. 71. The Court also added that “(...) the mere fact of a deterioration of the applicant’s state of health, albeit capable of raising, at an initial stage, certain doubts concerning the adequacy of the treatment in prison, could not suffice, as such, for a finding of a violation of the State’s positive obligations under Article 3 of the Convention, if, on the other hand, it can be established that the relevant domestic authorities have in timely fashion resorted to all reasonably possible medical measures in a conscientious effort to hinder development of the disease in question.”

31. *Kudła v. Poland*, op. cit., para. 91.

32. See, for example, the following judgments finding violations of Article 2 under both limbs: *Jasinskis v. Latvia*, application no. 45744/08, judgment of 21 December 2010; *Dzieciak v. Poland*, application no. 77766/01, judgment of 9 December 2008 and *Salakhov and Islyamova v. Ukraine*, application no. 28005/08, judgment of 14 March 2013.

33. *Grimailovs v. Latvia*, application no. 6087/09, judgment of 25 June 2013, para. 150.

34. *Sakkopoulos v. Greece*, application no. 61828/00, judgment of 15 January 2004, para. 38.

35. *Fülöp v. Romania*, application no. 18999/04, judgment of 24 July 2012, para. 38.

36. *Shchebetov v. Russia*, application no. 21731/03, judgment of 10 April 2012, para. 71.

37. *Fenech v. Malta*, application no. 19090/20, judgment of 1 March 2022, paras 129-130.

38. *Feilazoo v. Malta*, application no. 6865/19, judgment of 11 March 2021, see in particular para. 92. NB: although this case concerned immigration detention, the same principles apply.

39. *Ibid*, para. 139.

authorities had put in place relevant measures and had been vigilant in adapting their protocols to the evolving situation and that the applicant had not shown that he fell within the category of the most vulnerable (no applicability of Article 2 and no violation of Article 3).

36. In *Feilazoo v. Malta*, the Court examined an issue of automatic placement of new arrivals in Covid-19 quarantine. In that case, the applicant had already spent seventy-five days in isolation before being moved to other living quarters where new arrivals were being kept in Covid-19 quarantine. The Court stressed that there was no indication that the applicant was in need of such quarantine – particularly after a seven-week isolation period. Thus, the Court found that the measure of placing him, for several weeks, with other persons who could have posed a risk to his health and without a justification for such a measure in his case, could not be considered as a measure complying with basic sanitary requirements.

37. In another case, *Ünsal and Timtik v. Turkey*, the Court dismissed as manifestly ill-founded the complaints of two detainees who alleged that the hospitals where they were held were dedicated to Covid-19 treatments, thus exposing them to risk due to their fragile state of health caused by their hunger strike.<sup>40</sup>

38. The Court is now dealing with a number of pending complaints on Covid-19 related issues, such as the risk of contracting Covid-19 in prison following possible extradition to the USA,<sup>41</sup> lack of protective measures for HIV-positive prisoners,<sup>42</sup> inadequate provision of a sufficient amount of protection equipment namely masks,<sup>43</sup> or adequacy of measures to prevent infection or risk of infection with Covid-19 while in prison.<sup>44</sup>

39. Moreover, restrictions on access to the outside world imposed on persons deprived of their liberty during the Covid-19 pandemic may raise issues under Article 8 of the Convention guaranteeing the right to respect for private and family life and correspondence, although this right is not absolute like the rights enshrined in Article 2 and 3 of the Convention.<sup>45</sup> The Court has stressed on many occasions that the authorities had to enable prisoners or, if need be, assist them in maintaining contact with their close family.<sup>46</sup> Moreover, detainees' correspondence with the outside world, and particularly their communication with a legal representative, is protected under Article 8 of the Convention. In its case law, the Court has stressed the need to ensure protection from arbitrariness in the application of any measure monitoring prisoners' correspondence.<sup>47</sup> As regards Covid-19 restrictions, the Court is now examining a Polish case concerning long-lasting prohibition of detainees' family visits.<sup>48</sup>

### 3.3. The Parliamentary Assembly

40. Since the very beginning of the pandemic, the Assembly has raised concerns about the impact of restrictive measures on human rights and fundamental freedoms of persons deprived of their liberty. In [Resolution 2329 \(2020\)](#) "Lessons for the future from an effective and rights-based response to the Covid-19 pandemic",<sup>49</sup> whilst not specifically mentioning prisoners, the Assembly underlined the need to ensure that all public health measures taken during the pandemic of Covid-19 respect human rights and protect "vulnerable groups of the population" and called on Council of Europe member States to avoid discrimination in the implementation of such measures.<sup>50</sup>

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40. *Ünsal and Timtik v. Turkey*, application no. 36331/20, decision of 8 June 2021.

41. *Hafeez v. The United Kingdom* (application no. 14198/20), *Krstić v. Serbia* (application no. 35246/21) and six other applications.

42. *Maratsis and Others* (application no. 30335/20) *Vasilakis and others v. Greece* (application no. 30379/20) and four other applications.

43. *Suşnescu v. Romania* (application no. 19034/21).

44. *Rus v. Romania* (application no. 2621/21), *Faia v. Italy* (application no. 17378/20), *Vlomis and Others v. Greece* (application no. 29655/20) and *Riela v. Italy* (application no. 17378/20).

45. According to Article 8.2 of the Convention, "there shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

46. See, for instance, *Khoroshenko v. Russia*, application no. 41418/04, 30 June 2015 (Grand Chamber), para. 110 and "Guide on case law of the Convention – Prisoners' rights European Court of Human Rights", last update: 31 August 2022, p. 21.

47. See, for instance, *Enea v. Italy*, application no. 74912/01, judgment of 17 September 2009 (Grand Chamber), para. 143.

48. *Guhn v. Poland* (application no. 45519/20) and *Michalski v. Poland* (application no. 34180/20).

49. See [Doc. 15115](#), report by the Committee on Social Affairs, Health and Sustainable Development, rapporteur: Mr Andrej Hunko (Germany, UEL).

50. Paragraphs 7.3 and 8.7 of the resolution.

41. In [Resolution 2338 \(2020\)](#) “The impact of the Covid-19 pandemic on human rights and the rule of law”<sup>51</sup>, the Assembly called on member States to “ensure that the health and safety of persons deprived of their liberty are protected and they are not subjected to inhuman or degrading treatment or punishment, taking full amount of the expert guidance given by bodies such as the CPT”. The report on which it was based also stressed the human rights issues that might arise in relation with quarantine and confinement measures restricting detainees’ contact with their lawyers and families. Moreover, while welcoming the early release of certain categories of prisoners, it recommended to base such a measure on “objective, non-discriminatory criteria” and not to exclude from it “categories such as opposition politicians and activists, critical journalists and academics, or lawyers and other human rights defenders, especially those whose imprisonment gives rise to suspicion of political motivation”. In its [Resolution 2340 \(2020\)](#) “Humanitarian consequences of the Covid-19 pandemic for migrants and refugees”, adopted at the same time as [Resolution 2338 \(2020\)](#), the Assembly called on Council of Europe member States to avoid detention where possible “during the reception and detention processes” of refugees, asylum seekers and migrants and to take into account alternative measures.<sup>52</sup>

42. Moreover, in its [Resolution 2424 \(2022\)](#) “Beating Covid-19 with public health measures”, the Assembly stressed the need to shield “vulnerable persons” from infection and called on member States of the Council of Europe to ensure “(...) free, effective and easy access to vaccination for all for whom vaccine use is authorised, in respect for the principle of equitable access to healthcare (...)”<sup>53</sup>

### **3.4. The Commissioner for Human Rights**

43. The issue of protection of prisoners’ health was raised by the Council of Europe Commissioner for Human Rights, Dunja Mijatović, in her statement issued at the beginning of the pandemic.<sup>54</sup> While stressing that prisoners were among those most vulnerable to viral contagion and that some Covid-19-related deaths in prisons had already been reported in Europe, she commended the release of certain categories of prisoners in Council of Europe member States and other measures to reduce prison population. She urged Council of Europe member States to make use of alternatives to detention whenever possible and without discrimination and stressed they should pay particular attention to detainees with underlying health conditions, older persons who did not pose a threat to society and those who had been charged or convicted for minor or non-violent offences. The reduction of the prison population was also indispensable to ease the mounting pressure on prison personnel and the penitentiary system as a whole. Moreover, restrictions to family visits and other outside contacts should be “imperatively mitigated by alternative arrangements such as extended access to phone or video communications”. Moreover, in her statement on World Health Day, on 6 April 2022, she emphasised that during the transition period following the easing of lockdown measures, the special health needs of prisoners and other overlooked groups should be prioritised to ensure that their increased risks were adequately addressed.<sup>55</sup>

### **3.5. The Secretary General**

44. At the beginning of the pandemic, the Secretary General of the Council of Europe, Marija Pejčinović Burić, issued a toolkit for member States “Respecting democracy, rule of law and human rights in the framework of the Covid-19 sanitary crisis,”<sup>56</sup> She stressed that “(...) the prohibition of torture and inhuman or degrading treatment or punishment belongs to the core rights under the Convention as they cannot be subject to any derogation, even in time of public emergency such as COVID-19” and they entail “(...) positive obligations to protect people in state care against deadly diseases and the ensuing suffering.” Moreover, in her [2021 annual report “State of democracy, human rights and the rule of law. A democratic renewal for Europe”](#), she stressed that “(...) the Covid-19 pandemic further strained detention conditions, adding severe health risks for persons in prisons and other places of detention”.

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51. See [Doc. 15139](#) report by the Committee on Legal Affairs and and Human Rights, rapporteur: Mr Vladimir Vardanyan, (Armenia, EPP/CD).

52. See [Doc. 15142](#), report by the Committee on Migration, Refugees and Displaced Persons, rapporteur: Mr Pierre-Alain Fridez (Switzerland, SOC).

53. See [Doc.15444](#), report by the Committee on Social Affairs and Sustainable Development, rapporteur: Mr Stefan Schennach (Austria, SOC).

54. Commissioner for Human Rights, Statement “[Covid-19 Pandemic: Urgent Steps Are Needed to Protect the Rights of Prisoners in Europe](#)”, 6 April 2020.

55. Commissioner for Human Rights, Statement on World Health Day, “[Inclusive and resilient health care for all - are we closer?](#)”, 6 April 2022.

56. [SG/Inf\(2020\)11](#) of 7 April 2020.

### 3.6. The Council for Penological Co-Operation (PC-CP)

45. In its statement issued on 17 April 2020, the Council for Penological Co-operation Working Group (PC-CP WG) drew attention to some of the important above-mentioned texts issued by the Council of Europe and to standards and practices that may assist the prison and probation services and other criminal justice agencies of the Council of Europe member States in dealing with the Covid-19 pandemic.<sup>57</sup> The PC-CP WG also reminded the Directors of the prison services of the Council of Europe member States of a number of Council of Europe standards in this field. These are included in the [European Prison Rules \(2006\)](#) and in the Committee of Ministers' Recommendations R(93)6 on prison and criminological aspects of the control of transmissible diseases including Aids and related health problems in prison and R(98)7 on the ethical and organisational aspects of health care in prison. The Working Group summarised these standards in a few points, thus providing guidance to the prison services when facing the Covid-19 pandemic whilst ensuring full respect of the Convention's fundamental rights.<sup>58</sup> In its follow-up statement issued on 14 October 2020, the PC-CP WG noted the measures taken by prison and probation services to adapt to the Covid-19 pandemic, and highlighted the importance of good sanitary conditions and good healthcare in prisons. The PC-CP welcomed the increased use of new technologies, especially to facilitate communications and education within prisons, and called for solitary confinement only to be used where necessary. The PC-CP highlighted the importance of explaining the reasoning for restrictive Covid measures to inmates, and expressed concerns about the risks of suicide, self-harm and mental health problems during the pandemic. The PC-CP also called on States to resolve the backlog in both courts and probation service work, including by ensuring sufficient staffing.<sup>59</sup>

### 4. The response of other international bodies to Covid-19 in prisons

46. The World Health Organisation produced guidance "Preparedness, prevention and control of Covid-19 in prisons and other places of detention",<sup>60</sup> focussing on sanitary measures and best practices to help prevent and control the spread of Covid-19 within detention settings. Many other UN agencies similarly undertook work to highlight the standards to be applied in detention settings during the Covid-19 pandemic. One such example is the joint statement of 13 May 2020 of the United Nations Office on Drugs and Crime (UNODC), the World Health Organisation, the United Nations Programme on HIV/AIDS (UNAID) and the Office of the High Commissioner for Human Rights (OHCHR) on Covid-19 in prisons and other closed settings, which focused on the importance of avoiding overcrowding, ensuring health, safety and human dignity, ensuring access to continued health services, respecting human rights and adhering to UN rules and guidance.<sup>61</sup>

### 5. Conclusions

47. People in places of detention are more vulnerable to the pandemic as they live in close proximity and thus may act as a source of infection, amplification and spread of Covid-19 within and beyond the places where they are detained. Prison health care is part of public health care and nobody should be left behind. When dealing with the Covid-19 pandemic, member States of the Council of Europe preferred measures preventing the spread of the disease in prisons, which was a commendable step. Yet, prevention alone does not discharge them from the obligation to provide prisoners with adequate medical assistance while in detention. Using only preventive measures is insufficient for reducing the spread of Covid-19 in prisons. States should increase the capacities of prison medical services to adequately deal with severe cases. Access to Covid-19 vaccines in prisons is also an important topic – there should be free, effective and easy access to vaccination for all prisoners and staff for whom the vaccine's use is authorised.

48. Responses to Covid-19 and the restrictions imposed necessarily need to be adapted to the conditions that are present in a given prison. For example, open prisons will require a different response to closed prisons; prisoners with single cells may have different needs to those in large dormitories; alternatives to detention may be more feasible for those detained in lower security prisons than in maximum security prisons. Measures to contain the virus within a prison will obviously be more challenging where dormitories are more common, and especially if there are inadequate facilities for separating out unwell prisoners.

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57. [PC-CP\(2020\)5](#) of 17 April 2020, Section I.

58. *Ibid*, Section II.

59. [Follow-up Covid-19 related Statement](#) by the Council for Penological Co-operation Working Group (PC-CP WG)

60. World Health Organisation, "[Preparedness, prevention and control of Covid-19 in prisons and other places of detention](#), interim guidance", February 2021.

61. UNODC, WHO, UNAID and, OHCHR joint statement entitled "[Covid-19 in prisons and other closed settings](#)". See also the IASC "[Interim Guidance on Covid-19: Focus on Persons Deprived of Their Liberty](#)".

49. As the Covid-19 pandemic is not yet over, the response to it as regards the situation in prisons requires a co-ordinated action of various State authorities, including a long-term policy concerning the elimination of prison overcrowding. The findings of the CPT show that some member States confronted with long-standing problems of prison overcrowding have seized the opportunities that the pandemic had created and have increased their use of alternatives to deprivation of liberty. This is welcome but such a practice should not only be a temporary trend and member States should reflect on how to make it permanent.<sup>62</sup>

50. Prisons should establish emergency response plans tailored to the specificities of each particular detention setting for containing risks of outbreaks, whilst ensuring that restrictions on freedoms are only imposed to the extent necessary and that adequate steps are taken to protect the well-being of both prisoners and staff. The rationale for any restrictions should be communicated to prisoners clearly, with appropriate measures taken to compensate for the impact of the measures, such as improved telecommunications for contact with family. In particular, those in quarantine must nonetheless be ensured access to outdoor exercise and to telecommunications with family, legal representatives and others.

51. The situation of prison staff during the Covid-19 pandemic must also not be neglected. Many of them have had to work under very strained conditions, sometimes having to stay at the prison for extended periods of time in substandard living and working conditions and without seeing their own families. The welfare of prison staff and the welfare of prisoners is intrinsically intertwined and the needs of both groups must be respected in order to ensure a good, constructive overall environment within a prison setting.

52. To conclude, the pandemic raised many challenges for the member States in the area of human rights. Yet, European prisoners were treated as the last persons in the long line of those in need of treatment. I would like to end with a quote: "*Voulez-vous apprécier le degré de moralité auquel un peuple est parvenu, mesurer, pour ainsi dire, sa civilisation? Voyez comment ce peuple traite ses prisonniers.*" [If you want to know the level of morality of a nation and ergo measure its civilisation, you should look at how this nation treats its prisoners]<sup>63</sup> This saying is even more topical now, while the pandemic is still underway.

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62. It is worth noting the warnings from the OHCHR that such measures should not lead to amnesties for those responsible for grave violations of human rights.

63. Maurice Barthélemy, *Histoire politique et anecdotique des prisons de la Seine: contenant des renseignements entièrement inédits sur la période révolutionnaire* (Guillaumin 1840) 2.

## Appendix

### A. Introduction

Parliaments of the following 30 Council of Europe member States have answered a questionnaire sent through the European Centre for Parliamentary Research and Documentation (ECPRD), providing details about national legal provisions and practice: Albania, Armenia, Austria, Belgium, Bulgaria, Croatia, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, the Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden, Switzerland, Türkiye and the United Kingdom.

One State, Montenegro, did not respond to the questions as the data concerning epidemiological measures is no longer available on official websites. 15 member States did not answer the questionnaire. References below to “member States” refer to those who responded to the questionnaire.

### B. Summary of replies provided in response to the questionnaire

#### 1. During the Covid-19 pandemic, what measures were taken to prevent the spread of the Covid-19 in prisons and detention centres and to protect the health of detainees and staff (such as tests, quarantine, vaccination, hygiene protocols, conditional or temporary release, etc.)?

The Coronavirus pandemic, from March 2020, presented Council of Europe member States with the difficult task of preventing outbreaks of Covid-19 in prison and detention facilities, whose populations are particularly vulnerable to outbreaks of the disease.

**In all responding countries** containment measures were put in place to prevent the spread of Covid-19 in prisons and other places of detention, in order to protect the health of prisoners, prison staff and visitors. Measures varied depending on the overall pandemic situation in each country or in its regions. Measures often varied widely between different prison facilities, largely depending on the severity of the Covid situation in the region or facility and on the resources available in each facility.

Overall, all member States introduced: (a) sanitary measures within the areas of detainment (see below); and (b) social distancing measures limiting prisoners' contacts within the facility or with the outside world (see question 5). Some member States introduced measures to reduce the number of prisoners temporarily or indefinitely in order to reduce the risk of Covid-19 spreading in crowded prisons (see question 4).

##### a) Sanitary measures

**All member States** introduced sanitary measures to protect prison inmates and staff, for example regular disinfection of surfaces, provision of protective gear, ventilation of rooms, installation of Plexiglas dividers in visiting rooms, and other basic hygiene measures to prevent contamination with the virus.

Most countries introduced medical examinations and a quarantine of usually 14 days for new prisoners (for example **Albania, Austria, Bulgaria, Estonia, Finland, France, Germany, Hungary, Ireland, Lithuania, Luxembourg, North Macedonia, Norway, Romania, Switzerland, Türkiye**), as well as isolation for prisoners with symptoms of Covid-19 or known contacts of prisoners who were Covid-19 positive.

**Most member States** indicated that they offered voluntary vaccination against the Covid-19 virus once vaccines were available.

Some countries, such as **Denmark, Estonia, Finland, France, Greece** and **Hungary** stated that awareness campaigns to fight the spread of Covid-19 were undertaken.

#### 2. Did such measures take into account the special needs of vulnerable persons, such as older detainees or persons with underlying health conditions?

In many countries measures against the Covid-19 pandemic took the special needs of vulnerable persons into account (**Albania, Austria, Croatia, Denmark, Estonia, Finland, France, Ireland, Latvia, North Macedonia, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden, Switzerland**, and the **United Kingdom**). However, most responses did not give details as to what exact measures they undertook.

In **Austria**, systematic surveys were conducted to assess prisoner's vulnerability. Vulnerable prisoners were separated from others for their protection in **Austria, Estonia, Ireland, Norway, Switzerland** and the **United Kingdom**. In **Denmark** vulnerable prisoners were encouraged to self-isolate. In **Finland, France, North Macedonia, Portugal** and **Slovenia** vulnerable prisoners could receive a suspension of their sentences (see also below 4). Often vulnerable prisoners were under special supervision by medical personnel (for example **Latvia**). In **Türkiye** vulnerable prisoners are provided with voluntary pneumococcal vaccination.

**Lithuania** reported that measures did not take special needs of prisoners into account. No information was given regarding the situation in **Armenia, Belgium, Bulgaria, Georgia, Germany, Greece, Hungary, Luxembourg** and the **Netherlands**.

### 3. What was the legal basis for such measures?

Most countries named one or more specific pieces of legislation which were the basis for measures against the spread of the Covid-19 pandemic in prisons. Some countries adopted specific laws on Covid-19, also affecting the prison population. In other countries prison laws authorised prison management to take direct measures. This also covers the response to what was question 6 concerning the legal basis for restrictions on activities and visits.

### 4. Did the prison population diminish following the imposition of those measures?

#### *b) Measures taken to reduce the number of prisoners*

The countries that actively undertook measures to reduce the number of prisoners were **Armenia, Austria, Belgium, Denmark, Finland, France, Georgia, Germany, Ireland, North Macedonia, Norway, Portugal, Slovenia, Switzerland, Türkiye** and the **United Kingdom**. In some countries, like **Romania**, no measures to reduce the prison population were undertaken.

Most of these countries used conditional or temporary or early release of prisoners as a means to reduce the number of detainees (for example **Armenia, Austria, Belgium, Denmark, France, Georgia, Germany, Ireland, North Macedonia, Norway, Portugal, Slovenia, Switzerland, Türkiye** and the **United Kingdom**). On the other hand, in some countries, such as **Estonia** or **Finland**, release was generally not used to reduce the number of prisoners. Nevertheless, in **Finland** vulnerable prisoners could receive a suspension of their sentences, which was also possible for example in **France, North Macedonia, Portugal** and **Slovenia**.

Release measures usually considered the protection of the public, with only low-risk offenders being eligible for release. The release was usually controlled, for example by electronic means (for example **Norway**).

Release often happened on humanitarian grounds. In **Armenia** for example the release of two prisoners who had contracted Covid-19 was ordered. In the **United Kingdom** temporary release on licence on compassionate grounds was made possible for mothers and children, pregnant women and medically 'extremely vulnerable' prisoners. In **Germany** some juvenile prisoners' sentences were suspended, and some juvenile prisoners were released from their sentences entirely. In **Türkiye** children under the age of six, admitted to penitentiary institutions with their mothers, could be sent to relatives upon their mother's request.

In some countries sentences could be converted into house arrest (for example **Austria, France, Georgia** or **Portugal**). In **Georgia** convicts could be released on parole and foreign prisoners had the opportunity to serve the rest of their sentences in their respective home countries. In **Türkiye** a general temporary Covid-19 leave for certain prisoner groups was introduced.

**Some member States** suspended the summoning of prisoners to serve their sentences for a certain period (for example **Austria, Denmark, Germany, Finland, Ireland, Norway, Slovenia, Switzerland**). In some countries, for example **Germany, Finland** or **Norway**, subsidiary penalties, like fines or community service, could be ordered instead of prison time.

#### *c) Effects of the measures on the numbers of prisoners*

Following the imposition of measures to reduce the numbers of prisoners, the prison population in some countries decreased in the period following March 2020.

In some countries (**Austria, Denmark, Finland, France, Ireland, North Macedonia, Norway, Portugal, Slovenia, Switzerland**) the reduction in the number of prisoners seemed to be directly related to the introduced measures. In **Lithuania** the lower number of prisoners seems to have been part of a general

downwards trend in the number of prisoners in the country. In **Poland and the United Kingdom** (numbers collected only for England and Wales) it is unclear whether the reduction in the number was linked to any specific measures taken. As the report by the **United Kingdom** (concerning England and Wales) states, it was difficult to assess the impact of reduction measures, since other factors – such as for example the changing number and nature of crimes committed during the pandemic or the speed of the criminal justice system – might hugely influence the statistics.

While in some countries, such as **Norway**, the overall number of prison population is still reduced (as of July 2022 it is about 80% of the pre-Covid number), in **France**, for example, after a temporary steep drop, the number of prisoners has now increased again and has surpassed the pre-Covid number.

In **Ireland** the number of inmates in prisons decreased, but the number of prisoners on remand and the amount of time they spent on remand increased slightly, possibly due to a backlog in the court system caused by the pandemic. No other country gave information about the number of prisoners on remand.

In some countries the overall number of prisoners did not change at all (**Croatia, Estonia, Hungary and Romania**). In **Sweden** the overall number of prison population during the pandemic even increased. To handle this situation the SPPS (Swedish Prison and Probation Service) has, amongst other measures, tried to increase the use of special preparatory release measures like stay in care (for example for treatment of substance abuse), stay in a half-way house or extended activity release. **Albania, Armenia, Belgium, Bulgaria, Georgia, Germany, Greece, Latvia, Luxembourg the Netherlands, Spain and Türkiye** did not give any information on changes in number of prisoners due to anti-Covid-19 measures

#### **5. Were there restrictions on detainees' contacts with outside world, on their contacts with their lawyers, and on their activities (such as sport or other outside activities)?**

In all responding member States, social distancing measures were conducted, which limited prisoners' contacts with the outside world, with staff and with other prisoners by limiting visits, activities and transfers. These restrictions had the capacity of severely affecting prisoners' daily life and physical and mental well-being.

##### *d) Suspension or restriction of visits*

Private visits (family, relatives, etc.) were temporarily suspended in **Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, Georgia, Germany, Ireland, North Macedonia, Romania, Sweden** and the **United Kingdom**. Often, professional visits, for example by teaching staff, psychologists or ecclesiastical staff, were suspended temporarily (for example **Hungary**).

Several States (for example **Croatia, Estonia, France, North Macedonia, Norway, Türkiye**) specifically mentioned the fact that contact with lawyers or legal counsel, as well as in some cases (for example **Austria**), other official representatives, was upheld without interruption – usually with additional protective measures such as Plexiglass or, if necessary, by means of telecommunication. Several countries responded that telecommunication was generally encouraged (for example **Denmark, Georgia, Hungary, Netherlands and Poland**). The **Netherlands** also raised privacy objections concerning telecommunication as a potential problem, especially in communications between prisoners and legal counsel. In other cases, based on the responses, it is not entirely clear whether sufficient access to legal counsel was always granted (**Greece, Hungary, Lithuania, Luxembourg, Norway, Spain, Switzerland**).

In many prisons the number of possible visits or visitors or the length of visits was limited, for example in **Albania, Armenia, Croatia, Denmark, Hungary, Luxembourg and Norway**. In **Norway**, on the other hand, prisoners also had the right to refuse visits if they had safety concerns.

Generally, prisoner's access to the outside world has been restricted in **all responding States**. The most severe restrictions were usually temporary and limited to the first phase of the Coronavirus outbreak from March 2020 to around May 2020. It is, however, not clear, to what extent current visiting rights are equivalent to the pre-Covid phase. For example, as of May 2022, visits in prisons in **Ireland** remained fortnightly instead of weekly. The number of children physically visiting adults in prison in **Ireland** also drastically fell from 11 079 children in 2020 to 2 238 children in 2021. Changes such as these might have a considerable negative impact on a prisoner's mental well-being.

#### e) Suspension or restriction of regular activities

Prisoners' contacts within the facilities were also restricted. Most countries made mention of several and sometimes all activities outside of prison cells being suspended. These suspensions included group activities (for example **Albania, Bulgaria, Estonia, Latvia and Lithuania**)

Some countries stated that activities were reconfigured to prevent close contact (for example **Romania**) or limited regarding the number of participants (for example **Finland**). Shift systems in wards (**Türkiye**) or canteens (**Finland and Portugal**) were introduced. Access to the open air was temporarily suspended in **Estonia**.

Work, training programmes, sport and educational activities were suspended or reduced in Austria, Bulgaria, Denmark, Estonia, Finland, Germany, Ireland, Latvia, Luxembourg, North Macedonia, Norway, Poland, Portugal, Romania, Spain, Türkiye and the United Kingdom.

In many States leave or temporary leave was suspended or restricted (for example, **Albania, Austria, Belgium, Bulgaria, Finland, Latvia, Lithuania, North Macedonia, Norway, Poland, Spain, Sweden, United Kingdom**, sometimes without any exception such as urgent personal matters (**Hungary and Switzerland**), which for many prisoners would have meant considerably less time for socialisation outside of the prison.

#### f) Suspension of transfers

In many responding countries transfers of prisoners within the prison or to other institutions (such as court) were suspended or restricted (for example **Estonia, Finland, Luxembourg, Poland, Portugal, Romania, Spain, United Kingdom**).

### 6. Did detainees dispose of effective remedies to contest the restrictions?

Several countries indicated that prisoners had effective remedies to contest the restrictions imposed. Usually, prisoners were able to use the existing complaints mechanisms (Ombudsman, administrative courts, prison administration etc.) to try to overturn restrictions of their rights or to gain compensation (**Austria, Croatia, Estonia, Finland, France, Hungary, Latvia, Lithuania, Norway, Poland, Romania, Slovenia, Sweden, Türkiye and the United Kingdom**).<sup>64</sup> Only **Hungary and Lithuania** provided information on the number of sustained claims (of 801 complaints received 44 were sustained in **Hungary** and of the 65 cases in **Lithuania** 53 were upheld).

In **Denmark** the Danish Parliamentary Ombudsman made an own-initiative investigation concerning the imposed restrictions. In **Estonia**, independent monitoring bodies had continuous access to all prison facilities. **Ireland** pointed out that, "...[a]ccording to the Office of the Inspector of Prisons the complaints mechanism for persons in prison is 'unfit for purpose'".<sup>65</sup> According to the Irish Penal Reform Trust, a study of over 500 people in prison in Ireland found that people in prison lack confidence in the current complaints system, with almost half of respondents (45.5%) agreeing that there would be reprisals by staff for making a complaint.<sup>66</sup>

**Albania, Armenia, Belgium, Bulgaria, Germany, Greece, Luxembourg, Portugal, Spain, Switzerland** gave no information on remedies. The **Netherlands** gave no information on remedies but responded that there have been protests in one prison against restrictions on visits.

### 7. How were they compensated for such restrictions, if need be?

Only **Lithuania** provided information on monetary compensation in courts. The number of complaints grew particularly rapidly after 16 March 2020, when quarantine was introduced in the country. In the first three weeks alone, the Supreme Administrative Court of Lithuania awarded almost 30 000 Euros to convicts for improper toilets and other conditions of detention. **France**, on the other hand stated that the conditions for compensation after a complaint are rarely ever met in practice.

64. In North Macedonia prisoners were not offered any remedies. In North Macedonia, according to national legislation all citizens, including convicted or detained persons are obliged to respect administrative decisions.

65. Office of the Inspector of Prisons "Annual Report 2020".

66. Irish Penal Reform Trust (2022), "Alternative Report to the UN Human Rights Committee on Ireland's Fifth Review under the International Covenant on Civil and Political Rights (ICCPR)", p. 8.

Most States did not offer prisoners any automatic monetary compensation for the restriction of their rights during the pandemic. Only **Austria, Germany and Finland** responded that in the event of discontinued / restricted work opportunities or other activities work salaries or allowances continued to be paid to prisoners in full or on a pro-rata basis. In **Georgia** a law from 12 April 2022 announced an amnesty on humanitarian grounds whereby eligible prisoners were released, or their sentences reduced as compensation for the restrictions during the pandemic. In most countries (for example **Denmark, Estonia, Norway, Poland, Slovenia, Sweden, Switzerland**) other measures were introduced to compensate for restrictions.

Overall, measures seem to vary depending on the local prison facilities and seem to mainly have been focused on providing more or better means of telecommunication. Several countries indicated that prisoners were given more opportunities or longer time to make telephone calls (**Croatia, Denmark, Estonia, Finland, Georgia, Germany, Norway, Poland, Romania, Slovenia, Spain, Switzerland, Türkiye, United Kingdom**), in some cases calls were provided free of charge or at a reduced cost / with financial support (**Estonia, Germany, Greece, Norway, Poland, Sweden, Switzerland, United Kingdom**) or prisoners were given better access to cell phones (**Austria, Denmark**). Additionally, video calls were provided in most countries instead of physical family visits, court hearings, legal consultations etc. (for example **Armenia, Austria, Bulgaria, Croatia, Estonia, Finland, Greece, Ireland, Luxembourg, Norway, Romania, Sweden and Switzerland**). Instant messenger services were provided in facilities in **Poland**.

In many countries facilities expanded their technological infrastructures. Technological appliances or services were purchased or expanded, such as gaming consoles (**Denmark**), television services (extra channels in **Norway**), access to radio and television (**Poland**), tablet computers for digital “visits” (**Norway**), telephone sets, setting up additional workstations, or increasing the bandwidth of the internet connection (**Poland**).

Several countries mentioned that new cultural, educational, sports or recreational activities were developed for prisoners (for example **Albania, Austria, Croatia, Denmark, Finland, Georgia, Greece, Poland**).

**Belgium, Ireland, Lithuania, the Netherlands, Portugal and Spain** provided no information on compensatory measures.