

# Reintegration of convicts Class 13

*Prisoners complaint procedure,  
Prison's supervision,  
Penitentiary judge etc.*



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**KATEDRA PRAWA KARNEGO WYKONAWCZEGO**

# *Introduction*

**The complaints system within prisons is the main way prisoners can raise and resolve treatment which they think has been unfair or against the prison rules and instructions.**

Prisoners in Poland have the right to complain, especially to human rights organizations, courts, the Ombudsman and other institutions. However, the common practice of prison authorities is to repress those prisoners that complain.

- In general prisoners have a right to an effective remedy for alleged violations of their human rights, including, in particular, the right to freedom from torture and other forms of ill-treatment, and access to effective complaints procedures which should result in prompt, serious and objective investigations of the complaints by the authorities.
- Prisons must allow to make a formal complaint in person to a member of staff
- Foreigners must be allowed to submit a complaint in own language

# *Introduction*

**The complaints system within prisons is the main way prisoners can raise and resolve treatment which they think has been unfair or against the prison rules and instructions.**

According to the art. 102. of the Executive Penal Code all prisoners shall have:

- the right to standard of living adequate for the health, well-being of themselves and their families, including food, clothing, housing and medical care and hygiene
- the right to keep in touch with their families
- the right to practice their religion of choice/ freedom of religion
- the right to employment and the fair distribution of income, including social security and disability benefits
- the right to education and self-education, including being creative, and, with the consent of the director of the penitentiary institution, the right to produce and sell their art
- the right to take part in cultural activities, education and sport activities/events, to listen radio, to watch television, to read books and the press;
- the right to communication with attorneys/ probation officers and representatives (according to the art. 42 of the Executive Penal Code)
- the right to read opinions made by prison administration as a basis for deciding in their cases
- the right to make a request or submit a complaint, without censorship to the central prison administration, the judicial authority or other proper authorities through approved channels.
- the right to communication with investigative authorities, with court and other institutions as Polish Ombudsman police establishment for children, a juvenile educational centre, a psychiatric establishment (juvenile ward) or a specialised social care home. - (these are remand centres for them)

# *Introduction*

## **According to the International Law**

- \* [Article 7 of the International Covenant on Civil and Political Rights](#) “the right to lodge complaints against maltreatment must be recognized in the domestic law”
- \* [Article 2\(3\) of the International Covenant on Civil and Political Rights](#) states that “complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective”.
- \* The Committee against Torture has emphasized the importance of introducing “an effective and reliable complaint system that will allow the victims of torture and other forms of cruel, inhuman or degrading treatment or punishment to file complaints”.
- \* [Article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) requires that: Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities.

# *Right to make complaints*

- \* The right to challenge conditions of imprisonment or treatment while in detention is also contained in the [Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment](#):
- 1. *A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.*
- 2. *In those cases where neither the detained or imprisoned person nor his counsel has the possibility to exercise his rights under paragraph 1 of the present principle, a member of the family of the detained or imprisoned person or any other person who has knowledge of the case may exercise such rights.*
- 3. *Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant.*
- 4. *Every request or complaint shall be promptly dealt with and replied to without undue delay.*

# ***Right to make complaints***

\* In addition, [rule 36 of the Standard Minimum Rules](#) provides:

1. Every prisoner shall have the opportunity each weekday of making requests or complaints to the director of the institution or the officer authorized to represent him.
2. It shall be possible to make requests or complaints to the inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present.
3. Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels.
4. Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.

# ***THE RIGHT TO SUBMIT COMPLAINTS, APPEALS, REQUESTS AND PETITIONS***

## **Polish penitentiary system**

- \* Inmates are entitled to lodge complaints. As incarcerated persons, they have the right to present accusations and grievances which, in their opinion, result from the improper conduct of government bodies, in particular the Prison Service.
- \* Complaints may be filed with prison administration (the director of the penitentiary/ detention centre, district director of the Prison Service or Director General of the Prison Service) Prison administration have essentially 14 days following the date the complaint is lodged to review it.
  - ➔ **Pursuant to the article 7 of the Executive Penal Code** a convicted person may lodge a complaint to the penitentiary court against a decision of prison administration (listed in Article 2 points 3-6 and 10) on the grounds that decision is unlawful.
  - ➔ The complaint must be lodge within 7 days from the date of announcement or delivery of the decision.
- \* If an inmate withdraws a complaint it will be reviewed anyway.
- \* Polish law provides also for the possibility to fill a complaint to the court for detention. The court examines the legitimacy, legality and correctness of detention (Article 246 of the Code of Criminal Procedure).

# *The procedure*

## ***Complaints, requests and petitions procedure***

- \* Complaints, requests and petitions related to the conditions of stay at the penal facility or a detention centre should be lodged directly with the director of the penitentiary or detention centre. The method and place of accepting written applications, complaints and requests by the administration of the penal facilities are specified by the internal rules applicable in the detention centre/penitentiary
- \* Petitions, complaints and requests are processed without undue delay, not later than within 14 days.

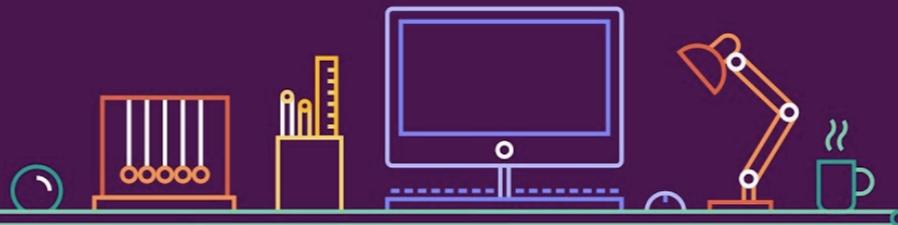
### **Complaints are processed by:**

- ➔ Director of the prison/detention centre – if the complaint is addressed to them, it concerns the behavior of an officer or an employee, it does not concern their own direct decisions.
- ➔ Regional Director of the Prison Service – if the complaint concerns the work, activities of the penal facility or detention centre supervised by them,
- ➔ General Director of the Prison Service or a person appointed by them, if the complaint concerns the activity of a regional division of the Prison Service
- ➔ Minister of Justice or a person appointed by them, if the complaint concerns the activity of the Central Board of the Prison Service.

# *Complaints to the Ombudsman*

- \* Inmates may also lodge complaints and appeals with institutions outside the prison system which protect human rights, such as the Ombudsman (Polish initials: RPO).
- \* Like any other complaint, complaints filed with the Ombudsman do not require any particular form – they only have to include: the inmate's personal data and the address to which correspondence is to be sent, what the complaint is about and the facts indicating violation of rights or freedoms.
- \* Every letter should be accompanied by the necessary documents relating to the matter (copies or transcripts) that the inmate has.

**When can I complain to Ombudsman Services?**



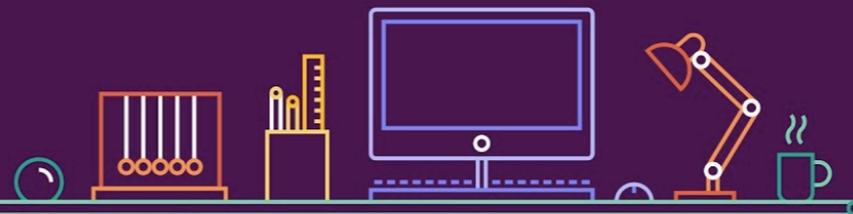
# *Complaints to the Ombudsman*

- \* The main task of the Ombudsman is to investigate whether the rights and freedoms, as well as the principles of social intercourse and social justice, have been violated as the result of actions or negligence of government bodies, officials or institutions.
- \* Ombudsman employees primarily check whether the rights and freedoms of inmates in penitentiaries and detention centres are being respected, making period visits to penal facilities during which they hold individual conversations with inmates.

**Requests and petitions may be lodged by inmates with the director of the penitentiary /detention centre, district director of the Prison Service or director general of the Prison Service.**

- \* Inmates may ask that a specific request be fulfilled in them. If an inmate withdraws a request it will not be reviewed – in contrast to a complaint.

**When can I complain to  
Ombudsman Services?**



# ***National Preventive Mechanism (NPM) (Krajowy Mechanizm Prewencji)***

**Optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) is:**

- signed: 1986
- ratify: 2005

- \* The national prevention mechanism (NPM) has been established in 2008.
- \* The NPM is composed by an individual body.
- \* The NPM can make unannounced visits.
- \* Confidentiality in communication between inmates and the NPM is guaranteed
- \* There are not some facilities or blocks that cannot be monitored by the NPM.
- \* The NMP reports are published.

# *Supreme Audit Office* *(NIK)*

## **The Supreme Audit Office**

- \* The ultimate supervisory authority is the Supreme Audit Office.
- \* It is an independent entity controlling public expenditure.
- \* This institution has the ability to visit prisons and conduct Audits.
- \* In 2011, Supreme Court conducted an investigation on the medical services provided by prison. And in 2013 the Supreme Audit Office published a report on prison healthcare. According to its conclusions, the healthcare provided to persons who are deprived of liberty is not fully consistent with the provisions of both national and EU law. In addition, the audit found that prisoners' preliminary and periodic examinations were conducted in violation of the time limits established by law.



# *Penitentiary Judge* *(sędzia penitencjarny)*

*Minister of Justice regulation on the manner, scope and mode of penitentiary judges' supervision*  
*(Rozporządzenie w sprawie sposobu, zakresu i trybu sprawowania nadzoru penitencjarnego),*

Prisons are mainly monitored by the representatives of the National Preventive Mechanism and by penitentiary judges.

## **Penitentiary judge**

- \* According to article 32-36 of the Executive Penal Code Penitentiary judges are responsible for supervision over the legality and correctness of imprisonment and other means of deprivation of liberty (pre-trial detention, arrest, etc.)
- \* Penitentiary judges are responsible for supervising safety conditions and controlling prison service's actions, including any reactions to rebellions, self-harm and deaths

Penitentiary judges are empowered to visit penitentiary units. They have a right to enter places of detention at any time without any restrictions, move around them, review documents and demand explanations from the relevant authorities. They can also conduct, without the presence of 3rd persons, interviews with persons deprived of liberty and examine their motions, complaints and requests

- \* Whenever solitary confinement has been ordered for more than 14 days, a penitentiary judge must agree to it.
- \* Penitentiary judges may suspend the execution of solitary confinement for the time needed to explain the circumstances of the case. They may also revoke this disciplinary measure (if it is unlawful) or refer it to the prison director for re-examination.

# *Penitentiary Judge*

*Minister of Justice regulation on the manner, scope and mode of penitentiary judges' supervision (Rozporządzenie w sprawie sposobu, zakresu i trybu sprawowania nadzoru penitencjarnego),*

## **Penitentiary judge**

- \* Moreover, they can overrule any unlawful decision of prison authorities concerning persons deprived of liberty. The prisoner has a right to challenge the decision of a penitentiary judge and refer the case to the penitentiary court.
- \* Whenever the penitentiary judge comes across an unlawful deprivation of liberty, it may release the person who was unlawfully deprived of liberty and immediately notify the relevant authorities
- \* The penitentiary judge may forward its observations with appropriate motions to relevant authorities and ask them for a response. If they consider the response unsatisfactory, they may refer the case to a superior prison authority.
- \* Furthermore, whenever the penitentiary judge comes across repetitive failures in the functioning of the detention facility or whenever detention conditions do not fulfil the requirement to respect human rights, the penitentiary judge may ask the superior authority to correct the failures.
- \* If the superior authority does not fulfil its obligation, the penitentiary judge may ask the relevant minister to close the detention facility

# ***INTERNATIONAL LEGAL MEANS OF PROTECTING THE RIGHTS OF INCARCERATED PERSONS***

- \* The European Court of Human Rights in Strasbourg covers every country that is a party to the Convention for the Protection of Human Rights and Fundamental Freedoms.
- \* Poland is a signatory to the Convention, which in practice means that persons incarcerated in Poland may lodge appeals with this Court.



# *Complaints to the European Court of Human Rights in Strasbourg*

The European Court of Human Rights in Strasbourg covers every country that is a party to the Convention for the Protection of Human Rights and Fundamental Freedoms.

Poland is a signatory to the Convention, which in practice means that persons incarcerated in Poland may lodge complaints/ appeals with this Court.

- \* The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) **introduces two types of complaints:**
  - an interstate complaint under Article 33 ECHR and
  - an individual complaint under Art. 34 ECHR
- \* When prisoner submits an appeal to this Court must follow the procedures for doing so, remembering in particular that:
  - the inmate must submit the complaint/ appeal as the aggrieved party (a complaint/ appeal cannot be submitted on behalf of other persons, nor can it be anonymous),
  - all possibilities for appeal within the court system of the given country must be exhausted first,
  - **the appeal must be submitted within 6 months following the date the decision against the inmate became legally binding.** The appeal must also present a brief description of the case, indicate the right that has been violated, inform that all possibilities for appeal have been exhausted and present the decisions issued in the case together with brief information about them.

# ***The Human Rights Committee***

**The Human Rights Committee is the body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights by its States parties.**

- \* Inmates may also exercise the right to submit complaints to the Human Rights Committee in Geneva (HRC).
- \* Anyone within the jurisdiction of states that are parties to the International Covenant on Civil and Political Rights of 16 Dec. 1966 and who claims to have had one or several of their rights recognized under the Covenant violated by the state may submit an appeal to the HRC in Geneva.

**Poland is a signatory to this Covenant.**

- \* When prisoner submits an appeal to the HRC must follow the procedures for doing so.
  - ▶ In particular they must include personal data (the HRC in Geneva does not review anonymous appeals) and must have exhausted all possibilities for appeal in Poland.

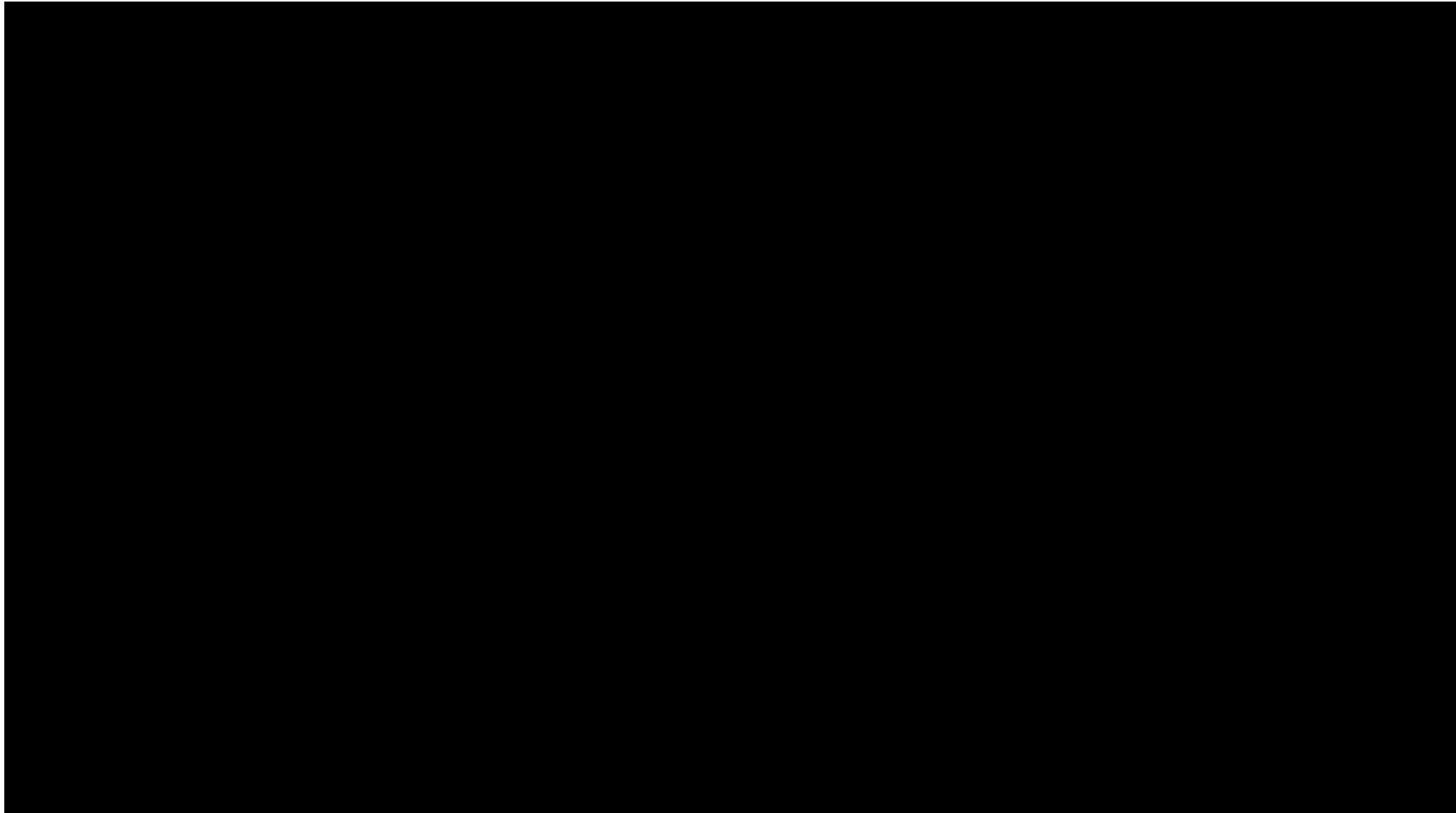
# *Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)*

- \* The CPT makes its recommendations based on its findings during visits to penitentiary units in various member states of the Council of Europe.
- \* Its comments and recommendations relate to the observed solutions in enforcement of deprivation of liberty and how prison staff work with prisoners, and therefore have practical meaning.
- \* Moreover, those recommendations are formulated by experts of various fields, and give a broad view of the reality of visited and controlled prisons.
- \* **The main objective of these visits was to examine the treatment of prisoners and conditions of imprisonment.**
- \* After each visit, the CPT draws up a report which sets out its findings and includes, if necessary, recommendations and other advice

**In the CPT's view, complaints mechanisms constitute a fundamental safeguard against torture and inhuman or degrading treatment of persons deprived of their liberty by a public authority, regardless of the place or situation concerned (police stations, prisons, penal institutions for juveniles, immigration detention centres, psychiatric hospitals, social care homes, military detention facilities, forced return flights, etc.).**

The CPT noted, following a visit in 2017, the absence of allegation of physical ill-treatment by staff and just a few complaints about verbal abuse

*CPT -  
Preventing torture in Europe*



# *Treatment and violence*

- \* The Constitution or the legislation mentions the prohibition of torture.
- \* Torture and other ill-treatment are not explicitly defined in legislation, in particular, in the Executive Penal Code.
- ➔ The right to be free from torture and other ill-treatment is guaranteed by **Article 40 of the 1997 Constitution of the Republic of Poland**, which provides that “no one may be subjected to torture or cruel, inhuman, or degrading treatment or punishment.”
- ➔ The prohibition of torture is further mentioned **in the Polish Criminal Code** under the “offences against peace, humanity and war crimes” (Articles 118a and 123) as well as “offences against the administration of justice” (Articles 246 and 247).
- ➔ Poland ratifies the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) on July 26, 1989.

## **According to the Prison Service's statistics in 2019:**

- ▶ 11 officers receive disciplinary measures because they allowed extraordinary incidents such as self-mutilation, death of a prisoner, brawl and violence between prisoners
- ▶ 5 officer were found guilty of inhumane treatment of prisoners

# *Treatment and violence*

- \* Inmates may also sign up to speak with the director of the penitentiary/ detention centre and supervisors of particular departments – e.g.:
  - ▶ the records department – in matters concerning the legal grounds for incarceration, the length of the sentence etc.,
  - ▶ the penitentiary department – in matters concerning the evaluation of behaviour, free time, post-release assistance etc.,
  - ▶ the logistics department – in matters concerning the furnishing of cells and other matters relating to living conditions.
- \* Each establishment keeps an updated record of the aggressions committed by members of the prison staff. — Each establishment also keeps an updated record of the aggression cases against the prison staff.
- \* If a case of violence is denounced, the director of the unit is obliged to inform his superior and the police / prosecution. Such events are recorded in the prison service system.

# *Violence between inmates*

- \* The CPT considered the number of inter-prisoner violence cases to be relatively low.
- \* The staff is trained to prevent it and to well-react in case of violence between inmates.

## ▶ The violence between inmates is related to:

- a system of delegated governance
- lack of staff (According to the Prison Service's internal regulation, there are 60 prisoners or 40 arrested persons per one tutor and 200 prisoners per one prison psychologist)
- overpopulation
- presence of gangs in establishments
- ▶ Cases of violence between inmates can be exacerbated by prison overcrowding and lack of staff.

- \* The most common forms of violence between prisoners are fights and beatings.
- \* Most cases of violence take place inside the cells.
- \* This is due to the fact that gang members may share their cells with inmates from a rival gang or with those who are not a part of the prison subculture.

# *Violence between inmates*

- \* A lot of fights also take place in walking squares, although not all of them are registered.
- \* The number of cases of violence in baths decreased in recent years because, in many units, the common baths were closed down.
- \* In 2017, in a penitentiary unit in Wrocław, a collective fight took place in the waiting room of the canteen, in which 50 men took part.
- \* An inmate from Czarne prison (northern Poland) died, in April 2016, following a violent dispute with fellow inmates.
- \* In the cases of violence between prisoners, explanatory proceedings are conducted to determine the circumstances of the event and identify the responsible persons. The Prison Service office does not release any public data in this regard.



# *Craziest Cases Of Wrongful Imprisonment*

**Why it is so important to provide prisoners with all those above mentioned instruments?**

- \* Because sometimes their rights are violated or not fully respected
- \* Sometimes the imprisonment itself might be wrongful- that is why so many bodies supervises penalty of deprivation of liberty



# *Council of Europe's Committee for the prevention of torture : 30th General Report 2020*

**The 30th general report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).**

- \* In its annual report for 2020, the CPT recalls that in many of its visits over the years it has found a failure to meet the basic needs of prisoners in certain establishments, which could lead to situations in which prisoners are exposed to inhuman and degrading treatment.
- \* The CPT issued also a set of minimum requirements for conditions of detention in European prisons, concerned by the negative effects of pre-existing austerity measures in certain states, which could be exacerbated by possible deeper budgetary restrictions due to the long-term impact of the COVID-19 pandemic.

