

**VULNERABLE GROUPS
OF PRISONERS
A HANDBOOK**

The compilation of this Handbook was coordinated by the research team of the Observatory on the Penal System and Human Rights of the University of Barcelona (Spain) and the Center for the Study of Democracy (Bulgaria) based on national reports elaborated by each country team.

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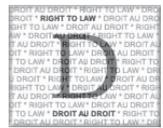
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INTRODUCTION

This handbook is part of the *“Re-socialisation of offenders in the European Union: enhancing the role of the civil society” (RE-SOC)* initiative.¹ Its main objective is to examine the situation of vulnerable groups of prisoners within the prison systems of Belgium, Bulgaria, Germany, Lithuania and Spain, as well as to identify practices in need of improvement.

In line with the concept that there are groups in need of special treatment and which are often subject to rights’ violations due to their vulnerabilities, the Handbook encompasses a review of the legal provisions, measures and promising practices considered to be shared in each country.

This publication examines the factors or situations that lead to vulnerability in a penitentiary environment. The methodology for collecting information on each country was based on the following components:

- the context – why this group is vulnerable;
- availability of (official or unofficial) statistical information on the population of each group;
- national legal framework – whether there are groups recognised and treated differently by the administration; and
- specific rules, measures and practices, if existing.

Measures and practices are taken into account in the national contexts, understanding their effect on the situation, and, where possible, explaining them for others having in mind that every country and penitentiary system has its own reality, problems and ways of tackling them.

The Handbook is also considering the special needs that these groups of people might have outside prison. Such needs could explain why in some cases there is no legal protection or even practices. In any case, prison as such and its internal procedures increase the negative effects over them. Whether by abusive treatment or insecure environment, or by the difficulties (or impediments) to achieve the so-called re-socialisation of offenders, the existence of such groups really exacerbates

¹ The initiative is being implemented with the support of the European Commission, Directorate-General Justice.

their situation giving fewer resources to exercise their fundamental rights and to live with fewer added suffering. As just to clarify some of them, the various difficulties they face are the fragility or absence of social links (either inside or outside prison), the several and persistent violent acts they suffered (and its impunity) and the total dependence on the penitentiary administration. In that respect, a serious problem in prisons is self-harm. It's occurrence is disproportionately high than in the outside but at the same time the sharp increase of such cases can also indicate a series of other problems, such as overcrowding, inadequate psychological aid, substance abuse, etc. This phenomenon is obviously directly connected to vulnerability and it can be explained by looking at the living conditions in prisons (not only regarding material tasks).

The Handbook follows the classification of vulnerable groups by the UN Handbook on Prisoners with Special Needs (HPSN)² and the country reports prepared by each partner. Each country report and a specific workshop carried out for their discussion, highlighted several points: the disparity of contexts and different perception or treatment of each group. For some national contexts, certain groups appear to be totally ignored by administrations, others take action on them on an irregular basis. Therefore, it was a challenge to extend the groups beyond those in HPSN. Thus, the groups "Prisoners with drug use/abuse problems", "Women", "Prisoners with self-harm and suicide risk" and "Juveniles" were formulated. Having in mind the context of the 5 countries under study, the category "Prisoners under life sentence" is used instead of "Prisoners under sentence of death".

Each chapter covers the national legal framework – the special provisions targeting vulnerable groups either concerning special treatment within prison, or thinking on possibilities to impose penal alternative measures; statistical data and measures running.

The Handbook is therefore general. It will be translated and adapted to the specific context of each of the 5 countries to maximize the research carried out so that the manual can be helpful in most practical way for local operators.

Without any doubt, imprisonment has a detrimental effect on every person that goes into it, regarding personal, physic, mental, social and economic matters and the intervention must also cover imprisonment, as well as thinking in further instances. As the UN Handbook for Prisoners with Special Needs remarks "All prisoners are vulnerable to a certain degree."³

² It was also taken into account as important background on this topic, the NU Handbook for Prison managers and policymakers on Woman and Imprisonment (2008) and Human Rights and Vulnerable Prisoners – Training Manual. There should be also mentioned other important initiatives on this matter as the Training Manual on Human Rights and Vulnerable Prisoners written by the Penal Reform International in 2003.

³ Handbook on Prisoners with special needs: Criminal justice handbook series. Vienna: UNODC. p. 4.

Vulnerability should be understood as a complex matter and “groups” should not be considered in a narrow way. Some people are in situations of vulnerability due to their belonging to more than one group (i.e. LGBT and foreign national prisoners). In this same way, gender perspective should be understood as a transversal element which exacerbates their situations of vulnerability when belonging to any of the other groups.

Initial research showed that violations of rights are attributed partly to the prison systems’ lack of funding and partly to the poor relationship with civil society. In any case it should be clear that neither the austerity policies, nor the fact that NGOs can be an alternative service provider, should serve as a justification for failing to respect fundamental rights of prisoners in accordance with the obligations acquired by domestic law and international treaties. In that sense, this publication also tries to put forward the cases in which civil society takes part in this process and assumes diverse responsibilities. Due to the particularly negative effect of imprisonment over some vulnerable groups, promising practices realised in communities can be taken into account. Therefore, many of the proposals to improve the conditions of these groups rest with regulatory reform to reduce their presence in prison.

However, as demonstrated in the national reports, all guidance or recommendation of promising practices can only be taken in their broad sense since every country or region should take into account its own legal, social and cultural environment.

One of the most serious concerns which raised during the preparation of the Handbook was the strong lack of official data about the majority of the groups and their representation over the total prison population, which is the first obstacle for further research and measure recommendation. In Belgium and Germany, for example, this concern is clearly addressed with regards to the prisoners with terminal illness (in the latter there is no information on the death outcomes of such cases). At the same time, some of the studied groups, like LGBT and ethnic minorities, are completely invisible to the statistics.

In any case, the high percentage of people under some category of vulnerability in prison “means that their special needs cannot be considered as a marginalized component of prison management policies”.⁴

⁴ Handbook on Prisoners with special needs: Criminal justice handbook series. Vienna: UNODC. p. 5.

1. FOREIGN NATIONAL PRISONERS

1.1. Introduction. Special needs & situations of vulnerability

This study is intended to contribute to the analysis of the European policy on immigration that falls within the penal sphere. Under the category of “foreign national prisoners” we will consider those who do not have the nationality of the country where they are imprisoned.

In general terms, except from Lithuania⁵ and Bulgaria,⁶ the countries under study have faced an increase of foreigners among their prison population.

In this chapter, the focus will be mainly on people hosted in penitentiary centres, whereas the situation in the so-called Detention Centres for Migrants where those who are waiting for expulsion are accommodated will not be discussed. This decision stems from the fact that, in spite of the number of allegations against them, they are not legally conceived as penal institutions.

The following statistics should be taken into account as a reference to the increased number of non-nationals in the prisons of each country:

In **Belgium**, the number of non-national detainees quadrupled in the period 1980–2010, going up from 1,212 to 4,494 persons⁷ and reaching around 42 % of the total prison population in 2012. Among them, the most represented nationalities were: Moroccan (10.5 %), Algerian (6.7 %), Romanian (2.9 %), Dutch (2.4 %), French (2.0 %), Italian (1.6 %), Turkish (1.5 %), Tunisian (1.1 %), and Albanian (1.0 %). It should also be noted that the majority of them were pre-trial detainees.

In **Germany**, according to the Annual Publication of the Federal Statistical Office, there were 13,216 adult and adolescent foreign nationals in German prisons as of 31 March 2013. Thus, they account for 23.7 % of the general adult prison population

⁵ By 2012 the estimated share of foreigners was slightly over 1 %.

⁶ In Bulgaria, data as of 1 September 2013 shows that the number of foreign inmates reached 252. Their number varied during a period of ten years (2003–2013) ranging between 165 and 262 persons.

⁷ Directorate-General of Penitentiary Institutions, 2012 Annual Report, p. 105.

which makes them a highly overrepresented group in German penitentiaries.⁸ Diverse studies have shown that this number does not correlate with an increased criminality among foreign nationals (e.g. Walter 2010), but is rather due to factors such as the general disposition to report more often foreign, rather than German offenders, a varying quality of criminal prosecution and a stricter sentencing policy (Feest & Graebisch 2012).

In **Spain**, the presence of imprisoned foreigners is one of the most important phenomena of the last decades. The steady increase in the percentage of non-national prisoners has been one of the greatest challenges faced by the prison administration. Although the foreign population was mildly reduced between 2009 and 2012 reaching 33 %, in Catalonia it has continued to increase to over 45 % (for the General Secretariat of Penitentiary Institutions (GSPI), there has been a reduction reaching 29 % in November 2014). In the same way, foreigners tend to be overrepresented in pre-trial detention and underrepresented in parole.

The reference to foreign nationals as a vulnerable group is the result of several factors identified on the basis of all the systematized information gathered in the countries under study. Although the aim of this report is to monitor what happens inside prisons, it should be clarified that these situations exceed the narrow scope of the institutions themselves, as throughout the research a differential treatment of non-nationals throughout the detention and sentencing stages has been observed.

Thus, while examining the reasons of vulnerability, some shared issues were identified that can be classified according to: 1) life in prison, and 2) impact on the length and kind of sentence imposed.

1) Life in prison:

- The language barrier. It affects the understanding and communication with other prisoners, prison staff and external services. It also has an impact upon the interpretation of prison rules, which entails an important amount of defencelessness, discrimination and opportunities for the abuse of force through discretionary sanctions. This was noted for instance in 2013 by the National Preventive Mechanism of **Bulgaria** operated by the Ombudsman, which reports excessive use of force against foreign inmates.⁹
- Difficulties in the involvement in educational and training activities, as well as in the available work.
- Cross-cultural difficulties and social isolation as part of the separation from foreign prisoners' families and the few social contacts they have the chance

⁸ Overrepresentation in the criminal justice system refers to a situation where the proportion of a certain group of people within the control of the criminal justice system is greater than the proportion of that group within the general population (UNODC 2009:57).

⁹ Annual Report of the Ombudsman of the Republic of Bulgaria as a National Preventive Mechanism. Sofia, 2013, available in Bulgarian at: <http://www.ombudsman.bg/documents/prevativnen%20mehanizam%202014.pdf>

to make. Isolation has a harmful effect on the mental condition of foreign inmates.

- Differences in terms of culture and religion. Foreign inmates are usually particularly vulnerable to physical and verbal abuse by prison staff and by other inmates, to discriminative search and accommodation, and to disciplinary sanctions not taking into account their culture and religion.

2) Impact on the length and kind of sentence imposed:

- Disadvantages and inequalities embedded in prison regulations. In **Spain**, foreigners are awarded fewer exit permissions (so they spend more time in prison than nationals); they have less possibilities to be placed under alternative penal measures (except from expulsion) or under an open regime. In addition, in cases where the last part of the imprisonment period can be replaced by a proposed expulsion, discriminatory treatment of foreign nationals is observed, namely on the fulfilment of the requirements to gain the interruption of sentence for foreign inmates is applied instead of the requirement to obtain the conditional release, which is applied for country nationals. So, while it is shown as a substitution, it actually amounts to a restriction of the rights of a certain group (Monclús, 2001) in the form of accumulation of measures (García, Aller. 2013).

In **Germany**, discrimination against foreign prisoners takes place, amongst others, with respect to the applicable prison regime. Although the *Federal Prison Act* is applicable to all prisoners, regardless of their nationality, e. g. *Administrative Regulations Nos. 1 and 2* on Section 10 of the *Federal Prison Act* generally exclude the placement in open institutions of those offenders who are subject to an extradition or expulsion procedure or an immigration detention order. According to several German court rulings, the transfer to an open prison may, however, not solely be denied on the basis of these regulations since they do not represent legally binding rules and applications for such a transfer have to be examined in view of the concrete circumstances of the individual case.

- Residence status of the prisoner. It has an impact with regard to the implementation of the sentence during detention, as well as to decision-making on early release.¹⁰ In **Germany**, especially those foreigners without a regular residence permit whose removal has been merely suspended temporarily ("Duldung") but who are still not allowed to stay in Germany (thus only "tolerated") face enormous problems and discrimination with

¹⁰ This aspect is particularly relevant in Belgium, considering that the percentage of foreign prisoners without a legal residence permit within the total number of foreign prisoners in Belgian prisons is around 25-30 %. This data, however, underestimates the proportion of foreign prisoners without a regular status in Belgian prisons because it does not include the group of foreign prisoners who are temporarily granted a residence permit by the Office of Foreigners' Affairs and who thus potentially can become irregular migrants over time.

respect to e.g. housing, social welfare, drug treatment after release. With such a restricted prospect of reintegrative measures, their chances to be released early are heavily reduced as well (Graebisch, 2012). The percentage of prisoners who are only tolerated increases when comparing the numbers of foreign offenders entering prison to those being released from prison due to expulsion orders during imprisonment. Many of them stay in Germany without a regular residence permit, whereas only around 10 % of foreigners who receive an expulsion order are actually deported. Deportation is suspended due to factual impossibility or reasons of law, especially human rights. If this does not lead to a residence status, this comes close to a additional punishment of denying access.

- In **Germany**, foreign nationals are likely to get longer prison sentences and an expulsion order after release from prison (Feest & Graebisch).

1.2. Legal Provisions

Apart from adopting the theoretical principle of equal treatment for all prisoners, it should be highlighted that there is no legal regulation in Belgium, Lithuania, and Germany that defines foreign inmates as a vulnerable group of prisoners.

However, there are some provisions and prison regulations in all of the countries under study that address their situation and oblige authorities to provide information and explanations of the penal proceeding in understandable language.

In **Belgium**, Article 19, Paragraph 1 of the *Dupont Act*¹¹ establishes that upon their arrival in prison, inmates have the right to be informed about their legal rights and duties, the procedure, rules and conditions of the punishment execution, as well as about existing or accessible opportunities for legal, social, medical and psychosocial assistance, and moral, philosophical or religious support. In its Paragraph 2, the same article stipulates that information should be provided, to the extent possible, in a language that they understand.

The *Dupont Act* (Art. 69 Para. 1) also establishes that imprisoned foreigners have the right to maintain relations with the consular officials and diplomats of their country, where applicable, in accordance with regulations prescribed by international agreements and without prejudice to legal prohibition of communication referred to in Article 20 of the *Law of 20 July 1990* on preventive custody and other exceptions as provided by international treaties. In its Articles 71–74, the same Act also provides for the right of prisoners to confess and practice their own religion or philosophy, individually or in community with others.

¹¹ This law is considered a “milestone” in the way sentences are executed in Belgian prisons. Until the adoption of this law, most aspects of life in detention, including prisons, were left to the discretion of the prison authorities. This law endorses the principle of the normalisation of prison life. In other words, life inside prison should resemble as closely as possible life outside prison, limiting the harmful effects.

In **Lithuania**, Article 70, Paragraph 3 of the *Code of Execution of Penalties* establishes that, if possible, convicted foreigners shall be isolated from other prisoners in the same correctional institution or placed in separate institutions. Nevertheless, the isolation of foreigners is often complicated due to prison overcrowding. The issue is often solved by putting prisoners from the same or similar countries in one cell.

In this context, it should be noted that convicted foreign nationals maintain relatively close ties with their embassies, which also help them in being in touch with their relatives.

In the case of **Germany**, there are various administrative provisions that disadvantage foreign prisoners in an extensive manner. As it comes to the right to have visitors, which is included in both the *Federal Prison Act* and all existing *State Prison Acts*, the prison administration is meant to assist the foreign prisoner to find contact persons and to enable him/her to get in touch; optical and acoustical supervision of visits, however, is also allowed. As far as written correspondence is concerned, the *Federal Prison Act* provides for an interception of letters in case they are written in a foreign language, without any compelling reason.

Apart from these, there is one central regulation that clearly distinguishes foreign prisoners from the German prison population: Section 456a of the *Code of Criminal Procedure*, which allows that the responsible prosecution service may decide to enable the removal of a foreign inmate from the prison before the termination of the prison sentence. Primarily designed to financially and organisationally relieve the German penitentiary system, the norm is also meant to protect the personal interests of the convicted foreigners (Schmidt 2012, p. 209). In its decision on re-socialisation of foreign national prisoners in **Germany**, the European Court of Human Rights established that it is forbidden to discriminate because of nationality when it comes to measures of rehabilitation in prison (ECtHR, R. v. Germany, no. 5123/07, 22 March 2012). Unfortunately, the court counteracts this important statement when suggesting in the end of the decision that such a discrimination may be compensated by a measure according to Section 456a of the *Code of Criminal Procedure*. In this respect, the court completely neglects the fact that this kind of measure may be in favour of the prisoner in some cases but results in further punishment in others, especially when the prisoner prefers to stay in Germany in spite of a possibly long-lasting rest of the prison term.

In **Spain**, while there is not a clear recognition in the vulnerability of foreigners, Article 118.2 of the *Penitentiary Rules* (1996) provides for equal access to education and information of foreigners and nationals; it also requires the Penitentiary Administration to secure adequate facilities to reach this goal. In addition, the General Secretariat of Penitentiary Institutions (GSPI) assumed in 2013 that “with the rapid increase of population of foreign inmates in our prisons, it has become necessary to develop a specific intervention to facilitate their integration ...”¹²

¹² <http://www.institucionpenitenciaria.es/web/portal/Reeducacion/ProgramasEspecificos/extranjeros.html>

In **Bulgaria**, the legislation provides for certain rules aimed to neutralise the disadvantages of foreign nationals. Some of them are:

- The Minister of Justice specifies the prison in which foreign nationals are placed. As the principle of allocation to the closest prison facility to the inmates' permanent address often cannot be applied, this provision is designed to avoid discriminatory practices.
- As to the language barrier, upon admission to prison, foreign nationals must be informed in a language they understand about certain rights:
 - ♦ The right to meet a representative of their country's diplomatic mission or consular;
 - ♦ The right to use legal aid and protection from their country's diplomatic mission or consular;
 - ♦ The conditions, under which they can be transferred to their home country, and the competent organs.
 - ♦ The prison administration should inform the Ministry of Foreign Affairs upon the reception in prison of foreign citizens.

The Bulgarian Helsinki Committee, however, reports numerous complaints by foreign nationals about the lack of equal treatment in the conditions of parole, as well as discriminatory disciplinary sanctions imposed on them due to poor knowledge of Bulgarian.¹³

1.3. Measures & Practices

Some practices, mostly regarding language acquisition, could be taken from the national reports. For instance, in most **Belgian** prisons it is possible to take language courses and sometimes also literacy programmes. However, both types of courses are delivered by a small number of people and can therefore only be offered to a very small share of prisoners.

As it was mentioned above, the **Spanish Penitentiary Rules** establish some specific guidelines for migrants in prison, such as providing information about rights and obligations in their own language, delivering Spanish language courses, facilitating their contacts with their country's diplomatic representatives, etc. However, such measures are not fully applied in the Spanish context.

As the GSPI says in its web page,¹⁴ the elaboration of the Framework Programme for Intervention with Foreign Inmates in which various recommendations of the Council of Europe have been incorporated to serve as a comprehensive approach deserves a special mention. The principles underlying the intervention should be:

¹³ Bulgarian Helsinki Committee, Human Rights 2012: Annual Report, Sofia, 2013. Available at: <http://humanrightsbulgaria.wordpress.com/%D0%B7%D0%B0%D1%82%D0%B2%D0%BE%D1%80%D0%B8-%D0%B8-%D0%B0%D1%80%D0%B5%D1%81%D1%82%D0%B8/>

¹⁴ <http://www.institucionpenitenciaria.es/web/portal/Reeducacion/ProgramasEspecificos/extranjeros.html>

reducing isolation, overcoming language barriers, comprehensive education, legal information, democratic values, and open intercultural activities.

As to who can carry out such actions, Article 62.4 PR states: “[t]he Penitentiary Administration will encourage especially the participation of institutions and associations dedicated to the re-socialization and support of foreign prisoners, facilitating the cooperation of social institutions of the prisoner’s home country through the relevant consular authorities“. Since this mandate was declared, several educational activities have been developed, such as the Framework Programme of Education for Coexistence in Diversity, the Intercultural Mediation Programme, the Instruction for Religious Assistance, the Legal Advisory Services, the Pilot Microenterprise Partnership Programme, the Programme for Young Companion, the Immigration Subcommittee of the Interagency Commission for Social Reinsertion (CIRSO), programmes aimed to help inmates and their families, as well as subsidized resources by the General Directorate of Penitentiary Services of Catalonia (GDPS) to be offered to foreigners in relation exit permits, parole or final freedom in cases of lack of family or relational network (2011:118).

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2. ETHNIC MINORITIES

2.1. Introduction. Special needs & situations of vulnerability

Ethnic and racial minorities under imprisonment are definitely not a group that receives considerable (official) attention in any of the countries under study. This gap has been reported both by the prison administrations and by academic researchers.

In spite of this, the research team has decided to include this group as a vulnerable one in order to highlight the need of scrutinizing their situation within penitentiary centres and throughout the course of penal proceedings. Due to the history behind the presence of ethnic minorities, especially the Roma, in Western Europe, it also demanded consideration in this study. Ethnic minorities are included as vulnerable groups in certain national contexts (e.g. the USA, Australia and Canada) in the *UN Handbook on Prisoners with Special Needs*.

Thus, the aim of this chapter is to reflect on the necessity to measure – in quantitative and qualitative terms – this category. Of course, as a starting point it is clearly necessary to know the number of prisoners of different ethnic and cultural backgrounds, but such data is actually not available in official sources. No information is provided by the prison department of either Lithuania, or Bulgaria. In the latter country, the only available data comes from a study conducted by the Centre for the Study of Democracy in 2005 with a special focus on Roma crime rate. In the same way, the information currently available in Spain is just the one collected by the *Barañi Report (2000)*, according to which the Roma community appear to be an over-represented group.¹⁵

The main ethnic minorities that prevail in some of the countries involved in this project are: the Roma in Spain, Turks and Roma in Bulgaria, and various ethnicities in German prisons – particularly black people, Sinti and Roma, as well as the

¹⁵ In this case, 25 % of Spanish women prisoners were Roma, a number supposedly 20 times as high as that of the Roma women at liberty.

so-called group of “(late) repatriates”¹⁶ and their descendants. The latter are the only group which became subject to a controversial criminological debate when imprisonment rates within the group rapidly grew (Feest & Graebisch 2012, Anh § 175, marg. no. 13). Young dependents of (late) repatriates in particular were regarded as increasingly criminal by several authors, as well as in the public debate (Kawamura-Reindl 2002, pp. 47 et seq.). The assumption that (late) repatriates became a particularly significant and overrepresented group of inmates could, however, never be verified since repatriates are not covered by the statistical offices and the figures from explorative studies have varied considerably (Zdun, 2007).

In view of the foregoing, this chapter raises concerns about this gap, taking into account that the impossibility to gauge the phenomenon limits the possibilities of running specific programmes and interventions.

We cannot put aside the facts that could denote a real situation of vulnerability (and perhaps of cross-vulnerability) – from the discrimination ethnic minorities suffer outside prison, through the absence of appropriate knowledge of their rights coming mostly from the language barrier, to the lack of understanding of their sentences.

This topic is highlighted in the **Spanish Barañi Report**, which studies the group of Roma women prisoners triply criminalized by poverty, ethnicity and gender. Thus, their adaptation to the prison environment may be more difficult because of the stigma on the Roma minority, leading to more pronounced social and labour exclusion in general. Furthermore, Roma serve rather long sentences due to the fact that a high number of Roma prisoners are sentenced for crimes related to drug trafficking.

In **Bulgaria**, the main problems faced by ethnic minorities are in the fields of:

- Access to justice, due to misunderstanding – or inadequate interpretation – of the Bulgarian legal system and the prison rules. It could also be assumed that disciplinary violations committed by members of minority groups sometimes result from this gap.
- Discrimination, the most visible manifestation of which is the segregation in accommodation. For instance, Roma inmates are often placed in more crowded cells with poorer living conditions. Also, discrimination might be the reason for the imposition of more severe disciplinary punishments on members of minority groups.

¹⁶ Since 1988, about three million (late) repatriates have come to Germany from Central and Eastern Europe (approximately 800,000) and the former Soviet Republics (about 2.2 Million) (http://www.aussiedlerbeauftragter.de/AUSB/DE/Themen/spaetaussiedler/spaetaussiedler_node.html;jsessionid=7C12483A25BA1FA6A530E966F0DCD8BA.2_cid287, last viewed: 24 July 2014). According to the Federal Displaced Persons Act (Bundesvertriebenengesetz), (late) repatriates are Germans who/whose parents fled (or were displaced from) Germany after 8 May 1945 or 31 May 1952, and have, since then, lived in resettlement areas. As German nationals, these former emigrants enjoy full civil and participatory rights.

- Religious barriers. Although inmates are free to practice their religion, this could only be allowed as far as it does not contradict the internal rules. At this point, there is no information about accidents with security checks and searches which contradict prisoners' religious beliefs.

2.2. Legal provisions

Surprisingly or not, the same statement is given from the five countries – no specific legislation exists in relation to this matter. The legal support to these groups has been based solely on the principle of non-discrimination settled in different international and national regulations.

Non-discrimination becomes binding through the *Universal Declaration of Human Rights*:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it is independent, trust, non-self-governing or under any other limitation of sovereignty. (Art.2)

On the European level, the principle of non-discrimination is envisaged in Article 14 of the *European Convention of Human Rights*:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground, such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.¹⁷

National anti-discrimination legislation is especially relevant in this respect, as any direct or indirect discrimination is unlawful and can serve as a basis for disadvantaged prisoners to claim damages.

The **Lithuanian Criminal Code** sets criminal sanctions for discrimination on the grounds of nationality, race, sex, descent, religion or belonging to other groups (Art. 169), as well as for incitement against any national, racial, ethnic, religious or other group of persons (Art. 170).

The Constitution of the Republic of Lithuania in its Article 29 establishes that all persons shall be equal before the law, the court, and other state institutions and officials. Constitutional provisions are particularized by the *Law on Equal Treatment of the Republic of Lithuania*, adopted on 18 November 2003. The interesting point in this case is that the *Law on Equal Treatment* not only prohibits discrimination, but also determines the duties of the state, municipal institutions and agencies to implement equal treatment by developing, approving and implementing programmes and

¹⁷ Available at: http://www.echr.coe.int/Documents/Convention_ENG.pdf

measures designed to ensure equal treatment. Support programmes of religious communities, associations and centres, public establishments, as well as charitable and sponsorship foundations are entrusted with carrying out this task.

In **Germany**, the *General Equal Treatment Act* aims, among other things, at the prevention and abolition of disadvantages due to race or ethnic origin.

Articles 71–74 of the *Dupont Act* in **Belgium** guarantee the right of prisoners to confess and practice their own religion or philosophy, individually or in community with others.

Even though these treaties and conventions declare equality and expressly prohibit any kind of discrimination, there is no specific regulation on the imprisonment of ethnic minorities. Some studies also highlight the fact that Article 14 is not often taken into account by the European Court of Human Rights (Rey Martinez.2012:7) as it is mostly a subsidiary tool.

Thus, reviewing some sentences, one case appears a milestone: *Nakova & Others against Bulgaria* (2005)¹⁸ from when on it was stated that in cases of racist attacks within penitentiary centres it is the state authority that has the obligation to investigate. But still, when the responsibility of these acts is under any public officer, they also have to reveal and expose the racist motivation behind them. It is curious, to say the least, that since then none of the national legislations have adopted this duty.

In **Bulgaria**, the principle of self-determination is the only official way of collection data on ethnic origin. Prison authorities do not collect such data and therefore the ethnic minorities are officially treated equally to other inmates. As to religious minorities, they declared by law free to exercise any religion they prefer unless it contradicts the prison rules. However, in Bulgarian prisons, only representatives of religious denominations, which are officially registered, can access the inmates.

2.3. Measures & practices

One of the possible consequences of the lack of information is the absence of specific programmes addressing the vulnerable situation of ethnic minorities in the prison environment. For instance, the initial kick of the Barañi Report was the mere awareness of the number of Roma that often go to the two female prisons in Madrid, which clearly shows the strict need to monitor this group more closely.

In **Spain**, there are programmes of cultural integration and language acquisition in similar instances with foreign women. Since 1995, the GSPI has worked together with the Roma Secretariat Foundation to carry out social integration in the Soto Real prison in Madrid; it has also signed a collaboration agreement with this organisation to comply with penalties of community services in Asturias in 2012.

¹⁸ Available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#%7B%22dmdocnumber%22:%5B%22778855%22%2C%22itemid%22:%5B%22001-69630%22%5D%7D>

Several programmes have been developed by NGOs, among them: the Framework Programme of Education for Coexistence in Diversity, the Intercultural Mediation Programme, and the Instruction for Religious Assistance.

With regards to the Catalan prison administration, in 2011 some agreements were signed with the Federation of Gypsy Associations in Catalonia for the implementation of community services. This Federation also implements health programmes for Roma women in two Catalan prisons.

Despite these agreements, there are no studies, standards, measures or programmes by none of the prison administrations in relation to ethnic minorities neither in Spain and Catalonia. The GSPI does not even consider “ethnic minorities” among the penitentiary statistical categories shown in the website.

In **Germany**, practical experience and programmes are so rare that only a few examples could be mentioned, such as the project in Rhineland-Palatinate. In order to counter the development of an isolating subculture among young ethnic German repatriates from Russia in the prison, employees of the juvenile prison of Schifferstadt designed a project that aimed at the strengthening of personal responsibility, future prospects, and educational as well as vocational integration (Michelitsch-Traeger 2008, pp. 171 et seq.). Furthermore, the project intended to deal with the young offenders’ cultural background and identity. In frequent group meetings, the young repatriates ate Russian specialties, watched Russian movies and debated about specific problems they faced in the prison. In the course of the discussions, the young prisoners mostly complained about the prohibition to talk in Russian in front of the prison staff, a stricter application of disciplinary measures in comparison to other inmates, and the little stock of Russian literature and films in the prison library (ibid., pp. 172 et seq.). Furthermore, the project tackled issues such as mutual prejudices, values and norms (pp. 173 et seq.). In addition to the group meetings, the project staff held one-on-one conversations and made use of the systemic therapeutic approach (ibid., pp. 175 set seq.).

In **Bulgaria**, the ethnic minorities, in particular Roma inmates, take advantage of the educational programmes in prison by way of compensating their scarce knowledge of Bulgarian and some other educational gaps. Once again, due to the lack of official data it is difficult to identify the share of minorities’ representatives being part of the educational system, which is in fact not specifically adapted to fit ethnic minorities’ needs.

In the field of medical care and social activities no special practices have been utilised to meet the special needs of this group.

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3. PRISONERS WITH DRUG USE/ABUSE PROBLEMS

3.1. Introduction. Special needs & situations of vulnerability

When talking about drugs and prison some important facts should be taken into account. On the one hand, it should be noted that the consumption of drugs is not a problem by itself, nor should be understood that consumption necessarily means addiction. Problems related to the use or abuse of drugs are a matter of physical and mental health. The illegality of consumption and the stricter controls on obtaining/consuming an illegal substance in prison may entail more health risks than outside prison (due to impurity of the substances, the means of using them, etc.). In Spain, for example, despite its decrease in recent years, the rate of drug-use related deaths in prison is around 20 % (GSPI 2013, p. 8).

Moreover, in recent years there has been a strong medicalization of life in prison, and a high percentage of prisoners have legal psychoactive drugs prescribed (González 2012: 376). This is particularly acute in the case of women (UNODC, 2009, p. 14). Such anti-depressive and sedative drugs are also obtained illegally and their use can spiral into severe health problems. Of the total number of deaths of drug related causes in Spain in 2012, five persons were under the Methadone Treatment Programme and a toxicological examination showed traces of benzodiazepines (GSPI 2013, p. 8).

On the other hand, stricter controls and difficulty to get drugs may also generate other vulnerable situations such as conflicts with other inmates and workers, fights and extortion. No matter whether it concerns use or abuse, the high percentages of inmates taking drugs calls for serious attention to the matter.

In **Belgium**, for example, a study carried out in 2008 by the Prison Health Care Central Service in collaboration with the Modus Vivendi Association indicated that the number of inmates who reported having ever used drugs increased from 60 % in 2006 to 65.5 % in 2008. The Catalan Prison Administration in 2004 recognised that around 50 % – 60 % of the inmates had drug related problems. In **Germany**, the Federal Ministry of the Interior and the Federal Ministry of Justice recognises respectively 30 % and to close to 50 % of inmates having such problems. Federal Ministry of the Interior & Federal Ministry of Justice, p. 612). In **Bulgaria**, the

possession of drugs (even for personal use) is criminalised, therefore lots of drug-addicts can be found in Bulgarian prisons.

It is also true that in the last years in some countries such as **Spain**, the consumption of some illegal drugs, especially heroin, has decreased (Spanish Ministry of Health 2011). An exception of these high rates, but also significant, is observed in Lithuania where the Prison Department has recognized that 15 % inmates are addicts. This leads two important differences with the other countries under study where rates have not changed in the last 10 years and where the prisoners addicted to alcohol are also taken into account.

In **Bulgaria**, despite the scarce information on this topic given by the prison administration, the National Preventive Mechanism reports that a significant number of inmates in the Burgas and the Varna prisons are frequent drug users.

This vulnerability is recognised by some prison administrations. In **Spain**, for example, the GSPI considers this issue particularly worrying: "Among all the people entering prison, drug addiction is one of the most important problems because of the number affected persons and the severity of complications associated with its consumption: health problems, disintegration of personality, difficult family life, education and employment gaps, in addition to legal and criminal problems".¹⁹

3.2. Legal provisions

The medical approach is highlighted in the **Belgian** prisons' drug policy (Federal Drug Policy Note of 2001, Communal Declaration of 2010, Ministerial Circular nr. 1785 of 18 July 2006). Ministerial Circular 1785 grounds a penitentiary drug policy upon the right to an equivalent treatment to the one received outside prison, upon the cooperation between the different levels of competences (communities, regions and Prison Service), upon the role of the central and local steering committees on drugs, upon the provision of information to prisoners, upon harm reduction and prevention of viral diseases, and upon discharge planning and organization of external aid. The already mentioned *Dupont Act* of 2005 provides a judicial basis for the right of health care that is equal to the health care in society and that is adapted to the specific needs of prisoners (Art. 88). Moreover, Article 89 explicitly states that a prisoner has the right of continued health care again on an equal basis as in society.

More explicit regulations can be found in the Spanish law which makes the inclusion of a special unit drug for addiction care part of the provision of healthcare in all the establishments. It recognises the right of any inmate dependent on psychoactive substances to follow addiction treatment and detoxification programmes, regardless

¹⁹ <http://www.institucionpenitenciaria.es/web/portal/Reeducacion/ProgramasEspecificos/drogodependencia.html> (last viewed: 20 April 2014).

of their legal, criminal and penal situation (Art. 37 *Organic Law of the Penitentiary System (OLPS)*, Art. 116 Penitentiary Rules (PR)).

In **Lithuania**, Article 175 of the *Code of Execution of Penalties* recognises the right for drug or alcohol addicted inmates to a written request for treatment.

Some countries such as **Germany**, however, do not deal clearly with harm-reducing measures (neither the *Federal Prison Act nor the State Prison Act*). The central regulations of the prison laws are those on medical treatment in general.²⁰ Thus, the *Federal Narcotics Act (Betäubungsmittelgesetz)* applies inside prison in the same way as it does outside. However, some states have specific administrative regulations on the treatment of drug-abusing prisoners, e.g. on the substitution with diamorphine (synthetic heroine) in Baden-Württemberg.

Bulgarian legislation in its turn allows the court to rule compulsory treatment of drug or alcohol dependency in prison. Such inmates are placed in the prison of Lovech – the only penitentiary facility in the country with a specialised psychiatric clinic. Others, who voluntarily express their will to do so, can also be placed under addiction treatment in the same facility. The number of the latter is, however, negligible.

3.3. Measures & practices

It is possible to affirm that drug use/detoxification is one of the areas where measures and practices within European prison systems are more concentrated.

The **Spanish** *Penitentiary Rules* establish that those specialised care programmes in drug addiction required voluntarily by inmates will be carried out (within the *National Plan on Drugs*) by the Prison Service in coordination with other government agencies or with other duly accredited third sector institutions. It also establishes that in order to achieve permanent programmes for drug addiction, the Penitentiary Services may have specific departments located in different geographical areas to avoid, where possible, the social uprooting of inmates enrolled in these programmes (Art. 116 PR).

In **Germany**, inmates are meant to be able to continue with medical programmes in which they have participated outside prison, such as maintenance programmes. Albeit, in reality, 70 % of the maintenance programmes are stopped once the affected offender has entered the prison. Moreover, Section 64 of the *German Penal Code* provides for a court-ordered compulsory drug therapy in a forensic psychiatric environment.

In a very different regulation, the **Bulgarian** penal system does not provide any alternatives to imprisonment for offenders with addiction, such as treatment in specialised institutions outside prisons. However, it recognises the possibility to be

²⁰ See below the chapter “Prisoners with mental health care needs”.

treated in prison hospitals' psychiatric units. In this way, the differentiation between drug addicts and inmates with mental diseases is not practically clear.

In many countries the harm reduction approach is widespread. In the **Belgian** system, for instance, efforts on harm reduction have been made by the Modus Vivendi Association with the financial support of the Federal Department of Justice through booklets on drug-related health problems and risk behaviour in prison made by and for prisoners. In Spain, the GSPI carries out preventive actions aimed at the entire population as well as therapeutic and rehabilitation activities for those who are active consumers or are in the process of recovery.

Other programmes and initiatives are offered by different countries, such as the Syringes Interchange Programme in **Spain, Catalonia,** and **Germany** (only in the Women's Prison of Berlin). In **Bulgaria,** due to the prison administration's denial of the fact that drugs are available within prison facilities, organisations doing harm reduction by providing sterile needles and syringes to drug users do not have access to prisons. Among other harm reduction programmes are: the *Aluminium Foil Distribution Programme* encouraging the reduction of parenteral narcotic drug administration (Spain), and substance substitution programmes, especially for heroin addictions, for instance methadone programmes (or other substances such as buprenorphine and codeine); the latter are present in all countries under study (Bulgaria, Spain, Catalonia, Belgium, Lithuania, and Germany). The implementation of substitution programmes, however, varies greatly from country to country and even from prison to prison regarding factors such as availability (available in 75 % of prisons in Germany,²¹ but fully absent in the Lithuanian system even for those prisoners who have participated in a similar programme before their imprisonment), or the consideration of the treatment not only as detoxification, but also as maintenance (differently regarded in different prisons in Germany and Belgium).

The complexity of the drug use/abuse problems and the therapeutic approach require that prison administrations offer diverse opportunities for treatment. Programmes are not simply carried out in any context, but in specific units, centres or communities, with a varying focus (free of drugs, maintenance, etc.). In Spain, for example there are different kinds of therapeutic units²² depending on the composition of the intervention team and the population characteristics of the unit (GSPI 2012:191 ff). The same happens in Catalonia where the Catalan Prison Administration offers many different programmes, some inside and some outside

²¹ Kepler et al. p. 82.

²² (a) Therapeutic and Educational Unit based on therapeutic groups of inmates and in a multidisciplinary team of professionals. (b) Therapeutic Drug Addicts' Unit – specific unit in a prison run by a team of professionals and NGO staff. (c) Internal Therapeutic Community, and (d) Therapeutic Mixed Unit. In the latter units inmates with drug addiction problems co-exist and carry out activities together with other internal profiles: mentally ill, disabled, etc.

prison.²³ For both administrations apply the *Replacement of Prison for Internment in a Therapeutic Community* in those cases where the sentenced person is a drug addict declared exempted of penal responsibility (Art. 20.2 PC).

In **Belgium**, there are currently small drug-free wings in the prisons of Ruiselede, Verviers and Bruges.

In 2010, the Director of the Prison Department in **Lithuania** (by Order No. V-319) introduced additional psychologist positions in social rehabilitation units in prisons which carry out rehabilitation programmes for convicts addicted to psychoactive substances. These programmes have a priority focus on thinking and behaviour correction. Rehabilitation centres for addicted persons are established in every prison aiming at no consumption (especially intravenous), or long breaks in consumption.

The GSPI in **Spain** has also developed the Detoxification Programme which can be performed on an outpatient basis, in a day care centre, or in a therapeutic unit. In Spain, there is also the possibility to receive external treatment for inmates classified in common regime, with low-risk profile (Art. 117 RP).

Here, the role of civil society is an important issue to highlight. Most of the services related to drug treatment are managed by NGOs. In Catalonia, all the agencies, both public and private, offering all kind of treatments for drug dependency, are organised through the Network for Care and Monitoring of Drug Addiction (a public network of specialized services working on problems related to drug use).

In **Lithuania**, non-governmental organisations are also involved in the rehabilitation process of sentenced persons. For example, members of Alcoholics Anonymous who volunteer in the Project MANO GURU lead the workshops about addicts' rehabilitation and integration into the society.

Substitution programmes are also available within the framework of NGO projects. These projects usually combine drug substitution with psychological and harm-reduction methodologies.

²³ 1) Inside prison, health attention and motivational programmes: (a) Drug Dependence Individual Treatment Programme, (b) Relapse Prevention Programme, (c) Free Drugs Programme and Informative and Motivating Group Programme, (d) Prevention of Contagious Diseases and Control of AIDS Programme, (e) Prevention of Contagious Diseases and Control of Hepatitis B Programme. 2) Intensive programmes: there are separate free drugs life units such as the Internal Group Programmes or the Special Attention Departments, and there are also the Harm Reduction Programmes (Syringes Interchange Programme and Methadone Harm Reduction Programme).

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4. LGBT PRISONERS

4.1. Introduction. Special needs & situations of vulnerability

In prisons, prejudices and stereotypes are often stronger than in the outside world, turning LGBT inmates into a particularly vulnerable group in several aspects.

First of all, they have higher **protection needs**. “LGBT prisoners are much more likely to be victims of sexual assault and rape than they are to be perpetrators of such acts. In prison settings, it is common for men who never would have engaged in sexual contact with other men prior to imprisonment to end up in non-consensual sexual relationships with men. Since prisoner-on-prisoner rape in such cases involves persons of the same sex, its perpetrators are unthinkingly labelled as homosexuals. In fact, the majority of prison rapists see themselves as heterosexual and the victim as substituting for a woman. Such relationships do not only involve sex. They include the forced submission of a person perceived to be weaker by an aggressor, often to prove and strengthen a male hierarchical position in the prison subculture.”²⁴

LGBT inmates, therefore, are most likely to suffer from sexually transmitted diseases, including HIV/AIDS.²⁵ Besides drug use, rape is the second reason for the increasing number of HIV-infected prisoners. The medical tests should be performed frequently enough and should cover all inmates in order to limit the spread of such infections. Sexual and physical violence can also cause specific injuries which should be treated adequately in prison hospitals. In cases of rape, intensive psychological support is needed.

The complaint procedure for rape or any other case of violence should offer special protection against retaliation, and victims, most of all LGBT victims, are usually afraid to submit a complaint.

Allocation of LGBT inmates may be a key factor for placing them in a vulnerable situation.

²⁴ United Nations Office on Drugs and Crime, Handbook on Prisoners with Special Needs, New York: United Nations, 2009, p. 105.

²⁵ Estimated numbers of persons living with HIV/AIDS at the end of 2006, by race/ethnicity, sex, and transmission category – 33 states with confidential name-based HIV infection reporting, Center for Disease and Control Prevention.

LGBT prisoners are likely to be sensitive in regards to body searches. Such persons usually do not have the explicit right to be searched by proper gender guards and with maximum respect of their personal dignity.

4.2. Legal provisions

No legal provisions on LGBT inmates exist in **Belgium, Bulgaria, Lithuania, or Germany**. Nevertheless, in all countries they enjoy the protection of the national anti-discrimination legislation.

In **Germany**, however, there are several regulations courts have dealt within the context of LGBT issues. Transsexual prisoners may assert a right to medical treatment according to Section 56 of the *Federal Prison Act* and the respective provisions of the *State Prison Acts*.²⁶ In certain cases, transsexual prisoners may even demand a treatment in the form of an extensive psychotherapy.

The Federal Constitutional Court, on the other hand, strengthened the rights of transsexual prisoners when it decided that the prison staff was obliged to call the transsexual applicant by her new, court-confirmed name and justified its decision with the principle of human dignity and personal freedom guaranteed by the German Basic Law.²⁷

In view of homosexual prisoners, both German legal literature and courts have been more restrictive and regarded homosexuality as mainly harmful. Hence, the purchase and possession of graphic homosexual literature may be forbidden by the prison administration.²⁸ Reasoning their decision, the Nuremberg judges argued that due to the exceptional sexual situation in a closed group of male prisoners, such magazines were likely to artificially charge an atmosphere, which is characterised by unwanted abstinence anyhow. Thereby, prisoners were enticed to react to that situation in a manner that led to relationships of dependence among the inmates.

Extramurally, Article 3 of *the Basic Law* (Equal Rights) was used as a basis to rule out regulations that discriminated on grounds of sexual orientation.²⁹

Due to the strict separation of women and men in the German prison system, homosexuality remains the sole opportunity of sexual contact for prisoners – developments like the introduction of the possibility of longer visits of several hours' duration in special apartments (*Langzeitbesuch*)³⁰ put aside. In spite of that fact and a high risk of sexually transmitted diseases without the possibility of safer sex,

²⁶ Higher Regional Court of Karlsruhe, Decision of 30 November 2000 – 3 Ws 173/99.

²⁷ Federal Constitutional Court, Decision of 15 August 1996, 2 BvR 1833/95.

²⁸ Higher Regional Court of Nuremberg, Decision of 15 August 1983 – Ws 552/83. See also Higher Regional Court of Munich, Decision of 16 April 1973 -1 V As 13/73; Higher Regional Court of Hamm, Decision of 27 February 1981- 4 Ws 58/81.

²⁹ E.g. Federal Constitutional Court, decision of 19 June 2012, 2 BvR 1397/09.

³⁰ For examples see Eder, U. (2008).

German prison case-law does not recognise the right to a steady supply with (cost-free) condoms.³¹

Acknowledging the problems a closed one-gender orientated environment poses, the principle of separation of prisoners according to their presumed (biological) sex may be questioned. When thinking about abolishing this separation, though, one would also have to take into account not to create a new vulnerability, i.e. subjecting a low number of women prisoners to a male-structured environment.³²

In spite of the lack of studies and statistics about the presence of transsexual prisoners within penitentiary centres, **Spain** has special administrative regulations with regards to this group. Instruction 7/2006 of the GSPI on Integration of Transsexuals in Prison gives the possibility to request a different psycho-social gender identity for the purposes of classification within Article 16 of the *Organic Law of the Penitentiary System* (which results in the separation of male and female prisoners and of course, has an implication over many aspects of the prison life like the treatment concerned, the methods of caging, etc.) In such a way, the recognition of their identity has implications in many aspects of the prison life.

As another way of recognition we can mention the cooperation agreement between the GSPI and a non-governmental organisation working with the LGBT community such as the GEHITU Association (LGBT Basque Country) to comply with Community Services.

In the case of Catalonia, there are also specific rules on gender identity change: For instance, *Instruction 3/2009* on the inner separation and peculiarities of the system of life of transgender people in prisons of Catalonia. Similarly, the method includes the possibility for a person to apply for recognition of a specific gender identity and then, according to this, to proceed to the appropriate prison classification.

4.3. Measures & practices

As it is said above, the prison authorities of none of the researched countries collect statistical information on LGBT prisoners. Moreover, researches on that topic are generally not available. Owing to a strong predominance of heteronormative attitudes among prisoners, LGBT prisoners remain an almost invisible, highly vulnerable group of inmates, and there seems to be no overall conception how to increase tolerance towards them in the general prison population. Professed LGBT

³¹ Higher Regional Court of Koblenz, Decision of 07 February 1997 – 2 Ws 837/96.

³² Cf. the discussion on giving up the prison for women and integrating it into a men's prison as a unit of its own: <http://www.taz.de/!113641/> (last viewed: 24 July 2014).

prisoners, however, depend on open-minded social workers, pastors and prison officers.³³

In **Bulgaria**, LGBT prisoners are more often perceived as gay persons due to the general lack of awareness about the essence of being bisexual or transgender. LGBT inmates are usually afraid to admit that fact due to fear of various forms of harassment (violence, sexual harassment, bullying, etc.). Prison administration does not consider inmates' sexual orientation, although such information could be useful when dealing with problems coming from their vulnerability. The prison staff usually interferes in inmates' relations only to provide protection in cases when the prison rules are violated. LGBT prisoners can turn to psychologists for psychological assistance. The medical treatment in Bulgaria does not meet any specifics related to the higher risk of sexually-transmitted diseases or injuries. The allocation of prisoners is not based on an adequate classification of their personal characteristics. Situations are handled personally, upon discretion of the prison director.

LGBT prisoners have received very little attention in **Germany** as well. With reference to the problematic topic of condom supply, there are both positive and negative examples.

In **Bavaria**, the HIV prevalence in the prisons is 30 times as high as that among the general German prison population, since it is quite difficult to get contraceptives (Lohmann 2014). Between the years 2005 and 2007, only 43 condoms were handed over to Bavarian inmates, while 13,000 men were imprisoned in Bavarian penitentiaries during that time (ibid.). In surroundings where homosexuality is considered off-limits, the duty to lodge an official application for condoms with the medical or psychological prison staff obviously prevented many prisoners from asking for them.

In contrast to the Bavarian prison policy, penal institutions in **North Rhine-Westphalia** have adopted a more progressive approach. The prison of Hövelhof, for example, not only offers a machine with different sorts of cost-free condoms, it also enables all newly admitted prisoners to get vaccinated against hepatitis A and B (Deutsche AIDS-Hilfe 2013, pp. 23 et seqq.). In the prison of Duisburg, cost-free condoms are available in an information centre which additionally offers information material from the German AIDS Service Organisation (Deutsche Aids-Hilfe), the local credit counselling centre and other relevant organisations (ibid., p. 32). In this way, prisoners can get hold of the contraceptives unnoticed.

³³ As an example of the contrary, the United States Department of State prepared Country Report on Human Rights Practices in 2012 in Lithuania, addressing the intolerance based on sexual orientation and identity that is still remaining a problem in this country.

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5. WOMEN

5.1. Introduction. Special needs & situations of vulnerability

While the average of women prisoners in Europe is around 4.9 %, their presence in the Spanish penitentiary has reached, within the last decade, 7.5 % of the total population.³⁴ Although the percentage is high, women actually represent a minority within the prison system and, as in other countries; this means greater burdens in the serving of the sentence. In order to consider that their vulnerability does not come only from their condition of a minority group, the following chapter aims to recount the situations that generate greater vulnerability.

In the case women share prisons with men, but common spaces are more often used by the latter. With fewer facilities and spaces dedicated to women, they are usually grouped unclassified (youth and adults, preventive and sentenced, prisoners with short and long sentences, and those with drug dependence). The fact of the existence of few prisons exclusively for women presupposes their dispersion over the territory, producing greater uprooting.³⁵

In terms of prison facilities, **Belgium** has only one single-sex women's prison (Berkendael), which hosts about 25 % (95 women are detained in this prison with a capacity of 64 places) of all female inmates. The vast majority (75 %) are detained in separate female wings of six other prisons (Anvers, Bruges, Gand, Lantin, Mons and Namur).

In **Bulgaria**, female prisoners are placed in separate facilities. The only prison facility for women, which include also a reformatory for juvenile female offenders and two open-type prison dormitories, is located in the town of Sliven in Central Bulgaria. As of 1 January 2012, 329 female prisoners were serving their sentence there.³⁶ Besides the lack of appropriate infrastructures, there is also a lack of staff, programmes, and specific treatment; the prison administration is unable to meet their specific physical, occupational, social and psychological needs.

³⁴ Aebi, M. & N. Delgrande, Council of Europe Annual Penal Statistics (Space I), University of Lausanne, 2011, p. 80.

³⁵ See: González 2012: 390-91. For instance, in the case of Spain, three women's prisons depend on the GSPI, but only the 20 % of the women are accommodated there. That means that the remaining 80 % are in women units in type prisons around the country.

³⁶ Aebi, M. & N. Delgrande, Ob. Cit., p. 80.

In **Catalonia** and **Spain**, on the other hand, women have less flexible penitentiary regimes, get less alternative penal measures³⁷ (except in the case of expulsions – GDPS 2011:113) and have a higher remand percentage. By contrast, according to GDPS, they have more permits, parole and open regimes than men because they “adapt better to prisons” (2011:113).

One of the specific situations of vulnerability shared by all countries under study is the case of pregnancy and motherhood. According to GSPI “more than 200 children live in prisons with their mothers, while they are serving their sentence” (GSPI 2011, p. 24).

The issue of pregnancy links with other health matters. For instance, women have higher rates of HIV infection (GDPS 2011:113). Furthermore, they are often over-medicated, particularly with psychiatric drugs. In **Belgium**, many women in prison have also high levels of mental illness and drug or alcohol abuse disorders, as well as higher exposure to sexual and physical abuse and violence.

In view of the individual treatment programme in **German** prisons, women are exposed to similar vulnerabilities. First of all, a high fluctuation in the sector of short prison terms regularly entails the prison administration’s abstention from individual treatment measures (Haverkamp 2011, p. 125). Deficiencies in the quality of vocational training and occupations, excessive debts of female prisoners and a missing debt regulation as well as inadequate aftercare – especially due to staff shortages and insufficient cooperation with ex-offender services (Straffälligenhilfe) – represent further specific problems in women’s prisons (Haverkamp 2013, pp. 136 et. seq.).

5.2. Legal provisions

In **Spain**, GSPI is aware of the “masculine” nature of the prison system and has developed a specific plan for women. The Catalan GDPS also recognizes that women prisoners are suffering more than men and that it is necessary to create specific rules and intervention systems to treat these different situations.

As for the problems of infrastructure, the *Organic Law of the Penitentiary System* states: “In the absence of preventive establishments for women and youth, they will occupy departments characterized by absolute separation, independent organization and a different regime within men’s prisons.” (Art. 8.3). As can be seen, to be separated from men does not mean to be separated by regime or age. Article 38.4 OLPS stresses that “In women establishments, inmates will be provided with the necessary items for intimate hygiene.” Beyond these provisions, the most important laws do not contain any allusions to the specific female needs, except for the issues of pregnancy and motherhood.

³⁷ Almeda, 2003: 42, 32, cit. González 2012: 391.

The GDPS also includes specific regulations and schemes for women. the *Catalan Penitentiary Rules* state in its Articles 4,2 that “Notwithstanding the generally established rules for all prisons, the system and the configuration of all institutions devoted exclusively to women and young people, preventive and sentenced, must observe the singularities and adaptations required to better meet the purposes of the criminal law enforcement”.

The *Code of Execution of Penalties* of the Republic of **Lithuania** establishes basic rules regarding the legal status of female prisoners. The rules are mostly restricted to the status of pregnant women and mothers.

First of all, women in prisons should be kept separate from men (Art. 70). Pregnant women, nursing mothers and children have the right to get better accommodation, living conditions and higher nutritional standards (Art. 173). The *Code of Execution of Penalties* sets forth that female prisoners have the right to raise and take care of their children until they have reached the age of three years in correctional house with children’s sectors (Art. 151). Also, there is a special rule that prison administration can allow pregnant women and mothers with children less than three years of age to be released from prison on parole, regardless of the general conditions for parole (Art. 29, 152). The most extreme disciplinary measures such as closing to lockup may not be applied for this group of prisoners (Art. 142).

Regarding **German** prisons, although female prisoners’ needs have mainly been neglected due to the “male predominance” in terms of population, there is one area in which the legislator has made an attempt to counter the detrimental effect of imprisonment for women or, to be more precise, for mothers. Therefore, both the *Federal Prison Act* (Sections 80 and 142) and the existing *State Prison Acts* provide for the creation of facilities for female prisoners with children.

Female prisoners in **Bulgaria** are located separately at the female prison in Sliven. Bulgarian legislation meets their specific requirements mainly in cases of pregnancy and giving birth to assure quality of treatment and childcare. The law provides for regular medical checks, alleviation of workload, quality food, possibility of being entitled to lighter regime, etc.

5.3. Measures & practices

In **Spain**, the *OLPS* regulates that “establishments or departments for women will be a room provided with the necessary material for obstetrics for the treatment of pregnant inmates and those who have just given birth and are nursing, as well as to meet the needs those whose urgency does not allow deliveries to be made in civilian hospitals.” (Art. 38, 1). Articles 165, 166.2, 167 and 180 RP regulate the possibility of establishing specific centres for mothers. Its impact on the two administrations is detailed below.

More broadly, since 2009 the GSPI has been implementing the Programme of Actions for Equality between Women and Men in Prisons with specific and crosscutting actions, whose main aims are:

- overcoming the special vulnerability factors that have influenced the immersion of women in criminal activity;
- eradicating gender-based factors of discrimination within the prisons;
- taking a comprehensive care for the needs of women prisoners;
- encouraging the eradication of gender violence especially its psychological and medical effects related to the high prevalence of episodes of abuse and maltreatment in the personal history of many of the women prisoners.

The GSPI itself has created a Technical Joint Commission and Monitoring to assess the impact of the programme, as well as to monitor the actions implemented in the field of gender equality.

In the field of education the administration highlights that “since there is an overrepresentation of Roma and foreign women, the administration should work with cultural integration and Spanish programmes”.³⁸

As to mothers in prison, the GSPI itself recognizes that mothers with children in prison are “the most vulnerable segment. Therefore, efforts must be renewed to improve their situation”.³⁹

Article 38.2 *OLPS* allows mothers to stay with their children below three years in prison. Depending on the system of classification in which the mother is, she can move with her child to one of these three specific units: Mother Unit, External Mother Units and Dependant Units.

On the other hand, it also recognizes a “specific regime of visiting for children not exceeding ten years and not living with the mother in prison. These visits will not have any restrictions in terms of frequency and intimacy, and the duration and time shall conform to the regimental organization of establishments” (Art. 38.3 *OLPS*).

- (a) Mother Units are special units within a prison for women with children below three years of age classified in ordinary regime.
- (b) External Mother Units. Since 2004, the creation of these units was definitely looking to separate mothers and children from the prison environment. They are units that are outside prisons, which offer a better environment for children and enhance the re-socializing effects for mothers. EMUs are structures that are built with the particular purpose of covering the specific

³⁸ Available at: <http://www.institucionpenitenciaria.es/web/portal/idioma/ca/Reeducacion/ProgramasEspecificos/mujeres.html> (last viewed: 4 May 2014).

³⁹ Ministry of Interior (ed) s/f “Unidades Externas de Madres”. p. 6. Document can be downloaded at: http://www.institucionpenitenciaria.es/web/export/sites/default/datos/descargables/publicaciones/Unidades_Externas_de_Madres_accesible.pdf

needs of mothers and children.⁴⁰ In these centres a system of frequent visits with minimal restrictions for children is promoted, with an intensive training and education programme.

- (c) Dependent Units: for mothers with children less than three years of age classified in open regime or under “relaxation” (Art. 100.2 PR). According to the GSPI “these are penitentiary units situated outside prisons, often in ordinary flats or houses without any outward sign that identifies them. [...] in these units reside men and women classified in open regime, and associations from the third sector usually collaborate to their functioning”.⁴¹

The GDPS also acknowledges the need for a gender specialized training for professionals working with women. For this purpose in each prison a staff member responsible for gender issues has been appointed, who also speaks with men to educate them in gender perspective. Moreover, the GDPS encourages specific health programmes such as gynaecology, family planning care or mother care (GDPS 2011 114-16).

The Department of Justice of Catalonia made a study on the topic of women in prison and their children (“Mothers in prison. The relationship with the children of imprisoned women”) which studies the relationships that women have with their children before entering into prison and how the mother – child relationship is maintained once the mother has been imprisoned. In addition, the resources offered by the government in order to maintain or recuperate relationships both inside and outside prison are analysed. The situation and particularities of foreign women are explored.⁴²

According to a 2013 study, in **Catalonia** there are 11 Dependent Units, three of which are for women.⁴³

The importance of civil society participation is also dealt with in Article 38.2 *OLPS* which states that “The prison administration will make agreements with public and private entities in order to maximize the development of the mother-child relationship and the formation of the personality of the child in the special circumstances determined by the imprisonment of the mother”.

The female prison in Sliven, **Bulgaria**, is one of the well-functioning prison facilities in Bulgaria. It does not share the common problem of overcrowding and has a

⁴⁰ Ibid, p. 7.

⁴¹ <http://www.institucionpenitenciaria.es/centrosPenitenciarios/otrasUnidades.html>

⁴² The whole study can be accessed in Catalan at: <http://www20.gencat.cat/portal/site/Justicia/menuitem.6a30b1b2421bb1b6bd6b6410b0c0e1a0/?vgnextoid=3528027b6a6f5310VgnVCM1000008d0c1e0aRCRD&vgnnextchannel=3528027b6a6f5310VgnVCM1> Sida. Ver Informe GSPI 2012 p. 161 estadística desde los 90’s. Cómo en los 90’s se morían 400 presos al año... 000008d0c1e0aRCRD&vgnnextfmt=default

⁴³ The study can be downloaded from: http://www20.gencat.cat/docs/Justicia/Home/recerca/cat-aleg/2012/mares_preso2.pdf

relatively good level of hygiene.⁴⁴ There are no irregularities reported in relation to the treatment of female inmates in vulnerable position.

The rules of the prison in Sliven provide a number of special conditions for pregnant or nursing women, such as medium-security regimes, remunerated use of sick leave, regular check-ups, adding foods and special hours for feeding mothers, exemption of performing hard physical activities and night work, the right to remain in open areas for at least 2 hours a day in the case of nursing mothers. The children of imprisoned mothers up to one year of age can stay with their mothers in prison nursery, as prisoners who give birth while serving the sentence can benefit from the suspension of that and remain with the child at home until (s)he is one year old.

In **Germany**, as a practical example of gender mainstreaming in German penitentiaries, there is a special programme for the professional reintegration of former prisoners, in the course of which a network for qualification, employment and aftercare services was created (Haverkamp 2013, p. 143).

In **Belgium**, the law contains some of the rights of women prisoners discussed above. In fact, Article 15, Paragraph 2 of the *Dupont Act* provides for the designation of specific prisons or prison sections for different categories of prisoners (including women), against whom a particular form of punishment may be used.⁴⁵

Although the *Dupont Act* of 2005 recognises the right of the detainee to maintain contact with the outside world and to receive visitors (Art. 53 and Art. 58–63), currently only the *General Regulation of Penitentiary Institutions* (Art. 111 and 112) addresses specifically the issue of children living with their imprisoned mothers.⁴⁶ Theoretically, a child can stay with his/her mother held in prison until the age of 3 years. However, most existing cases relate to infants less than one year of age. The circumstances that most often lead to this situation are when the child is born during the time of the mother's detention, when a mother lives alone with her

⁴⁴ Annual Report of the Ombudsman of the Republic of Bulgaria as a National Preventive Mechanism 2012, Sofia, 2012, available at: <http://www.ombudsman.bg/documents/Report%20NPM%202012.pdf>

⁴⁵ The different categories of prisoners specifically mentioned in this article are remand detainees, female detainees, detainees accompanied by children under the age of three, and detainees who need special care (due to age, physical or mental health).

⁴⁶ As already mentioned, Article 15, §2 of the *Dupont Act* also provides for the designation of specific prisons or prison sections for female detainees and detainees accompanied by children under the age of three, against whom a particular form of punishment may be used.

children when arrested, or when both the father and the mother are incarcerated together.⁴⁷

In **German** prisons mothers may be accommodated with their children if the latter are not bound to attend school and if the placement is to the best interest of the child. Prior to the placement, the Youth Welfare Office has to be consulted. The facilities for mothers with children are meant to offer a child-friendly living space different from the general prison atmosphere and to assist the female prisoners in building and developing a proper relationship with their offspring as well as learning to properly raise their children in freedom without endangering them by committing crimes (Deutsche AIDS-Hilfe 2014, p. 177). At the moment, there are 10 such facilities in Germany (Weßels 2012, § 142, marg no. 3).

While those special facilities undoubtedly offer a less restrictive prison regime than the ordinary prison sectors, it is still questionable whether they could ever serve their purpose. Penal institutions do – by nature – not represent surroundings that enable the development of a healthy familial relationship, let alone give the prisoners a realistic chance to raise their children self-determinedly. Therefore, the approach of several federal states to give female prisoners the opportunity to care for their children at home in the framework of the so-called “day-releases for housewives” (Deutsche AIDS-Hilfe 2014, p. 177) are to be generally welcomed. However, the principle of anti-discrimination requires the extension of such measures to male prisoners, as the child’s separation from his or her father is damaging as well.⁴⁸

In **Lithuania**, women who have been convicted to serve their sentences in a correction house or arrest imprisonment, serve their penalties in Panevėžys Correction House. This includes adult women, juveniles, as well as mothers with children below three years of age. In 2012, eight mothers took care of children in the colony and four women served their sentences while pregnant.

In other detention facilities, i.e. Šiauliai Remand Prison and Lukiškės Remand Prison-Closed Prison no conditions exist for women to live with their children. This is also

⁴⁷ At the international level, the *United Nations Rules for Treatment of Women Prisoners and Non-custodial Measures for Women Offenders*, the so-called *Bangkok Rules*, were adopted by the General Assembly of the United Nations on 21 December 2010. The *Bangkok Rules* govern the treatment of women within the criminal justice system (remand, sentenced custody, etc.) as well as the specific rules concerning the detention of pregnant and nursing women and women with child(ren) in their care. The *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR) recognizes in its Article 8 the right to respect of private and family life as a fundamental value to be protected. The *International Convention on the Rights of the Child* (CRC) also states in its Article 9 the right for a child to grow up with family and to maintain personal relationships with his/her parents. Finally, the *Standard Minimum Rules for the Protection of Juveniles Deprived of Freedom*, the so-called *Havana Rules*, provide, in its Article 93 that the child staying with his parents in custody should be subject to caution and special care.

⁴⁸ One of the authors of this report, as a lawyer, had one male client in Bremen who qualified for day-releases to care for his child.

not allowed by legal regulation. Children born in these institutions are given away to relatives or public orphanage.

In Panevėžys Correction House, mothers live with their children in a special nursery or baby section. The prison staff does not interfere with the educational process. If necessary, these mothers can ask nurses for assistance. Convicted mothers with their children live separately from other inmates' dwellings. They have their own kitchen, shower room and other facilities. There is also a game room for children, equipped with pedagogical tools. In 2012, the Panevėžys penitentiary provided over 20 different pedagogical, educational, remedial, and psychological programmes. Ten convicts raising children below three years of age in penitentiary, for example, attended parenting skills trainings.

5.4. References

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6. JUVENILES

6.1. Introduction. Special needs & situations of vulnerability

In **Spain**, the penal system for adult over 18 years of age is different from the one for minors. However, among the adults there is a certain age range that has special consideration: young prisoners between 18 and 21 years of age (sometimes even up to 25).

According to the Catalan administration, juveniles who commit more violent crimes are more often in preventive prison, less often under open regime (14 % versus 24 % of adults), and there are more non-nationals among them (GDPS 2011: 110-11).

Prison administrations understand that young people should be a group of special attention. Because of their age it is supposed that the educational component must be strengthened and that juveniles should be separated from the influence of adult prisoners.

If we look at the **Bulgarian** case, we can realize that its criminal law focuses on re-socialisation rather than on punishment. Young offenders are placed in reformatories, the boys separately from the girls.

Juveniles have some additional rights including: as much contact with the outside environment as possible, extra stay in open space, more frequent visits by relatives, non-governmental organisations, etc., additional visits of cultural events, tourist walks, etc. As regards security measures, disciplinary sanctions for minors are lighter, and the use of weapons against them is limited to the cases of guards responding to an armed attack.

The capacity of institutions for juvenile offenders is 296 people. In 2011, there were a total of 60 inmates younger than 18 years and 336 between 18 and 21 of age. A total of 89 juveniles were placed in custodial institutions/reformatories.⁴⁹ As of 1 September 2013, a total of 47 youngsters under 18 years of age were accommodated in reformatories.

⁴⁹ Aebi, M. and N. Delgrande, Council of Europe Annual Penal Statistics (Space I), University of Lausanne, 2013, p. 76.

6.2. Legal provisions

In **Spain**, the *OLPS* in its Article 9.2 stipulates: “Youth must serve separately from adults in separate institutions or, in any event, in separate departments. For the purposes of this Law, the term young people of either sex are those who have not reached the the age of 21. Exceptionally, and taking into account the personality of the inmate, (s)he may remain in a centre for young people if (s)he has already reached twenty one, but is below twenty-five.” Articles 173–177 of the Spanish *Penitentiary Rules* (PR) set forth the principles governing the implementation in youth departments.

In **Bulgaria**, on the other hand, under the *Law on Execution of Penalties and Detention in Custody*, juvenile offenders, similarly to female prisoners, are entitled to specific medical care corresponding to their specific needs and condition. However, the respective secondary legislation, namely *Ordinance No 2 of 22 March 2010 on the Conditions and Procedures for Medical Services in Places of Deprivation of Liberty*, does not provide for any specific measures for juveniles or any differentiated approach in the provision of medical services. Female juveniles do receive specific health services, as they are physically placed in or close to the same facility as adult female offenders.

6.3. Measures & practices

The GDPS also recognizes that young people are a group of special attention. Citing the *UN Standard Minimum Rules* of 1955 it records that juvenile must be kept separate from adults. Citing *Recommendation R (87) 3* of the CoE it says that young inmates should be kept in conditions in which they can't have bad influence and may have proper education with special attention to those with special needs due to ethnicity or foreign origin. (GDPS 2011: 110).

Both the GSPI and the GDPS develop specific programmes for this group. The GSPI says its Integral Youth Intervention Programme “is characterized by an intense educational activity which aims to curb the development of a criminal career and achieve social integration after release.”

In **Bulgaria**, the rehabilitation in reformatories is focused primarily on education. Going to school reduces the duration of imprisonment as three days in school deduct one day of the sentence. Juveniles who attend school are also entitled to work up to 3 hours per day. The organisation of the work for the juvenile inmates pays particular attention to the opportunities for professional training. Upon expiry of the juvenile offender's sentence, the respective town's mayor and the municipal council are engaged with the assistance for the released juvenile's settlement and placement into a job.

6.4. References

Aebi, M. and N. Delgrande, Council of Europe Annual Penal Statistics (Space I), University of Lausanne, 2013.

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7. OLDER PRISONERS

7.1. Introduction. Special needs & situations of vulnerability

When speaking about old prisoners, it needs to be established which age limit is to be used as a reference. While the age of 60 is predominantly used as a demarcation line, the age of 50 has been suggested as well (Schollbach & Krüger 2009, p. 131). Taking the latter as a basis for the quantitative evaluation of older prisoners, this group appears even more relevant. In Spain, however, in order to have some especial treatment because of the age, older prisoners are considered persons of above 70 years.

Older people are more diverse and have different needs, depending on their socio-economic background and health status. The *UN Handbook on Prisoners with Special Needs*⁵⁰ identifies three main categories of older prisoners: 1) those who were sentenced to long prison terms while young and have grown old in prison; 2) habitual offenders, who have been in and out of prison throughout their lives, and 3) those who have been convicted of a crime in later life.

Older persons are more likely to need special assistance to access legal counsel upon their arrest, during the pre-trial detention and in prison. There are potential difficulties associated with the prison layout and conditions for older persons in terms of accommodation. These include stairs, difficulties in accessing sanitary facilities, overcrowding, excessive heat or cold, as well as many architectural features that may hinder those with physical disabilities from satisfying their most basic needs. Health is a universal concern for all older prisoners, due to their age, generally unhealthy lifestyles and histories of substance abuse. Chronic and multiple health problems, such as heart and lung problems, diabetes, hypertension, cancer, Alzheimer's disease, Parkinson's disease, ulcer, poor hearing and eyesight, memory loss and a range of physical disabilities, are among the common problems from which older prisoners suffer. Adequate medical care for older persons requires considerable additional financial and human resources, putting a serious burden on the prison system.

⁵⁰ United Nations Office on Drugs and Crime, *Handbook on Prisoners with Special Needs*, New York: United Nations, 2009, p. 105.

The longer the period of imprisonment, the more severe are the problems associated with institutionalisation. Older prisoners who have spent many years in prison often lose their contacts with their families and the community, making them increasingly dependent on the institutional setting.

Some older prisoners may not be in a position to work due to physical disabilities or health problems. As elderly people adapt to new environment less easily, social workers and psychologists should pay special attention to prepare them for the life outside prison. This is especially important for people who have served a long-term prison sentence.

7.2. Legal provisions

The legal provisions on older prisoners in the researched countries are limited. Nevertheless, age is one of the official grounds under which national anti-discrimination legislation protects older prisoners.

The only provision of **Bulgaria's** prison legislation concerning elderly people stipulates that female prisoners over 60 years and male prisoners over 63 years of age are subject to mandatory medical checks to assess their ability to work.

In terms of health care in **Belgium**, pursuant to the *Dupont Act* of 2005,⁵¹ older prisoners are entitled to benefit from the same quality level as in the free community. Article 15, Paragraph 2 provides for the designation of specific prisons or prison sections for different categories of prisoners (including detainees who need specific care due to age, physical or mental health), and against whom a particular form of punishment may be used.⁵² However, this article is *de facto* and so far absolutely not respected.

There are almost no special legal provisions for older prisoners in **German** penitentiary law. The only existing legal regulation deals with the duty to work according to Section 41 of the *Federal Prison Act*, which does not apply to prisoners aged 65 and above.

In **Lithuania**, there are some special rules in the Penal Execution Code addressed to this vulnerable group:

- related with the work of convicts (Article 125). Retirement age convicts can be employed only with their written consent, when no contrary medical opinion exists;
- related to deductions from wages (Article 133). Retirement age convicts having less money in their personal account than set by law, no more than

⁵¹ Act on Principles of Prison Administration and Prisoners' Legal Status (commonly referred to as the Dupont Act) of 12 January 2005.

⁵² The different categories of prisoners specifically mentioned in this article are remand detainees, female detainees, detainees accompanied by children under the age of three, and detainees who need specific care (due to age, physical or mental health).

six months before the end of the sentence may be exempt from the obligation to pay deductions to convicts fund;

- related to vocational training. Article 148 sets that vocational training for retirement age convicts can be arranged at their request.

It should be noted, that Article 6 of the Code of Execution of Penalties of the Republic of Lithuania establishes the principle of equality implementing penalty laws. But in this Article, the age of convict, as a sign of non-discrimination, shall not be named.

Spanish law recognizes some benefits for older prisoners. Article 92 of the *Penal Code* recognises the possibility of an earlier parole for persons over 70 who fulfill certain criteria. The exception is to comply with $\frac{3}{4}$ of the sentence or $\frac{2}{3}$ (in cases where the same conditions also have continuously developed labour, cultural or occupational activities). Furthermore, the GSPI has a Programme of Comprehensive Care for Elderly in Prison. It is developed by Instruction 8/2011 implementing the protocol of an integrated care for this group. In 2012, 113 people were involved.

7.3. Measures & practices

Most European countries face the general demographic trend of an increase in the number of ageing population. This trend is visible in prisons, as well. Another factor, which affects Belgium and Germany most, is the recent tendency in the penal sanctioning practice, i.e. longer prison sentences, a more restrictive approach towards the suspension of sentences on probation and the more extensive use of legal instruments for the prolongation of prison sentences.

TABLE 1: NUMBER OF OLDER PRISONERS AS OF 1 SEPT 2012

Age\Country	Belgium	Bulgaria	Germany	Lithuania	Spain
60 – 70	364	200	1,710		2,041
Over 70	81	40	373		509
Total	445	240	2,083	180	2,550

Source: Council of Europe Annual Penal Statistics SPACE I – 2012.

Similarly to other vulnerable groups, the services, provisions, and programmes provided by the researched countries' penitentiary institutions to this group seem poorly adapted to the needs of an older population (including e.g. food, sports and

fitness infrastructure, outdoor exercise, prison labour, education, reintegration programmes, and other time use activities). Moreover, as prisons traditionally house mainly young adult males, old inmates are exposed to potential risk of stigmatisation and identity crises.

Despite political recognition in **Belgium** of the phenomenon of increasing older population and the specific challenges it raises, to date little empirical research has been undertaken on older inmates in Belgian prisons. Considering the lack of preventive or proactive attention to the (health) problems, sensibilities, and needs of older prisoners in later life, they are usually identified by scholars as a “forgotten” or “hidden” minority.

In **Bulgaria**, these specifics are not addressed – or at least not explicitly – by the prison administration. Social workers who are responsible for the social activities in prison can take into account some of these problems, but this is usually contingent solely on their humanity and professionalism.

As the gradual alteration of the age structure of the **German** prison population became obvious, the prison administrations reacted to the increased number of older prisoners, and the legal literature discussed different forms of their accommodation.⁵³ Nevertheless, many federal states have not yet designed an overall conception for the placement of older prisoners, and thus, senior inmates are treated as ordinary prisoners in most German penitentiaries.

A pioneer in dealing with the ageing prison population is the state of Baden-Württemberg. As early as 1970, Baden-Württemberg started to imprison senior inmates separately from other prisoners (Rennhak 2007, p. 19). In Singen, a branch of the prison of Konstanz, 48 prisoners above 62 can be accommodated. In the only German “prison for the elderly”, the convicts’ average age is 70 and all prisoners serve prison terms of at least 15 months (German Press Agency 2014). While the equipment of the penitentiary does not significantly differ from ordinary prisons, the everyday life of the prisoners does.

The Singen prison – designed as a closed facility – is oriented to the open prison regime, with a daily routine that is less strictly determined than in ordinary closed prison facilities. Between 7 am and 10 pm, all prison cells are open; in the case of multi-occupancy cells without a toilet this is so even around the clock (Rennhak 2007, p. 20). Tendencies like loneliness and isolation are meant to be counteracted by common shopping trips and hikes, health support is offered in the form of age-appropriate sport programmes, discussion groups, music and cooking classes (Schollbach & Krüger 2009, p. 136). Extended visiting possibilities and suitable occupations for those prisoners who are still bound to work⁵⁴ are further notable differences.

⁵³ See e.g. Fichte (2007); Legat 2009, pp. 70 et seqq.

⁵⁴ The duty to work does not apply to prisoners above 65 years.

Another example of an age-specific treatment of older prisoners is the *Kornhaus*, a special department for older inmates in the prison of Schwalmstadt in Hesse. According to the Hessian scheme of execution (Vollstreckungsplan), prisoners who have reached the age of 55 and exhibit a low degree of dangerousness and likeliness to abscond are transferred to this facility. The Kornhaus has room for 61 prisoners who are mostly accommodated in single-occupancy cells (Roos & Eicke 2008, p. 109). The cells are open at all times and the facility offers medical, psychological, pedagogical, sports-pedagogical and religious services. Prisoners have comparably generous visiting regulations (six hours a week) and may take part in memory training, age-appropriate sport groups, discussion rounds and information events on age-specific topics like the old-age pension scheme (Schollbach & Krüger 2009, p. 135). The Kornhaus prison staff has undergone a special training programme that focusses on the special needs of older prisoners and the conception of the prison is subject to constant development (Roos & Eicke 2008, p. 113).

As it is the case with prisons in general, it has to be kept in mind that efforts to change conditions often result in only minor differences with respect to the daily life of a prisoner. For instance, when entering the Kornhaus – a more than 400-year-old building – the first thing to do is to climb a number of unavoidable stairs. The wood works, prominently exhibited to visitors, are relicts of the prison's past since a lack of personnel prevents current inmates from producing any further pieces. It also turns out that most of the elderly prisoners kept in the Kornhaus serve shorter sentences for minor crimes, especially prison terms for default of paying an imposed fine. In such kind of cases it would be preferable to seriously think about alternatives to imprisonment and to question the meaningfulness of a prison term in general.

In Detmold,⁵⁵ Bielefeld⁵⁶ (both North-Rhine-Westphalia), Waldheim (Saxony)⁵⁷ and Bayreuth (Bavaria),⁵⁸ the prison administrations installed special departments for older prisoners which also offer age-specific treatment and – in part – barrier-free facilities.

The prison of Berlin Tegel, the biggest German penal institution for male prisoners, has adopted a different, non-separating approach. Instead of creating a separate department for older prisoners, the prison administration places senior inmates in the general prison section and initiated special age-appropriate treatment programmes in 2011 (Kammerer & Spohr 2013, p. 318). The different offers for older prisoners, including occupational therapy, age-specific consultation hours and a computer class, are organised by private agencies like the city mission (ibid.). In the framework of a pilot project, the Institute for Gerontological Research investigated the situation of older prisoners and revealed that age-specific programmes generally enjoy considerable popularity among senior prisoners if they are properly informed about the offers (Kammerer & Spohr 2013, p. 321).

⁵⁵ See: Voogt 2013.

⁵⁶ See: Neue Westfälische (2012).

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8. PRISONERS WITH DISABILITIES OR SPECIAL HEALTHCARE NEEDS

8.1. Introduction. Special needs & situations of vulnerability

Physical and mental disabilities presuppose a situation of special vulnerability in a hostile and closed environment such as the prison.

In **Spain**, there are no official statistics on the number of prisoners with some degree of disability, either physical or mental. However, a study has been conducted, demonstrating, that approximately a 2 % (i.e. more than 1,000 people) of the prisoners have accredited mental disabilities. According to DINCAT (an association that manages the programme addressing the relevant issues in Catalonia), the percentage is about 1 % of the prison population (which, with respect to the total population in 2012, means about 100 prisoners), accepting at the same time that further investigation is required to diagnose more cases. According to FEAPS (an association that works with people with disabilities in a prison in Madrid), the number of people diagnosed with an intellectual disability in prison could reach 6.5 %.

Prison environment might cause greater harm to people with disabilities due to the high levels of control and limitations. The architectonic barriers, designs that are difficult to modify, on the one hand, and the low level of autonomy, which makes life in prison harder, either by a subjective experience of imposing more restrictions, or because of its particular situation, on the other hand, might lead to abuse by other prisoners in addition to the limitations of the right of defence in some cases of intellectual disabilities.

The lack of diagnosis has also been identified as a problem. According to FEAPS, 69 % of people with an intellectual disability who are serving a sentence have not been recognized as such in the criminal proceeding. This could also imply that the trial did not take into account any mitigating circumstance of the criminal responsibility.

In **Bulgaria**, the number of prisoners with disabilities or people with special health needs is not available to the public, although such information must be collected by the prison administration at the time of admission. The National Mechanism of

Prevention against Torture informs about certain cases of prisoners with this kind of diseases (e.g. epilepsy). However, there is no research to determine the percentage of people with such conditions among people deprived of liberty in prison settings.

The Department of Prisons of the Republic of **Lithuania** does not provide any statistics about prisoners with physical disabilities.

In **Germany**, prisoners with disabilities have hitherto received very little attention. In the annual publication of the Federal Bureau of Statistics on the Demographic and Criminological Prisoners, the only statistical overview of German prison population, persons with disabilities are not mentioned at all. What is more, the German legal literature does not – with a few exceptions – deal with prisoners with disabilities either. While mental disabilities in ordinary prisons are not grappled with at all, the prison administrations of the different federal states provide, by their own account, specially equipped cells for physically handicapped prisoners.

The **Belgian** Prison Department also does not provide statistical data about prisoners with disabilities, whether physical or mental. Nevertheless, reports of the Belgian Federal Ombudsman – *Médiateur Fédéral* – and the Centre for Equal Opportunities and Opposition to Racism (created by the Federal Act of 15 February 1993) show that physical and mental disabilities can suppose a special situation of vulnerability in prison facilities, considering that most of them are not adapted or equipped to meet their special needs. The issue of persons with disabilities in prison cannot be viewed separately from the general context of endemic prison overpopulation and the difficulties raised by this in regard to the organisation of the prison system as a whole.

The little attention to this subject is even more surprising since Article 13, Paragraph 2 of the United Nations *Convention on the Rights of Persons with Disabilities* provides that state “*Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.*”

8.2. Legal provisions

According to Article 88 of the *Law on the Rights of Patients and Compensation for the Damage to their Health* of the Republic of **Lithuania** (1996-10-03 No. I-1562), all prisoners should have access to health care of the same quality as in the free community which would be suited to their specific needs.

According to Article 73 of *the Penal Execution Code*, pregnant women, nursing mothers, minors, persons with disabilities, as well as patients have rights to better accommodation and living conditions and higher nourishment standards. Article 182 sets forth that those persons with disabilities released from correctional institutions have the right to receive statutory social benefits.

No other rules and legal privileges apart from those already mentioned addressed this vulnerable group of prisoners.

In **Bulgaria**, there are no special rules for the accommodation of prisoners with disabilities or special needs (e.g. close proximity of stairs, washrooms, accommodation at lower floors). The prison administration tries to comply with such requirements within the limits of the available resources as well as in compliance with the prison rules. There is no information about any complaints concerning such problems.

In **Spain**, there is no specific legal framework that provides treatment to the situation of prisoners with disabilities. However, some level of official recognition can be observed in specific intervention programmes for this group of prisoners. The GSPI has an intervention programme whose main objective is the “early identification of those inmates with disabilities.”⁵⁹ According to this institutional recognition a suitable internal separation to avoid potential hazardous conditions can be reached.⁶⁰ Nevertheless, it is still a pending task.

The **Belgian** federal law against discrimination does not guarantee the full participation of people with disabilities in social life. The anti-discrimination legislation applies to the sector of goods and services, whether public or private, and therefore to public services such as courts and penitentiary facilities.⁶¹

Reasonable accommodations are defined as “appropriate measures, taken as needed in a particular case, to enable a disabled person to access, participate and progress in the areas for which this law applies, unless such measures would impose a disproportionate burden in respect of the person who should adopt them” (Art. 4)

The concept of reasonable accommodations plays a key part in relation to the equal treatment of persons with disabilities as compared with others held in prison. The refusal to provide reasonable accommodations for a disabled person constitutes a form of prohibited discrimination within the meaning of the law. People with disabilities who are held in prison are entitled to reasonable accommodation meeting their specific needs. The measures to be taken must be proportional, keeping the balance between security requirements and disability-related needs of the inmates.

Germany is the only one of the five countries under study which has something to say on this subject. While the UN *Handbook on Prisoners with Special Needs* defines persons with disabilities as those “who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”, German

⁵⁹ Available at: <http://www.institucionpenitenciaria.es/web/portal/Reeducacion/ProgramasEspecificos/discapitados.html> (last viewed: 20 April 2014).

⁶⁰ ABC Journal, Córdoba (Spain), Sat. 2/18/2006, p. 49.

⁶¹ The *General Anti-Discrimination Federal Acts* provide for protection in large areas of public life: the provision of goods or services when these are offered to the public; access to employment, promotion, conditions of employment, dismissal and remuneration, both in the private and in the public sector; the nomination of a public servant or his/her assignment to a service; the mention in an official document of any discriminatory provision; and access to and participation in, as well as exercise of an economic, social, cultural or political activity normally accessible to the public.

social law in particular considers individuals as disabled when their bodily functions, their intellectual capacities or their mental health deviate for more than six months from the condition typical for a given age, so that their participation in society is impaired (Section 2 of Book IX of the German *Social Code*).

As far as German penal and penitentiary law is concerned, a disability does not automatically exclude the offender's fitness for a custodial sentence. Severe disabilities may, however, lead to an incompatibility with the facilities of the penal institutions according to Section 455, Paragraph 3 of the *Code of Criminal Procedure*. In such a case, the prosecution can order the suspension of the prison term's execution (prior to imprisonment). As there are no special penal institutions for persons with disabilities, convicted offenders are transferred to the responsible penitentiary in accordance with the regional scheme of execution.

German penitentiary law contains a few regulations that are particularly relevant for prisoners with disabilities.⁶² First of all, Section 5, Paragraph 3 of the *Federal Prison Act* stipulates that prisoners should undergo a medical examination and should be introduced to the head of the prison promptly after their admission to the penitentiary. In case of disabled prisoners, one of the responsible officers is obliged to advise them on appropriate rehabilitative measures according to the degree and gravity of the disability.

As far as working inside or outside the prison is concerned, a diagnosed disability of a prisoner has to be considered as well. In view of Article 5 of *Council Directive 2000/78/EC* as well as the German implementation act (*Allgemeines Gleichbehandlungsgesetz*) – two legal instruments which need to be regarded when applying the *Federal Prison Act* – a disabled prisoner has the right to an occupation if he or she had got the job unless the disability hindered him or her. In this case, the workplace has to be changed – to an (economically) reasonable extent – in order to enable the disabled prisoner to do the work (Däubler & Galli 2012, § 37, marg. no. 14). If the disabled prisoner is transferred to an open prison, he or she may receive help from the locally responsible Integration Office. If disabled prisoners are not capable of performing economically productive work, Section 37, Paragraph 5 of the *Federal Prison Act* provides for the assignment of occupation of a therapeutic nature.

Another regulation that specifically addresses disabled prisoners is Section 59 of the *Federal Prison Act*. According to that provision, prisoners are entitled to be supplied with visual and hearing aids, prosthetic appliances, orthopaedic and other aids which are necessary in a particular case to ensure the effectiveness of therapeutic treatment or to compensate for a disability. For aids and therapeutic measures, the costs of which are not born by the prison administration, disabled prisoners are, moreover, entitled to ask for supplementary welfare benefits (Kamann 2008, p. 495).

⁶² As mentioning every respective state regulation would go far beyond the scope of this report, the following remarks will be limited to the relevant provisions of the Federal Prison Act.

Last but not least, prisoners with disabilities shall – like prisoners with mental health issues – be transferred to prison hospitals or other penal institutions that are more suitable for their needs according to Section 65, Paragraph 1 and 2 of the *Federal Prison Act*.

8.3. Measures & practices

In **Spain**, the GSPI programme aims to adopt the “necessary measures to facilitate the mobility and the participation in everyday life”,⁶³ including early detection of cases, allocation to departments or centres without architectural constraints and the processing of official certificates” (GSPI 2011: 34).

In the case of mentally handicapped inmates the intervention is aimed to basic skills training to achieve autonomy. This programme, although operative since 1995, has been jointly performed in collaboration with FEAPS since 2006 and is currently implemented in 39 prisons (GSPI 2011: 34, 2012: 42).

Some inmates with intellectual disabilities also participate in the CAAT programme (Companion Animals Assisted Therapy).

The GDPS has also drawn a plan for the intellectually disabled. The Justice Department together with the Dincat Federation “runs a programme to prevent hazardous situations and abuse of persons with disabilities in Catalan prisons”.⁶⁴

In the Quatre Camins prison a Special Attention Department (SAD) has started operating in which 12 prisoners with intellectual disabilities live with other prisoners who are under drug treatment programmes.⁶⁵

As regards to medical care in **Bulgaria**, prisoners with chronic diseases are under dispensary observation in the prisons’ hospitals or medical centres where they undergo medical checks and obtain prescribed medicines. This observation is performed under the same rules that apply to patients outside prisons. Emergency cases are handled under an order of the prison director after a consultation with the director of the medical centre or hospital.

Prisoners are entitled to a job in accordance with their health status. The assessment of the ability to work is performed outside the prison facilities and the prison authorities are obliged to convoy the prisoner to the respective specialised institution.

Interruption of the execution of the sentence due to health reasons is possible if the medical examination proves that adequate treatment must be provided outside the prison. There are strict criteria for evaluation. Practically, after prison hospitals’

⁶³ Available at: <http://www.institucionpenitenciaria.es/web/portal/Reeducacion/ProgramasEspecificos/discapitados.html> (last viewed: 20 April 2014).

⁶⁴ See: <http://www.elpuntavui.cat/noticia/article/2-societat/5-societat/690379-nou-pla-per-als-reclusos-amb-discapacitat-intellectual.html> (last viewed: 7 February 2014).

⁶⁵ About the Special Attention Departments (SAD) normally thought to drug users therapy, see the chapter on drug users.

drain-off in terms of equipment and qualified personnel, the performance of examinations related to interruptions of the sentence or the granting of sick leaves remained one of their major functions.

In **Lithuania**, the aspects of life of disabled persons in prisons depend on the prison infrastructure and regulation, but also at the discretion of the administrative authority.

The Ombudsman deals with individual and group complaints of sentenced persons, but the conclusions from his inspections identify problems common to the entire prison system. Ombudsman inspections have revealed that in other prisons not all conditions of detention are well adapted for prisoners with disabilities. In response to the findings of the Ombudsman inspections the prison administration is trying to solve the problems in two ways:

- Individually, for example the issue of care of one prisoner with disability was solved employing an inmate to provide the required services.
- By creating special areas for disabled persons. Because not all the conditions of detention in prisons are adapted for prisoners with disabilities, some of them are placed in the Vilnius Correction House, where prison administration has created the entire necessary infrastructure.

As to long-term plans, it should be noted that a decision to complete the construction of a new hospital in Pravieniškės has been taken. Addressing the construction of the new hospital, the Government is planning not only to prepare premises for disabled prisoners, but also to obtain a license for long-term care. In addition, it is necessary to ensure medical supervision of the disabled during the convoy.

As indicated above, both **German** legal literature and the public debate have rarely dealt with disabled prisoners. However, a consultation of the sixteen different State Ministries of Justice revealed that either their prisons, or prison hospitals contained special facilities for physically handicapped prisoners, the number of barrier-free cells ranging between three and ten rooms per federal state (Oberfeld 2009, p. 234). Special departments for physically disabled prisoners, though, only exist in Hövelhof and Bochum (both North Rhine-Westphalia), offering space for 72 prisoners in total (ibid.).

The **Belgian** penitentiary administration should integrate the concept of “reasonable accommodations” organically within its policy, staff training and infrastructure design. If the principle of reasonable accommodation has been enshrined in law, there are no measures expressly intended for persons with disabilities in the prison regulations. Certain actors within the prison system do promote the “natural” practice of making such accommodations, particularly in the case of staff working within prison psychiatric units. In response to the Federal Ombudsman inspections or following the intervention of the Centre for Equal Opportunities and Opposition to Racism,

the prison administration usually solves problems on an individual basis. However, such a way of addressing special needs of disabled inmates is not sufficient or appropriate.

Feest (2010) has formulated several demands that shall facilitate disabled prisoner-friendly accommodation in ordinary prisons:

- Barrier-free prison facilities
- Cell equipment according to the disability
- Consideration of the disability in the treatment programme (individual aid and treatment)
- Assignment of occupations that correspond to the disability
- Lower working hours
- Therapeutic occupation offers (if economically productive work is impossible)
- Increase of exemptions from the obligation to work
- Disabled-prisoners-friendly leisure facilities
- Special diets, supply with individual medical aids
- Consultation of specialized doctors by the medical officer
- Introduction of an ombudsman for disabled prisoners
- Cooperation with the local Integration Office (in the course of preparations for release).

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9. PRISONERS WITH MENTAL HEALTHCARE NEEDS

9.1. Introduction. Special needs & situations of vulnerability

The issue of mental health and its relationship with imprisonment is one of the greatest concerns to the administration as well as to the prisoners themselves, their families, and those who work with them. Mostly, as we shall see, it is about the complex relationship between mental illness/handicap and prison which presents numerous challenges for the prison system as a whole. At the same time, it represents one of the largest vulnerability situations for inmates. As González points out, “[t]he high prevalence of mental illness in prisoners – four times as high as in the general population for severe mental disorders and fifteen times as high for mental problems related to drugs – makes it an issue of particular apprehension” (2012: 376).

We must also clarify that this matter, treated as a health issue, includes inmates with psychiatric disabilities or intellectual handicaps. In addition, we must distinguish between those who have been declared irresponsible because of their mental illness/disability and those who, being guilty, are affected by any of these health circumstances.

In all the countries under study, the measure imposed on an offender with a mental illness from which his/her criminal responsibility was excluded would either be non-custodial, or custodial in a psychiatric hospital, but such a person should never be sent to prison. But, as it happens in many countries, as a direct consequence of the shortage of places in adapted institutions, a substantial number of mentally ill offenders held under internment orders remain in prison psychiatric units or in regular prison sections for months and sometimes even years, awaiting transfer to an ad-hoc care institution where they could benefit from an appropriate treatment. It is important to note that although some administrations expand their efforts in building special institutions to house this people (i.e. penitentiary psychiatric hospitals, psychiatric units), the World Health Organization and the International Committee of the Red Cross discourage their existence (UNODC, 2009, p. 28).

As we have already highlighted, rates of inmates in some of these circumstances used to be very high. In **Germany**, a study conducted in the prison of Bielefeld Brackwede in North-Rhine-Westphalia, the largest federal state, has shown that

53.2 % of its inmates had suffered from a personality disorder in need of treatment within the previous six months and 27.3 % had suffered from an anxiety disorder (prisoners can belong to both groups (von Schönfeld et al 2006, pp. 834, 836). The study has also revealed that a remarkable percentage of prisoners suffered from substance-use disorders, namely 59.2 % of the male and 69.8 % of the female participants (ibid., p. 836). Other studies mention 26.2 to 80 % of prisoners with personality disorders (Ukere 2012, pp. 6-7; Kopp 2012).

Similarly, **Lithuanian** imprisonment statistics reveal that prisoners' mental health is a pervasive problem: 1,653 prisoners in 2012 had mental health diseases (1,514 persons with a psychiatric handicap and 139 mentally handicapped persons (e.g., lower IQ)), which is equal to 17 % of the prison population.

In **Spain** studies have shown that "roughly one in four prisoners suffers from psychiatric disorders, and, overall, between 40 % and 50 % of the prison population studied has some kind of medical history related to mental disorders (if we add the ones related to the use and abuse of drugs).⁶⁶

Despite the gravity of the issue, some countries still do not present any statistics. **Bulgarian** authorities state that there are no prisoners with psychological and/or psychotic disorders held in specially designed sections inside penal institutions. This means that there are such persons, but they are not placed in special prison sections. There is a psychiatric hospital within the penitentiary system, where inmates reside if necessary, but no data is available on the number of inmates within the hospital or the total number of prisoners with psychological needs.⁶⁷

In the case of **Belgium**, in 2012 authorities reported 4,093 "mentally ill offenders", indicating an increase of 24 % over the six previous years. These numbers, though, refer to people declared criminally irresponsible. Mentally ill or handicapped inmates (guilty declared offenders) are not considered as a category by the Belgian penitentiary administration in its annual report. As an example of the complexity of this problem we can see that over 1,100 of the 4,093 "mentally ill offenders" counted by the Belgian authorities, were detained (interned) in ordinary prisons (in psychiatric wings or in cell blocks among regular prisoners), accounting for 10 % of the total prison population.⁶⁸

These high rates in the five countries represent a significant vulnerable group of inmates if we have in mind that conditions of confinement are harmful by themselves to mental health for everybody that lives in prison.

Furthermore, some conditions can have a bigger harmful effect: isolation, poor prison conditions, overcrowding and lack of safety induce distress, depression and anxiety in prisoners. Prisoners with existing mental disabilities are at further risk of

⁶⁶ González 2012: 377-378. using data from Arroyo 2011, Gallego (et al) 2011, and DGIP [CSPI] 2007.

⁶⁷ Council of Europe (SPACE) 2008.

⁶⁸ Directorate-General of Penitentiary Institutions, 2012 Annual Report, pp. 101-117.

acute mental harm. On the premise that a high percentage of inmates have increased psychiatric and psychotherapeutic needs, the psychiatric capacities of prisons in the five countries are extremely low and it can be assumed that many psychological problems are not adequately diagnosed and treated. The absence of (evidence-based) treatment protocols leads to additional difficulties, including wrong clinical diagnoses of mental health problems at the start of a person's incarceration, and consequently inadequate treatment and care. This shortcoming is particularly relevant, considering that a majority of mentally ill offenders have dual or multiple diagnoses, including substance use/abuse related disorders, psychotic disorders, personality disorders, impulse control disorders, and other severe mental disorders.

Further problems prisoners with mental disabilities could face are their disadvantages regarding the access to justice. Due to their condition, they may not be sufficiently aware of their legal rights, may be unable to gain access to legal counsel without assistance, or face stigmatisation, discrimination and ill-treatment at the hands of law enforcement officials.

Another important problem is the risk of self-harm and suicide associated with mental instability. As an example, the Bulgarian National Preventive Mechanism report for 2012 says that during the last few years only in the prison in Burgas there have been about 10–12 cases annually.

9.2. Legal provisions

Mental illness and mental disorders are taken into account as a matter of health within the prison system. In this sense, in **Germany**, there is a legal recognition of the mentally ill in the *Federal Prison Act* (Section 56) and in the different *State Prison Acts*.⁶⁹ The federal regulation clearly stipulates that the prison administration is responsible for taking care of the prisoners' physical and mental health. In this context, the state's obligation to facilitate proper medical treatment in the penitentiaries corresponds to a legally enforceable right on the prisoner's part (Lesting&Stöver 2012, § 56, marg. no. 1).

As to medical care in the prison, German penitentiary law provides for the application of the so-called principle of equivalence, based on the presumption that "[l]ife in penal institutions should be approximated as far as possible to general living conditions" (Section 3 Para. 1 of the *Federal Prison Act*). But, as the German legislator never enabled the – originally designated – involvement of prisoners in the public health insurance scheme, mentally ill prisoners do not have the right to choose their

⁶⁹ See: Article 58, BayStVollzG (Bavaria); Section 56 NJVollzG (Lower Saxony); all other State Prison Acts do not explicitly mention the prison administration's responsibility for the health of the prisoners, but guarantee the latter a right to necessary medical treatment: Section 74, Para. 1 of BbgVollzG (Brandenburg); Section 62, Para. 1 of StVollzG M-V (Mecklenburg-West Pomerania); Section 72, Para. 1 LJVollzG (Rhineland-Palatinate); Section 62 Para.1 SLStVollzG (Saarland); Section 63 Para.1 of SächsStVollzG (Saxony); Section 73, Para. 1 of ThürVollzGB (Thuringia); Section 32, Para.1 of JVollzGB-3 (Baden-Württemberg); Section 24, Para. 1 of HStVollzG (Hesse).

own doctor (Laubenthal 2011, p. 387). The discretionary powers of the prison doctors may therefore assume some limitations; also, psychiatric or psychotherapeutic treatment oftentimes does not take place due to the fact that ordinary prisoners have not been diagnosed with a guilt-diminishing mental disorder and the court has not ordered their transfer to a forensic psychiatry (ibid.). If the medical officer, however, recognises that a proper treatment is not possible in the prison facilities, the *Federal Prison Act* provides for the prisoner's transfer to a suitable institution.⁷⁰

The principle of equivalence is also formally in force in the other countries, but reality, as in Germany, differs very much from legality. In **Bulgaria**, for instance, medical centres and hospitals in prisons do not cover the applicable medical standards – they are not sufficiently equipped and the personnel is less qualified than required. There are usually problems with the medical documentation accompanying the transfer of prisoners, which sometimes is either imprecise or delayed, leaving the medical personnel unaware of the potential chronic/mental diseases (and special needs) of the prisoner.

In **Belgium**, the provisions regarding health care and health protection (Art. 87–97, 99 Dupont Act (Act on Principles of Prison Administration and Prisoners' Legal Status, 2005)), medical expertise and medico-psychosocial expertise (Art. 100–101 ibid), the right to social assistance and services relating to the detention plan (Art. 102 ibid) have not so far been implemented. Royal Decrees have to be issued for the coming into force of several articles.

The same situation can be found in **Spain** where Article 37 of OLPS states that “for the provision of healthcare, establishments shall be equipped with special units intended for psychiatric observation”. However, there is a deficiency of means and a habitual absence of psychiatrists in prisons (Gallego, et al, 2010: 110).

The law itself can present limitations in this respect, as it is in the case of **Germany**: courts denied the right to a state-funded psychotherapy, arguing that the definition of illness in Section 58 of the *Federal Prison Act* did not cover psychological disorders.⁷¹ This phenomenon, however, may soon be left behind as the *Federal Prison Act* is being gradually replaced by State Prison Acts, eleven of which already mention psychotherapy or other forms of psychological aid as part of the catalogue of medical measures in the prison.

⁷⁰ See: Section 65, Para. 2. There are similar provisions in many State Prison Acts.

⁷¹ See e.g. Higher Regional Court of Karlsruhe, Decision of 19 February 1997, 2 Ws 221/95, 2 Ws 222/95.

9.3. Measures & practices

Although the *Standard Minimum Rules for the Treatment of Prisoners* outlined in its Article 82.1 that “persons who are found to be insane shall not be detained in prisons (...)”,⁷² as we have seen, this is far from the practice. Nevertheless, there are a number of interesting practices developed in some of the countries under study.

In **Belgium**, multidisciplinary teams⁷³ were set up within prison-based psychiatric wings in 2007 to get over problems with the provision of forensic psychiatric care, including the lack of systematic collection of data, the lack of residential and non-residential treatment options, and conflicts between treatment and control orientation. Although these teams were created, they are not fully staffed, and proper individual treatment of mentally ill offenders is still often underdeveloped or completely lacking in these facilities.

In **Germany**, only seven federal states – Baden-Württemberg, Bavaria, Berlin, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate and Saxony – have independent psychiatric departments in their penitentiaries. The others intend to guarantee psychological treatment via cooperation agreements with forensic or general psychiatric institutions or by offering ambulant psychiatric services. In those states where penal institutions offer in-patient treatment, however, there is a lack of complementary measures (Konrad 2009, p. 211). Another example of psychiatric treatment in German prisons is the cooperation agreement between the prison of Brandenburg and the local psychiatry, on the basis of which the prison hospital makes six beds available to prisoners with psychiatric needs (Menn 2013).

In **Bulgarian** prison facilities of open and closed regime, persons with mental disabilities can be placed in separate premises upon an order of the director.

The magnitude of the problem led the Spanish penitentiary administration to carry out studies on the subject in 2006 and 2009, after which a specific programme PAIEM (Framework Programme of Comprehensive Care for the Mentally Ill in Prisons) was developed. The framework programme PAIEM allows participation and collaboration from many third-sector organizations providing services and supportive staff. For instance, this is the case of the Iris Project within the Programme for Psychosocial Rehabilitation of Inress (the Institute of Social Work and Social Services), developed together with the GSPI in Madrid IV Prison.

⁷² Available at: https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf

⁷³ FPS Justice, DG CorrectionalFacilities, Prisons Health Care Service, Circular No. 1800: Equipes soignantes des sections psychiatriques dans les prisons, les sections ou dans les établissements de défense sociale : objectifs, composition, fonctionnement, 7 June 2007.

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10. PRISONERS WITH TERMINAL ILLNESS

10.1. Introduction. Special needs & situations of vulnerability

Terminal illness refers to a situation in which there is no reasonable medical possibility that a patient's condition will not continue to degenerate and result in death. In this context, two groups of terminally-ill prisoners are of concern: the prisoner with a specific sentence who becomes terminally ill prior to release, and the prisoner with an unlimited sentence (lifelong imprisonment) or measure (forensic psychiatry or preventive detention).

Such persons usually have special needs such as particular access to high-cost clinical resources and ongoing palliative care, which many prisoners with a terminal illness are in need of; needs in terms of adequate and timely legal representation at various stages of their detention and imprisonment; a need to be accommodated in an environment that does not exacerbate the suffering inherent in their condition and that enables ongoing medical supervision; a need for psychological and spiritual support.

10.2. Legal provisions

There is no specific regulation or legal provisions in **Belgium** addressed to this specific group of inmates. Of course, in terms of health care, pursuant to the *Dupont Act* of 2005, they are entitled to benefit from the same quality level as in the free community (Art. 88) as well as to benefit from specific modalities of their sentence execution (Art. 15 Para. 2). They might also be granted provisional release if the Court for Execution of Sentences (*Tribunal d'application des peines*⁷⁴) considers that their health condition is incompatible with detention. Articles 93, 94 and 98 also define the right (and its modalities) to be transferred, as required under medical supervision, to a specialized penitentiary or (if insufficiently equipped) extra-penitentiary hospital or care facility in order to receive appropriate treatment or surgery. Finally, terminally ill offenders may also be granted the right to be euthanized (Law of 28 May 2002).

⁷⁴ The Belgian Act of 17 May 2006 on the External Legal Position of Prisoners and the Rights of Victims established the creation of such courts which are competent to decide on the implementation of alternative measures to custody (limited detention, electronic monitoring, conditional release).

Growing numbers of older prisoners and spreading illnesses like cancer, aids and hepatitis C and a reluctance to release certain prisoners gave rise to the reflection upon dying prisoners in **Germany**. According to Section 455 of the *Federal Criminal Code*, the execution of a prison term can be interrupted (or delayed prior to its beginning) in cases of long-lasting severe illnesses which cannot be treated in a prison or a prison hospital, unless, *inter alia*, interest of public security stands against such an interruption. Terminal illness is also an issue of clemency law. Already in 1977, the Federal Constitutional Court ruled that human dignity demands that every prisoner with a sentence of lifelong imprisonment must have a concrete and realistic chance to regain freedom and re-enter society at some later point in time, thus not giving up hope.⁷⁵ The constitutional court later ruled that this “principle of hope” (*Hoffnungsprinzip*) cannot be reduced to a remainder of life in mental or physical infirmity or closeness to death.⁷⁶ However, according to the Federal Constitutional Court, it is still possible that lifelong imprisonment can be imprisonment until the prisoner dies.⁷⁷ By now, cases of terminal illnesses should offer the possibility of release, even if it is treatable in prison or if a danger of re-offending is recognised.⁷⁸

According to Article 176 of the **Lithuanian Penal Execution Code** and Article 76 of the *Criminal Code* terminal or incurable disease can be reason of exemption from punishment. Nevertheless, the case of disease doesn't mean that exemption from punishment is implemented automatically: Article 76, Paragraph 2 of the *Criminal Code* stipulates that a person who contracts a terminal illness following the passing of a judgement may be released from serving the undischarged term of the sentence. The court shall decide this issue taking into consideration the gravity of the committed criminal act, the personality of the convicted person, his conduct while serving the sentence, the nature of the illness and the period of the sentence already served. Also, there is no statistics, how many such inmates are in prisons in Lithuania.

In the case of inmates with serious or incurable diseases, the **Spanish Penal Code** recognizes the possibility of allowing parole if they are in open regime and have a favourable prognosis for re-integration (which can be seen as an inappropriate requirement for people who may be about to die).

10.3. Measures & practices

There are no statistics on the number of inmates with terminal illness in **Belgian** prisons or the number of deaths in prisons due to such illnesses.

⁷⁵ BVerfG, 1 BvL 14/76, 21-06-1977.

⁷⁶ BVerfG, 2 BvR 1146/85, 24-04-1986, Para. 38. Cf. ECHR, *Vinter et al. v. UK*, 66069/09, 130/10 and 3896/10, 09-07-2013, pp. 26-7; *Fiedeler* (2003).

⁷⁷ E.g. BVerfG, 2 BvR 539/80 and 612/80, 28-06-1983, Para. 111; BVerfG, 2 BvR 2259/04, 06-07-2005, Para. 30.

⁷⁸ BVerfG, 2 BvR 3012/09; 09-03-2010.

The spread of HIV/AIDS, tuberculosis and other serious diseases is growing, and new cases are discovered every year in most prisons in **Bulgaria**. HIV/AIDS infections are often due to unsafe injection drug use or sexual assault. Such cases are discovered through annual screenings of a random number of prisoners in each prison. The random principle on which screenings are based makes the available data incomplete. The actual number of HIV-positive inmates is most probably much higher, having in mind that some of the patients, especially those sentenced for drug-related offences, often go in and out of prison. In certain cases, upon order of the prison director, prisoners at high risk such as drug users can be placed in separated units.

No special attention is being paid to prisoners with terminal illnesses. Medical care is not of the same quality as in the hospitals outside prisons. There are prison psychologists who take care of the inmates' mental health and who might respond to emotional problems related to terminal diseases. There is no public information about the number of prisoners with terminal illnesses in Bulgarian prisons. In Bulgaria, the majority of these prisoners' special needs are rarely addressed by the prison administration due to the lack of financial resources and qualified personnel.

The critical situation of organisational and practical shortcomings in the provision of health care in **Belgian** penitentiary settings, previously described in this report, undoubtedly affects the possibility for this particularly vulnerable group of offenders to receive appropriate medical treatment.

The conflict between the health care necessity and the security constraints is particularly evident for inmates who are in a serious health condition that requires appropriate and timely medical care, which prison facilities are most often unable to provide. As reported by NGOs,⁷⁹ terminally ill offenders (as well as other offenders in critical health conditions) are usually confronted with obstacles (refusal of the prison authorities to release them when they have committed serious offenses and still have a long sentence to serve, practical difficulties to organise their transfer due to shortage of qualified staff) which impede them to receive the care required by their state.

There are no reliable statistics on the number of releases because of terminal illness or the number of deaths in prisons in **Germany** due to such illnesses. In the case of lifelong prison sentences practitioners estimate that 9 to 15 % of prisoners die in prison.⁸⁰ The number of persons released only a couple of hours or days before death is absolutely uncertain. According to Fiedeler (2003, p. 14), the Observatoire International des Prisons together with Aides-Provinces denounced Germany for its practice of releases just before death in 1996.

⁷⁹ Observatoire international des prisons, Notice 2008 de l'état du système carcéral belge, pp. 109-110.

⁸⁰ Fiedeler (2005), p. 76, referring to the Federal General Prosecutor, respectively Fiedeler (2003), p. 18.

In Berlin (Prison Hospital Plötzensee), a project on hospice and palliative medicine in prison was initiated since (prison) reality and dying prisoners asked for a dignified way to die in prison.⁸¹ Even though the topic is not a new one, discussions on it have not even started in Germany yet.

Although diseases such as HIV or hepatitis C are no longer considered terminal in **Spain**, they still pose a significant personal and public problem. The strong presence of heroin in Spanish prisons during the 1980s and the high intravenous consumption in a shared and unhealthy way provoked a HIV outbreak in Spanish prisons, accompanied by an alarming number of deaths. Some authors directly blame the prison administration for inhuman treatment given to this group in the 1980s and 1990s (as well as the indiscriminate entry of heroin in prison), thus aiding the spread of HIV and the subsequent high death rate.⁸²

Although the number of people infected with hepatitis C remains very high, the total amount currently infected with HIV has been significantly reduced. In 2004, in prisons depending on the GSPI 11.2 % of prisoners were infected with HIV, a figure that has gradually declined to reach 6 % in 2012. As to hepatitis C, the share of cases has also been reduced, but is still alarming: from 36.2 % in 2004 to 22 % in 2012.⁸³ In Catalonia, the number of inmates infected with HIV fell from about 13 % in 2006 to 7.1 % in 2012.⁸⁴ The share of new cases of hepatitis C has fallen from about 26 % in 2006 to 16 % in 2012.

As it was indicated in the sections above, prison environment turns out to be detrimental to the physical and mental health of inmates; these effects can have even greater impact in the cases of people with serious or terminal diseases such as HIV or hepatitis C. It is not just for the ease to catch a disease in prison, but also because the risk of their spread is higher than at liberty. It is important to note here that despite the severity of hepatitis C, budget cuts have affected penitentiary health by limiting the possibility for inmates to have the most advanced medicines for this disease, recovery rates after treatment; this has been reported as a possibly inhumane treatment.⁸⁵

Among the most popular programmes to prevent infection are needle exchange programmes. Prior to this, around 80 % of the infections were transmitted parenterally.⁸⁶ According to the Ministry of Health, one in three injecting drug users

⁸¹ Ärzte Zeitung, 04.10.2013.

⁸² Tarrío 1997, Manzanos 2007.

⁸³ GSPI, 2012 Annual Report.

⁸⁴ Catalan Justice Department Reports 2009, 2012.

⁸⁵ This was denounced by the Human Rights Association of Andalusia (APDHA) in 2013 <http://asscat-hepatitis.org/blog/apdha-denuncia-trato-inhumano-a-las-personas-presas-por-los-recortes-sanitarios/> (last viewed: 20 May 2014).

⁸⁶ See: Drug Users Chapter.

are HIV positive and three out of four users of injected drugs are positive for hepatitis C.⁸⁷

Another programme developed by the GSPI is the Highly Active Antiretroviral Therapy (HAART), which aims to reduce deaths from HIV turning into a chronic disease. Other programmes to prevent diseases such as hepatitis B, tuberculosis, and cervical or breast cancer were developed by the Catalan prison administration.

As Gonzalez points out “the GSPI has received congratulations on prison policy for the prevention of infectious diseases” (2012: 373). Likewise, “despite the shortcomings, the Committee for the Prevention of Torture considers that the medical services provided in prison have an acceptable quality” (González 2012: 371), although the author points out less optimistic studies and reports on the health system in prison.⁸⁸

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⁸⁷ <http://www.msssi.gob.es/gabinete/notasPrensa.do?id=2671> (last viewed: 9 May 2014).

⁸⁸ See: Manzanos 2007: 143-150; Ombudsman of Catalonia, 2007: 325.

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11. PRISONERS UNDER LIFE SENTENCE

11.1. Introduction. Special needs & situations of vulnerability

Life imprisonment is the most severe punishment in the contemporary European penal systems and it is applied to extremely serious intentional crimes which have caused death. In some countries such as Spain it does not formally exist. In countries such as Lithuania, however, it is applied in its most severe form – without the possibility of parole. Those sentenced to life imprisonment are usually posed under a very strict security regime with impossibility to meet other prisoners.

Life imprisonment has significant effects on the personality of the convicted person related to “the indeterminacy of their sentence – if, when and how release will be granted”.⁸⁹ Despite the stricter security measures, such prisoners should not be denied access to legal literature or visits by legal representatives in person and as often as they require. In time, the share of elderly persons among them is likely to increase; therefore, they will have the same need of assistance in legal issues. The most strict security regime, combined with the isolation and restrictions on free movement can cause severe disruptions in mental and physical health of persons sentenced to life imprisonment. Since they are more likely than others to develop mental health problems, they should be provided with regular psychological and/or psychiatric care. The professional capacity needed can be much broader, as studies show that the effect of long-term imprisonment is a matter of personal reaction.⁹⁰ As regards to social activities and in order to sustain their mental care and to minimise de-socialisation and institutionalisation, prison authorities should not lift their focus off life-sentenced prisoners. Introducing specific treatment programmes and opportunities for “prison careers” can motivate such inmates. Another aspect of isolation is the gradual loss of relationships with people from the outside world. Visits should be encouraged, rather than obstructed by the high security regime.

⁸⁹ United Nations, Life Imprisonment, Vienna, 1994, available at: <http://www.penalreform.org/wp-content/uploads/2013/06/UNODC-1994-Lifers.pdf>.

⁹⁰ Ibid.

11.2. Legal provisions

Life imprisonment is available in all of the countries in focus of this study except **Spain**, where it does not exist formally. However, certain conditions of the punishment for terrorism combined with the availability of extremely high security regime dispose certain inmates in a situation close to that of “lifers”. Lithuania does not allow for parole to be applied to life-sentenced prisoners, and **Bulgaria** has the two forms of life sentence – with and without parole. Life imprisonment without parole or any other realistic chance to regain liberty has been considered a violation of human rights by the ECtHR (*Vinter and others v. United Kingdom*, nos. 66069/09, 130/10 and 3896/10, 9 July 2013). In its judgment, the court refers to a decision of the German Federal Constitutional Court, demanding for the application of the above-mentioned principle of hope. Aside from life imprisonment, **Germany** and **Belgium**, provides for preventive detention which gives the authorities the possibility to prolong the sentence of an inmate who is considered a threat to society.

Life imprisonment is the most severe punishment under **Belgian** law since the formal abolishment of the death penalty in 1996. It can only be imposed for murder. According to the most recent Council of Europe’s Annual Prison Statistics, as of 1 September 2012 in Belgium there were 213 prisoners serving a sentence of life imprisonment.⁹¹

Life-sentenced prisoners serve their penalty under a very strict regime comparing with prisoners convicted to fixed-term imprisonment.⁹² However, inmates sentenced to life imprisonment are eligible to apply for parole after serving 15 years (when no previous conviction or below 3 years), 19 years (when previous conviction below 5 years), or 23 years (when previous conviction to 5 years or more). If the parole court rejects the parole, the inmate can apply every following year.

In addition to life imprisonment, a specific legal provision (the so-called “placement at the disposal of the courts for enforcement of sentences”)⁹³ allows for the extension of the initial term of the sentence. Pursuant to the *Act of 9 April 1930*, this regards offenders who are considered to pose an unacceptable risk to society and might be kept in detention after having formally served their prison sentence. The provision may be imposed for offenders: a) who have been convicted several times (recidivists); or b) who have committed sexual offences. When such offenders have served their sentence, the court for enforcement of sentences may extend their stay in prison, if it still considers them as a threat to society and their rehabilitation as impossible. This additional penalty may be imposed for a period of minimum 5

⁹¹ Aebi, M. and N. Delgrande, Council of Europe Annual Penal Statistics (Space I) – Survey 2012, University of Lausanne, 2014, p. 98.

⁹² S. Verelst, “Life Imprisonment and Human Rights in Belgium”, *Human Rights Law Review*, vol. 3, núm. 2, 2003, p. 279-290.

⁹³ Pursuant to the *Act of 26 April 2007* (which entered into force on 1 January 2012) the provision was previously called “placement at the disposal of the Government”, as the decision was taken by the Minister of Justice.

years and maximum 15 years. The court may also decide to grant them supervised release under certain conditions.

In **Bulgaria**, the life sentence is the most severe penalty imposed for extremely grave offences. It is aimed at isolating serious offenders from society by keeping them within prison facilities for the rest of their lives. After serving 20 years of a life sentence, the court can replace it by imprisonment of a total of 30 years. Life sentence without parole is a separate punishment introduced in Bulgaria together with the abolition of the death penalty in 1998. The present legislation foresees its application only in exceptional cases and the majority of crimes for which it can be imposed are crimes against the state, genocide, and/or crimes in time of war. Life sentence without parole cannot be imposed to persons who have been under 20 years of age at the time of the commission of the crime, or to women who have been pregnant at that time.

Lithuania is one of the few countries where the possibility of parole for life-sentenced prisoners is not provided. The release *de jure* is possible on compassionate grounds applying the President Grace. Nevertheless the institute of President Grace for life sentenced prisoners has been applied in only one case. Thus, the sentence of imprisonment is *de facto* irreducible.

Life-sentenced prisoners serve their penalty under a very strict regime comparing with prisoners convicted to fixed-term imprisonment: Article 51 of the *Criminal Code* establishes that convicted persons shall serve the penalty of life imprisonment in a prison. Having served the first 10 years of the sentence of life imprisonment, convicted persons may, in accordance with the cases and the procedure laid down in the respective laws, be transferred to a house of correction. There is no special legal regulation treating the vulnerabilities of life sentenced prisoners.

Although life imprisonment does not exist in **Spain** and it is unconstitutional in theory under Article 25.2 of the Spanish *Constitution* (noting that the rehabilitation of the offender as the purpose of punishment), certain situations in practice are very similar to that form of punishment. Most of them are related to the country's anti-terrorist penal policy. Under different modifications of the *Penal Code* from 2003, the maximum penalty was extended from 30 to 40 years of imprisonment (Art. 76 PC), which is closer to life imprisonment. Another modification introduced harsher conditions and the new form of calculation of prison term (taking into account the total term of all sentences imposed instead of the term of the particular sentence) for early release, applying for lighter regime or parole (Art. 72.6 OLPS, 78 and Art. 90 PC). In addition, there are inmates, classified dangerous, who are under a regime of extreme isolation – FIES (Fichero de Internos de Especial Seguimiento) system.

German penal law considers life imprisonment to be a prison sentence of undetermined duration. According to Section 57a of the German Penal Code, a life sentence may be suspended by the court after the prisoner has served at

least 15 years. Conditional early release, however, is only admissible if the particular seriousness of the convicted person's guilt does not require the prison term's continuation, the release is appropriate with respect public security interests and the convicted person consents. What is more, there are other penal measures that resemble the character of life imprisonment. Constructed as a measure of betterment and security (Maßregel zur Sicherung und Besserung), preventive detention (Sicherungsverwahrung) may be ordered if a person - who has been sentenced to a prison term of at least two years – has either already been sentenced twice, each time to a term of imprisonment of not less than one year for intentional offences which he committed prior to the current offence or as a result of one or more of these prior offences that he or she has served a term of imprisonment or detention under a measure of betterment and security for a total term of not less than two years, and only if a comprehensive evaluation of the convicted person and his offences reveals that, due to his propensity to commit serious offences, particularly of a kind resulting in serious emotional trauma or physical injury to the victim or serious economic damage, he poses a danger to the general public. The duration of preventive detention is undetermined in principle and may therefore result in something similar to life imprisonment. The latter is especially the case considering that preventive detention is executed under conditions very similar to those of regular imprisonment although the Federal Constitutional Court has called for a clear distinction with respect to the accommodation and treatment of preventiv detainees.

Moreover Section 63 of the *Penal Code* provides for the placement of an offender in a forensic psychiatry if he or she has committed an unlawful act in a state of insanity or diminished responsibility and if a comprehensive evaluation of the offender and the act leads to the conclusion that as a result of his or her condition, serious unlawful acts can be expected of him or her in the future and that s/he therefore presents a danger to the general public. Again, the duration of the placement is basically undetermined and a release only provided for in cases where an expert has considered the offender to be no danger to the public security anymore.

11.3. Measures & practices

Life-sentenced prisoners are in the focus of inspections by all major international and human rights organisations due to the severe penalty they are subjected to. The Council of Europe's Committee of Ministers has issued *Recommendation Rec(2003)23 on the management by prison administrations of life sentence and other long-*

term prisoners,⁹⁴ which provides guidance on the principles of managing and harm-reduction activities on such prisoners.

In all researched countries, there are no relevant practices to compensate lifers' vulnerabilities such as special psychological support, opportunities to a "prison career", etc.

TABLE 2: NUMBER OF PRISONERS SENTENCED TO LIFE AS OF 1 SEPT 2012

	Belgium	Bulgaria	Germany	Lithuania	Spain
Prisoners with life sentences	213	166*	2,031	110	N/A

Source: Council of Europe Annual Penal Statistics SPACE I – 2012.

* Of those 166, 59 are sentenced to life imprisonment without parole.

Inmates who are sentenced to life imprisonment or to life imprisonment without parole in **Bulgaria** are accommodated in separate prisons, or in separate sectors of a prison facility. Upon their admission in prison, they undergo mandatory psychological profiling. They are initially placed under a special regime – permanently locked in single cells under high security regime without possibility to participate in joint activities with other prisoners. They can work only if there is an opportunity to do so in separate premises under strict security measures. Upon decision of the Committee on Execution of Penalties of the respective prison inmates sentenced to life imprisonment or to life imprisonment without parole who have good behavior, they can be placed under a lighter regime (the so-called "strict regime") and can be accommodated in common cells with other prisoners and participate in joint social activities. This is possible after the fifth year of their sentence. The prisoners sentenced to life imprisonment or to life imprisonment without parole cannot have their sentence reduced by working or attending educational courses and cannot benefit from awards which are utilised outside the prison. The isolation of prisoners sentenced to life imprisonment or to life imprisonment without parole is observed also during visits, stay in open air, medical treatment, or in any other cases of leaving their security zone. The special security zone in Bulgarian prisons is usually used also for serving the disciplinary punishment of isolation.

⁹⁴ Council of Europe, Recommendation Rec(2003)23 of the Committee of Ministers to member states on the management by prison administrations of life sentence and other long-term prisoners (Adopted by the Committee of Ministers on 9 October 2003 at the 855th meeting of the Ministers' Deputies), 2003, available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=Rec\(2003\)23&Language=lanEnglish&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FD864](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(2003)23&Language=lanEnglish&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FD864).

In **Germany**, life imprisonment does not entail a separate accommodation. While the principle of hope poses a milestone when compared to life imprisonment without a chance of ever being released, the question whether life prisoners actually hold out hope of release and thus suffer less from life imprisonment is a different matter. Research has shown that this is not the case (Fiedeler 2003). The uncertainty of an actual release and its point of time takes away the positive thinking.

11.4. References

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12. PRISONERS WITH SELF-HARM AND SUICIDE RISK

12.1. Introduction. Special needs & situations of vulnerability

Self-harm and suicide incidents (including hunger strikes) are disproportionately high in prisons compared to the outside world. Although these are closely related with the inmates' mental condition in the extreme environment of the prison associated with isolation and the specific subculture, the sharp increase of such cases can also be indicative for a series of other problems, such as overcrowding, inadequate psychological aid, substance abuse, etc.

The international standards recommend that acts of self-harm should be attended from a therapeutic, rather than from a punitive point of view. The use of practices such as placing inmates in security cells or using means of restraint as prevention of self-harm is recommended by the Committee for the Prevention of Torture of the Council of Europe (CPT) only as options of last resort and only if all other options have failed. Such practices should not be used as an alternative to medical care or crisis intervention and should not compensate insufficient or undertrained personnel.⁹⁵

The **allocation** of inmates with higher self-harm and suicide risk should be carefully considered by the prison administration. Certain factors which may intensify self-harming attitudes may be related to the inmates' allocation: living in overpopulated/underpopulated cells, sharing a cell with unsuitable inmates, etc. On the other hand, the allocation of inmates with higher self-harm and suicide risk should allow easy access to guards and medical staff.

Prisons should situate sufficient number and well qualified personnel in order to **handle crisis situations** adequately. Medical and psychiatric personnel should be available, so that guards are not left to deal with such crises using means of restraint.

⁹⁵ Committee for the Prevention of Torture, Visit Report to Slovenia, 2012 (19.07.2013).

12.2. Legal provisions

In **Bulgaria**, the legal framework governing the medical care in prisons⁹⁶ allows for the use of forced medical treatment in cases when inmates' life or health is threatened (Art. 44). All such cases are reported to the prosecutor who supervises the prison. In cases of hunger strikes, the prison's doctor, psychologist and social service officer explain the possible effects of the strike and the means stipulated by law for solving the hunger strike motive problem.

In **Germany**, pursuant to Section 3 of the *Federal Prison Act*, the penal system has to be adapted to the general extramural life conditions as far as possible and harmful consequences are to be prevented for the purpose of supporting re-socialisation. Relaxations which make the daily life in prison more bearable also provide for security in prison, insofar as more deprivation among inmates also disturbs the safety inside prison (Bennefeld-Kersten 2009, p. 76).

Similar to members of the extramural society, prisoners may not be restricted in their freedom to decide upon their own life, not even in the decision to put an end to it. But the special situation in prison has to be taken into account, which may challenge the free will of the detained person (Bennefeld-Kersten 2009, p. 78).

According to German prison law, there are "special security measures" that may be ordered in respect of a prisoner where, "in view of his behaviour or on account of his mental state, there is increased danger of his escaping, or danger of violent attacks against persons or property, or the danger of suicide or self-injury." (Section 88 of the *Federal Prison Act*) In this situation, the following measures are permitted: deprivation or withholding of articles, observation at night-time, segregation from other prisoners, deprivation or restriction of outdoor exercise, detention in a specially-secured cell containing no dangerous objects and shackles.

The measure of deprivation or restriction of outdoor exercise has been repeatedly criticised by the CPT since it violated No. 27.1 of the *European Prison Rules*. While the German legislator has abolished the possibility to deprive prisoners of their outdoor exercise or to restrict it with the purpose of disciplinary action, the provision with respect to security measures is still kept in the law and even the new *State Prison Acts* have recently implemented similar rules in ignorance of the CPT's renewed recommendation without giving reasons for it, and despite the fact that experts pointed to this in parliamentary hearings (e.g. Graebisch 2013, p. 20). Recently, the CPT described it as "highly regrettable that, despite the specific recommendation repeatedly made by the committee for almost two decades, the special security measures of 'prohibition of outdoor exercise' has not only been maintained in the federal law [...], but has also been introduced in the newly-

⁹⁶ Ministry of Justice and Ministry of Health, Ordinance No 2 of 22 March 2010 on the conditions and procedure for providing medical services in the places for deprivation of liberty. Available at: <http://www.gdin.bg/Pages/Legal/Default.aspx?evntid=25681>

adopted regional laws governing preventive detention and the execution of sentences”.⁹⁷

To understand the persistence of the German legislation, it is important to comprehend the typical practical approach that is made use of by prison administrations in Germany. Special security measures are used much more often than disciplinary measures, because the latter require to follow certain procedural safeguards and thus are more complicated and entail more preconditions to be fulfilled than security measures do. This may seem justifiable when keeping in mind that the purpose of disciplinary measures is to keep up with security and order and to react to infringements retrospectively; security measures are there to protect the prisoner and/or others in an emergency. But there is a high risk of misusing this right to intervene for reasons other than protection. This is especially the case with the transfer of a prisoner to a “specially secured room without dangerous objects”, a kind of isolation cell that – apart from suicide prevention – can serve multiple purposes from the perspective of the prison administration.

Another connection between suicide prevention and disciplinary measures can emerge if the latter are ordered as a consequence of attempting (or announcing the intent of) suicide. Because an attempt of suicide does not constitute a breach of duty, it may not be used as a reason for disciplinary measures, even though this has been subject to debate in the German legal literature (Walter 2012, § 102, marginal no. 34 with reference) and has often been handled differently in practice.

As one of the disciplinary measures in prison law, disciplinary detention may be implemented (according to the *Federal Prison Act*) for up to four weeks. Restrictions of liberty going beyond the mere deprivation of liberty due to imprisonment itself and isolating conditions cause an increased vulnerability of the respective prisoners. This is explicitly acknowledged by German prison law for the execution of disciplinary detention. The law requires hearing a doctor before executing disciplinary detention inside prison and the execution has to be supervised by the doctor. The reason for this regulation is the knowledge that otherwise dangers for the health of the prisoner could occur, especially an increased risk of suicide (Walter 2012, § 107, marginal No. 1). According to German law, forced feeding is allowed in case of a hunger strike endangering the life of a prisoner (Section 101 of the *Federal Prison Act*).

Regarding hunger strikes, there is clear limitation in reference to the right to life for prisoners in **Spain**. The Constitutional Court has ruled that in case of hunger strike, due to the special relationship of submission, it is mandatory for the administration to force the feeding if the life of the prisoner is in danger (CCS 120/1990 of June 27 and CCS 1347/1990, of 19 July).

⁹⁷ Council of Europe, CPT (2014) Report to the German Government on the visit to Germany carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 November to 2 December 2013, CPT/Inf (2014) 23.

Lithuanian legal regulation does not follow any standards in protecting this group of vulnerable prisoners, e.g., Lithuania has not adopted laws or policies requiring that:

- prisoners assessed as vulnerable should be accommodated in the most convenient and appropriate for monitoring areas of the prison and treatment by the medical personnel and other relevant agencies should be made available;⁹⁸
- prisoners assessed as being at risk of suicide/self-harm should be continuously monitored by both medical and prison staff throughout the prisoner's time in custody and records of such monitoring should be kept.⁹⁹
- prisoners detained in a special cell should be visited by a doctor who shall, *inter alia*, monitor his/her physical and mental health daily and as frequently as it is necessary.¹⁰⁰

12.3. Measures & practices

In **Bulgaria**, all prisoners registered for having committed self-harm or suicide attempts undergo specialised treatment programmes. They are under the supervision of the prison psychiatrists and psychologists who consult them in private sessions to minimise the risk of self-harm.

According to the Council of Europe Penal Statistics' latest report, the suicide rate in **Belgium** was 10.1 per 10,000 inmates, against an average of 6.7 for the CoE member countries.¹⁰¹ According to the figures of the Belgian Ministry of Justice, the number of suicides in prison was 8 in 2004, 11 in 2005 and 2006, 13 in 2007, 16 in 2008, 12 in 2009, 19 in 2010, 12 in 2011 and 13 in 2012.¹⁰²

Several initiatives have been undertaken in **Belgium** in order to ensure suicide prevention among inmates:

- An evaluation tool has been developed by the Prison Health Care Service which would make it easier to detect psychiatric problems and suicidal behaviours from inmates upon their entry into prison. In some prisons, a special suicide prevention unit has been established, such as the one in

⁹⁸ SMR 22(2), 62, EPR 12.2, 39, 43.1, 46.2, 47.1, 47.2.

⁹⁹ SMR 22(2), 62, EPR 12.2, 39, 43.1, 46.2, 47.1, 47.2.

¹⁰⁰ SMR 25(1), 32(3), R(98)7:66, EPR 43.2.

¹⁰¹ Aebi, M. and N. Delgrande, Council of Europe Annual Penal Statistics (Space I) – Survey 2012, University of Lausanne, 2014, p. 131.

¹⁰² However, the figures recorded in the 1990s were higher. In 1994, the number of suicides in Belgian prisons amounted to 13 (two internees, two pre-trial detainees and nine convicts). In 1995, it amounted to 15 (two internees, five pre-trial detainees and eight sentenced prisoners). In 1996, it amounted to 18 (seven pre-trial detainees and eleven sentenced prisoners). In 1997, it amounted to 24 (two internees, eight pre-trial detainees and fourteen sentenced prisoners). In 1998, it amounted to 28 (seven internees, seven pre-trial detainees and fourteen sentenced prisoners).

Gand which opened in June 2010. It consists of a multidisciplinary team whose members (prison supervision staff, members of the psychosocial service, of the medical service, and social workers) have received specific external training. All prison staff members have also been trained on suicide risk factors screening, recognition of alarming signals and how to convey them to the unit. The unit can recommend to the prison manager to introduce specific protection measures, such as the adaptation of the living space and referral to authorities for help. From June to December 2010, the unit was involved in 48 cases.¹⁰³

- Different prisons also offer the opportunity for inmates to have free access at any hour to help phone lines, such as suicide prevention lines.
- Compulsory supervision for inmates with suicide risk has been introduced. In order to avoid their isolation, they are placed in a duo or trio cell, so that their **co-prisoner(s)** may play the role of a trusted partner or assigned inmate support and alert the prison staff if necessary. For the most serious cases, placement in the psychiatric observation wing is ordered.
- A specific module on suicide prevention has been included as part of the training provided to all prison staff members.

The Prison Department's statistical data shows that in 2012, 693 self-harm injuries and 5 suicides have occurred in **Lithuanian** prisons. The lack of legal protection of vulnerable persons in prisons has been observed in practice: prisoners who are prone to self-harm are often subjected to penalties, as, according to some prison officers, their acts are attempts at manipulation or attention seeking. The Seimas Ombudsman noted that such officers position can provoke a danger of overlooking the threat of suicide or more serious self-harm. Also, attention should be paid to the possible influence of a subculture. The CPT has expressed concern about this issue, noting that self-harming is often related with mental and psychological problems and these issues should be addressed through a therapeutic rather than criminal approach.¹⁰⁴

The annual reports published by the GSPI in reference to mortality in prisons emphasize that in recent years suicides in Spanish prisons have been increasing, becoming the second cause of death in prison after "natural death" and overcoming drug-related ones. In two years (2011-2013) the percentage of deaths from this case

¹⁰³ Directorate-General of Penitentiary Institutions, 2010 Annual Report, p. 75.

¹⁰⁴ Report to the Lithuanian Government on the Visit to Lithuania Carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 21 to 30 April 2008. CPT/Inf (2009) 22. Available at: <http://www.cpt.coe.int/documents/ltu/2009-22-inf-eng.htm> (last viewed: 26 November 2013).

has nearly doubled. The data is significant, especially considering the progressive decrease of inmates who has been taking place since 2010.¹⁰⁵

According to the GSPI, in 2012 the prison suicide rate in **Spain** was 0.41 per one thousand persons, while in outside prison it was 0.075. That is, for every person at liberty who committed suicide there were 6 imprisoned persons who resorted to this act.¹⁰⁶ This figure appeared even higher when the study by Gallego (et al 2010) showed the suicide rate in prison was 11 times as high as outside prison (p. 111).

As Gonzalez points out, according to the Ombudsman's 2007 report, "[t]he environment can influence the determination of ending one's own life, as evidenced by the fact that suicides are not allocated randomly by the various prisons. Specifically, at least during 2005, nearly 40 % of registered suicides occurred in four prisons, which points to a more oppressive atmosphere for inmates (either by increased crowding, or dealing with guards or other prisoners) or a dubious way to compute deaths" (2012: 382).

As regards self-harm, between 2005 and 2007 the number of self-harm cases in Catalonia was less than 100 per year, but after 2008 it increased to exceed 300 in 2012 (308).

Since it is an obligation for the Penitentiary Services to "safeguard the life, integrity and health of the inmates" (Art. 3.4 Prison Act), the Spanish Prison Administration, for years, has been developing in its prisons individualized programmes of detection and prevention of suicidal behaviour".¹⁰⁷

The Suicide Prevention Programme (SPP) "tries to prevent suicidal attempts. The programme is a comprehensive protocol used by technicians to identify the social or personal situations that may pose a high risk of suicide. It is complemented with the figure of "assigned inmate support". This is a prisoner who previously received special training through a course, and who accompanies the partner under treatment in his daily activities. This programme is implemented in all prisons." (GSPI 2011: 34). The proceeding set forth in *Instruction 14/2005*.

In 2007, the Ombudsman congratulated the GSPI for the development and implementation of specific programmes for suicide prevention (González 2012: 382). The number of "support inmates", undoubtedly key figures for the proper functioning of this tool of intervention, amounts to 895. This aggregate data does not allow assessing to what extent the target of 2 % of inmates trained to develop these tasks in each prison has been reached (Ombudsman Report 2007: 331). In any case,

¹⁰⁵ See more info in Paul Rodellar en VICE "¿Qué está pasando con los suicidios en las cárceles españolas?" <http://www.vice.com/es/read/que-est-pasando-con-los-suicidios-en-las-carceles-espanolas-486>.

¹⁰⁶ See: GSPI 2012:9 and statistics from the NSI in: <http://www.ine.es/jaxi/menu.do?type=pcaxis&path=/t15/p417&file=inebase&L=0> (last viewed: 4 June 2014).

¹⁰⁷ <http://www.institucionpenitenciaria.es/web/portal/Reeducacion/ProgramasEspecificos/prevencion-Suicidios.html> (last viewed: 20 May 2014).

it should be noted that for the toughest regimes of isolation there is little alternative and the programme has little influence. If we consider that it is in such circumstances that more suicides are committed, it is conceivable that the protocol is insufficient. In the Topas prison in Salamanca, there is an observation cell in the infirmary for suicide prevention (Gallego et al, 2010: 110).

In **Germany**, there are numerous researches and practices with respect to inmates with an increased self-harm and suicide risk:

- **Knowledge about the occurrence of suicide.** In comparison to the residential population, the suicide rate of male prisoners were 5.6 times as high and that of female prisoners 8.6 times as high (Opitz-Welke et al., p. 388). The German study also shows that the suicide rate in terms of both male and female pre-trial prisoners was much higher than the suicide rate of sentenced prisoners (5.2 times as high for male pre-trial detainees and 5.9 times as high for female pre-trial detainees) (ibid., pp. 387, 388). Pre-trial detainees who were accused of sexual offences and homicides committed suicide relatively more often than those who were accused of other offences (ibid., p. 388). Beyond that, the authors of the study found that most suicides were committed on Sundays and on public holidays (ibid.). The study gives no information on the mental health of the prisoners who committed suicide, but notes that 26 % of them had attempted suicide before (outside prison). That may be an indicator for mental health problems (ibid.).
- **Connection between occupation density and suicide.** As research shows, there is a conspicuous connection between occupation density and the suicide rate for both men and women. While the number of prisoners in Germany has declined (since 2006 up to the present), suicide rates among male prisoners have also fallen (Opitz-Welke et al., p. 387). In the period between 2000 and 2011 in Germany, 934 male and 26 female prisoners committed suicide. The suicide rate of male prisoners shows a linear decline from 117 suicides of men in prison in the year 2000 to 50 suicides in 2011 (ibid.). Although the suicide rate decreased in the residential population in Germany during the same time as well (ibid., p. 388), the linearity and parallelism of the decline is still striking. The suicide rate of female prisoners rose during the same period (no suicides of women in prison in 2000 and only two in 2001, 3 suicides in 2011), but it has to be considered that the total number of suicides of female prisoners is very small (ibid., pp. 387, 388). Overcrowding can be considered as a risk factor for prison suicide, as it leads to poorer access to resources for the prisoners (ibid., p. 388). Since the results fit into a pattern of relations also described for occupation numbers and suicide rates in Eastern European prisons for 1997–2008, overcrowding has to be discussed as an independent risk factor for prison suicide (Rabe 2012, pp. 222–230; Opitz-Welke et al., p. 388). Since there is

still a remarkable number of remaining cases, it is obvious, on the other hand, that there is a remaining need for further discussion.

- **Initial screening.** The WHO recommends initial screenings with respect to suicide risk of all newly arriving prison inmates.¹⁰⁸ Even though those screenings may help to detect some risk factors of suicide, it is not sufficient for a clear assessment of the risk of suicide. This will probably be more successful when conducted by an inter-disciplinary group of medical doctors, psychologists and social workers, while general prison officers will usually not be properly qualified. The CPT standards also emphasise the role of the medical screening on arrival, which requires trained staff aware of the topic of suicides in any situation and capable to recognise at least some prisoners at risk of suicide in the course of the initial screening. According to the CPT standards, suicide prevention is a matter affecting the prison's health care service. In case a person is considered to be at risk of committing suicide, this person ought to be observed for as long as necessary and their access to possible suicide tools/objects ought to be barred (CPT standards 2013, p. 44).
- **Removing clothes.** As mentioned above, according to German prison law, exceptional measures can be adopted in case a prisoner is likely to commit suicide. Two of these security measures are surveillance at night and the accommodation in a specially secured cell (*besonders gesicherter Haftraum*, called "Bunker" by prisoners). Often, these cells only contain a mattress and a toilet, while the equipment should include non-endangering items such as books or the possibility to watch TV through a glass panel (Feest/Köhne 2012, § 88 marg. No. 15). Undressing prisoners for several days for the purpose of preventing a suicide was denied by the European Court of Human Rights (*Hellig v. Germany*, no. 20999/05, 7 July 2011) this is a degrading treatment and alternatives such as tear-resistant clothes may be used.

As the example of being detained naked shows, sometimes the prison administration reacts to the risk of suicide with measures potentially perceived by the prisoner as disciplinary instruments and even as degrading treatment in the sense of Article 3 of ECHR. Another example for this is the surveillance of a prisoner during night time. While such surveillance is only convenient to prevent a suicide if it takes place frequently, constant observation leads to a situation which can even reinforce the decision to commit suicide (Feest/Köhne 2012, S. 573). The same problem arises with some other measures to prevent suicide, such as the accommodation in specially secured cells.

- **Aliveness control.** A further measure that – while originally being intended to prevent suicides – may be perceived as restrictive by the prisoner is the

¹⁰⁸ WHO 2007, Suizidprävention; also recommended for the UK in the Council Report CR99: Suicide in Prisons, Royal College of Psychiatrists 2002, p. 20.

so-called *Lebendkontrolle* (aliveness control). It implies that prison staff controls every morning whether the prisoners are still alive by waking them up and talking to all prisoners, even to those who are still asleep. This can also be perceived as a humiliating (Graebisch 2005, p. 66). Even though this may seem to be a comparatively small intervention, it should be kept in mind that it happens on a daily basis and for all of the prisoners.

- **Misuse of suicide prevention measures for disciplinary reasons.** As it is in the nature of such things, it is hard to prove a practice of renaming and misusing legal instruments within a total institution. But there are regular and convincing reports about it by prisoners, e.g. to the Prison Archive at the University of Applied Sciences and Arts, Dortmund (and before: the University of Bremen). Even in official documents a hint to this kind of practice can be found: one of the two decisions by the European Court of Human Rights on German Prison Law, the one that was already mentioned about the prisoner being detained naked for one week, deals with a case that is remarkable in several aspects. The prisoner tried to make use of his indisputably existing right to single accommodation when prison officers announced he will be moved to a three-persons-cell against his will. He immediately applied formally to the prison governor as well as to the court, but did not receive a decision until four years later. While this decision was proving that he had been right, he had no possibility to gain justice within reasonable time. He was made to leave his former cell by the use of physical force, while he resisted. He was brought to a security cell and had to stay there naked until he was transferred to the prison hospital one week later. Even though he showed visible injuries, the use of force was seen to be justified by the need of the prevention of violence. The courts, as well as the German government, pointed to a perceived need of leaving him naked by means of suicide prevention – the latter being the isolated fact that finally resulted in a judgement against Germany because of a violation of Article 3 of ECHR. Even if one did not take it for granted that the prison officers used measures provided for suicide prevention with the intention of disciplinary punishment, it has to be acknowledged that prisoners in situations like this suffer from a specific lack of evidence if it happens.

Against this backdrop, it may also be more understandable, even though not justified, why German legislators continuously insist on the possibility to deprive prisoners of their right to outside exercise or even to withhold it completely, as mentioned above. In a recent response of the German Government to the last report of the CPT, the Government argues in favour of this security measure in a three-step argumentation, saying that: 1) it is almost never made use of; 2) it is absolutely necessary to make use of it for reasons of, inter alia, suicide prevention; and 3) accommodation in a “specially secured cell” and outside exercise are mutually exclusive. This partly contradictory line of argument points to the strong urge of obtaining

the authorisation to take such measures which, in turn, can be used for reasons closer to disciplining than protection.

- **Communication technology.** Prisoners are confronted with diverse stress situations in their daily life in prison, such as fear of the loss of close persons or fear of the trial and many restrictions (Bennefeld-Kersten 2009, S. 79). For some prisoners, a well-structured daily routine or the closeness to other persons can have a protective function (ibid.). Another link exists between bullying and suicidal behaviour, even though it is not ascertained whether inmates who committed suicide had been more affected by bullying than other inmates, or whether suicidal inmates had interpreted more situations as threatening than other inmates (ibid., pp. 92). Social support could help to manage problematic occurrences, contact and communication could help the inmates to deal with their situation. One possible measure could be an intranet or telephone counselling for inmates, where new inmates not only can find information (including during the long night hours), but also can learn that other inmates have had similar feelings and problems in their situation and have found ways to deal with it (ibid., pp. 202). However, the technical infrastructure for this kind of approach is not even available in most prisons, and where it is, it would probably not be used for a purpose like this due to fear of security risks.
- **Listeners.** As the suicide rate is the highest at the first stages of the imprisonment period (WHO 2007, p. 143), one measure for the prevention of suicides is to provide for a possibility for newly arriving and potentially suicidal inmates to have conversations with other inmates who are specially trained as „listeners“ (Lohner and Pecher 2013, p. 581). For prisoners, the training to become a listener and the support they get as a listener is perceived as a good possibility to qualify and make use of their own empathic skills, which can be an important step of development (ibid.), also with respect to self-efficacy. The concept of listeners was first developed in English-speaking countries and is based on the idea of self-help amongst inmates. The new prisoner is not left alone, especially not at night, and may prefer to talk about certain thoughts with another inmate rather than with a prison officer (Lohner and Pecher 2013, p. 581). One danger of misuse could be that these listeners could potentially serve as informants who pose questions to new inmates in the interest of the authorities, instead of treating the information of the new prisoners as confidential. This is especially problematic in pre-trial detention with respect to the presumption of innocence and the right not to contribute to one's own incrimination. Due to the very same reasons though, it may be especially attractive for the authorities to gain knowledge from a prisoner at this stage of the criminal proceeding. The phenomenon of a different kind of "listeners" is well known from practice. These are prisoners talking to new arrivals about their offenses. Afterwards, they deliver the information to the prison officer and/or appear

as witnesses in court, hoping to get some privileges during their own prison time. While this is especially likely to happen in pre-trial-detention, at the same time prisoners in pre-trial detention are at the highest risk for suicide. Thus, if misuse could be prevented, it may serve as a promising model, even though it is a very limited one from the beginning. If restricted to the first night after arrival, it may help prevent suicides happening as a first reaction to imprisonment, where the first 48 hours are the most critical. Against this backdrop, the model of “listeners” has recently been tested in a Munich prison. The listeners were recruited from a special unit for social therapy and shared a specially equipped room with a remand prisoner. For implementing the model of listeners the demand for a separation of convicted prisoners (like those from the social therapy unit) and pre-trial prisoners was neglected (with the consent of the affected prisoners). It has been made clear that the listeners may not be used as assistants for tasks which should be managed by professionals (Lohner and Pecher 2013, p. 592). But while they are very close to what is already known in prisons as “listeners”, the problem how to keep the one apart from the other would need some debate.

- **Reducing deprivation.** Deprivation can also be a risk factor for suicide, but at the same time it is inevitable in prison (WHO 2007, p. 133). Even though the reduction of harm should always be important not only for the prevention of suicide, but also as something both prisoners and staff benefit from (WHO 2007, p. 134), as an asset, it can reduce the risk of suicide.
- **Suicide amongst female prisoners.** While the suicide rate among female prisoners seems to be very low, one has to keep in mind the comparatively low rate of women being imprisoned.

A WHO Guide to the Essentials in Prison Health contains recommendations to react to the risk of suicidal behaviour particularly of female inmates in prison. According to that, prison directors not only need to ensure effective health services but shall also install a “suicide prevention coordinator with in-depth understanding of the risks of suicidal and self-injurious behaviour among women in prison”. The staff that works in women’s prisons should be aware of the particular risks of self-harm among women in custody (WHO 2007, p. 160).

- **Self-harm amongst female prisoners.** Prisoners who commit suicide have often attempted to do so before or have self-inflicted injuries. There are differences, though, in the occurrence of self-harm in different countries and prisons. While in a big and – to a great extent – closed British women’s prison (London Holloway) self-harm was a major problem that was discussed and visible on a daily basis, it did not appear as any kind of important aspect in a German prison with a rather open-minded policy (Vechta Women’s Prison in Lower Saxony), where a remarkable numbers of prisoners

were profiting from home leave and the like. When comparing these prisons after visiting each for one full week, the degree of openness they offered was the most striking difference. It was followed by the difference in being permissive to (at least) the expression of despair and in offering somebody who listens. It was not a project for implementing any kind of “listener” model, but the prison’s regular staff with its empathetic approach that made a perceivable difference (Graebisch 2005). It has been argued that the experience of imprisonment is even more painful for female than for male prisoners and that this is mainly connected to intense suffering from the separation from the family. Research has shown that the atmosphere of a prison with a degree of offering at least the possibility of free expression of despair is an important approach for the prevention of suicide.

- **Pains of imprisonment and expression of despair in connection to suicide.** For as many as around twenty years, it has been known that an understanding of suicide by prisoners will only be possible if using ethnographic approaches when researching the situation of prisoners at risk of suicide, instead of mere medical/psychiatric diagnosing which aims at the prediction of suicide by looking at certain risk factors. Unfortunately, the latter is what still happens when “screening” is done after the arrival of a new prisoner. Qualitative research reveals the fact that suicide in prison is a consequence of the pains resulting from imprisonment and the inability to cope with them. Obviously, the best way to prevent suicide is to reduce these pains by changing painful prison conditions and to take steps towards openness of the prisons. As far as these pains are inevitably connected to imprisonment, the least would be to create an atmosphere conducive to the expression of despair and to attempt supporting prisoners in keeping contact with the outside world and their social ties as well as to offer professional social care in case there is none. In addition, it has become clear particularly from the research conducted by Alison Lieblich from the UK, the approach of identifying risk-factors and implementing “measures” falls short of reaching its intended goal. This is especially the case with security measures that increase the pain experienced by the prisoner and thus may also increase the chance of suicide, which could only be prevented by even closer efforts of surveillance leading to even more despair, leading to even closer efforts of surveillance.

12.4. References

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