

National monitoring bodies of prison conditions and the European standards

Mónica Aranda

European Prison Observatory. Detention conditions in the European Union



With financial support from the
Criminal Justice Programme of
the European Union



National monitoring bodies of prison conditions and the European standards

Mónica Aranda

European Prison Observatory. Detention conditions in the European Union



With financial support from the
Criminal Justice Programme of
the European Union



ANTIGONE
EDIZIONI

NATIONAL MONITORING BODIES OF PRISON CONDITIONS AND THE EUROPEAN STANDARDS

Mónica Aranda
Antigone Edizioni
Rome, January 2015

ISBN 978-88-98688-11-1



National monitoring bodies of prison conditions and the European standards by Mónica Aranda, is licensed under a [Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Unported License](https://creativecommons.org/licenses/by-nc-nd/3.0/).

Associazione Antigone Onlus

Legal residence: Via della Dogana Vecchia, 5 – 00186 Roma
Tel. +39 064511304, Fax +39 06233215489
segreteria@associazioneantigone.it
www.associazioneantigone.it

European Prison Observatory

Project Director: Mauro Palma
Project Manager: Alessio Scandurra
Scientific Coordinator: Francesca Vianello
Unit coordinators: Susanna Marietti, Alessandro Maculan, Barbara Liaras, Sophie Vidali, Anhelita Kamenska, Maria Ejchart, Antonio Pedro Dores, José Ignacio Rivera Beiras, Will McMahon
Workgroup: Roberta Bartolozzi, Patrizio Gonnella, Luigi Menna, Emiliano Nieri, Michele Miravalle, Daniela Ronco, Giovanni Torrente, Giuseppe Mosconi, Marie Crétenot, Sarah Dindo, Jean-Luc Untereiner, William Aloskofis, Nikolaos Koulouris, Athanassia Mavromati, Olga Themeli, Ilvija Pūce, Kristine Laganovska, Katarzyna Wiśniewska, Marcin Wolny, Ricardo Loureiro, Nuno Pontes, Monica Aranda Ocaña, Josep Maria Garcia Borés, Tammy McGloughlin, Arianna Silvestri, Roger Grimshaw.
www.prisonobservatory.org



With financial support from the
Criminal Justice Programme of
the European Union

This publication reflects the views only of the author, and the European Commission cannot be held responsible for any use which may be made of the information contained therein.

INDEX

INTRODUCTION.....	7
NATIONAL PREVENTIVE MECHANISMS IN EPO COUNTRIES.....	17
DETENTION CONDITIONS and HYGIENE.....	17
CONTACTS WITH THE OUTSIDE WORLD.....	18
DISCIPLINE AND PUNISHMENT.....	19
HEALTHCARE and ILL-TREATMENT.....	20
REFERENCES.....	22
MÓNICA ARANDA OCAÑA.....	26
THE EUROPEAN PRISON OBSERVATORY.....	26

INTRODUCTION

The Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) was adopted by the UN General Assembly in 2002 and came into force in 2006.

The OPCAT establishes a system of unannounced and unrestricted visits to all places where persons are deprived of their liberty by independent international and national monitoring bodies. When a State ratifies the OPCAT, its main obligation is to set up a National Preventive Mechanism (NPM) to undertake regular visits to places of detention. For the first time, an international treaty focuses on national implementation and provides a national body with specific powers to prevent torture and ill-treatment. NPMs are mandated to conduct regular visit to all types of places where persons are deprived of liberty. These visits should lead to reports and concrete recommendations to improve the protection of persons deprived of liberty. NPMs can also make comments on laws and regulations and propose reforms. Every year, NPMs have to publish an annual report on their activities and torture prevention issues in their country.

Half of the States in the world have expressed an interest in the system promoted by the OPCAT. As of February 2014, 72 States had ratified the OPCAT and an additional 20 States had signed the treaty. Many others have started consultations at the national level in the view of ratification. (www.apt.ch/en/opcat)

Let's see how the situation in the European Prison Observatory partner countries, with the following table, is:

The European Prison Observatory partner countries in respect to OPCAT

	FRANCE	GREECE	ITALY	LATVIA	POLAND	PORTUGAL	SPAIN	UK
Are there any inspection and monitoring bodies dedicated to prisons in your country?	The General controller of places of deprivation of liberty (Controleur général des lieux de privation de liberté - CGLPL) equivalent to the National Preventive Mechanism; The institution of Human Rights Defender (Défenseur des droits), equivalent to the ombudsman	The Body for the Inspection and Control of Custodial Institutions. This body is subjected to the Secretary General for Crime Policy of the Ministry of Justice, Transparency and Human Rights.	The surveillance judges. National and regional parliamentarians can visit all prisons without restrictions. Since 2003, some Municipalities and some Regions have been appointing local and regional prison Ombudsmen. The Ong Antigone.	The Ombudsman who was set up in 2007 replacing and significantly expanding the earlier National Human Rights Office (NHRO) operating since 1995.	Penitentiary Judge; Ombudsman; the Supreme Audit Office and various non-governmental organizations.	Inspeção-Geral dos Serviços de Justiça (Ministry of justice general inspection na audit body); Serviço de Auditoria e Inspeção da Direcção Geral dos Serviços Prisionais (head of prisons audit and inspection body) and Ombudsman	The surveillance judges and the Ombudsman.	<u>England and Wales</u> : Her Majesty's Inspectorate of Prisons (HMIP); Independent Monitoring Boards (IMB); Independent Custody Visiting Association (ICVA) <u>Scotland</u> : Her Majesty's Inspectorate of Prisons for Scotland (HMIPS); Independent Custody Visitors Scotland <u>Northern Ireland</u> : Independent Monitoring Boards (IMB); Criminal Justice Inspection Northern Ireland (CJINI) <u>Isle of Man</u> : Independent Monitoring Board for the Isle of Man Prison. <u>[Prisons and Probation Ombudsman (PPO) too]</u>
	FRANCE	GREECE	ITALY	LATVIA	POLAND	PORTUGAL	SPAIN	UK
Has your country signed/ratified/acceded the OPCAT? If yes - when?	Ratified on 28th July 2008	Signed 3rd March 2011; ratified 10th January 2014..	Signed on August 2003, 20th; ratified 3th April 2013.	Latvia has neither signed nor ratified the OPCAT	Ratified in 2005	Signed 15th February 2006; Ratified 15 th January 2013	Ratified on 3rd March 2006.	Ratified 10 th December 2003
	FRANCE	GREECE	ITALY	LATVIA	POLAND	PORTUGAL	SPAIN	UK
Is the National	Legislation passed in October 2007.	The law on OPCAT ratification	It has been set up but not yet designated.		Since 2008 the duties of NPM are performed by	By Law 9th May 2013.	In Spain is the Ombudsman. It was	Yes it designated its NPM on

European Prison Observatory

National monitoring bodies of prison conditions and the European standards

Preventive Mechanism (NPM) set up, designated or maintained? If yes - when?	Designation of the first mandate-holder in June 2008 by presidential decree.	designates the Ombudsperson's Office (the Citizen's Advocate) as NPM	The decree-law setting up the NPM was issued by the Government on December 2013, 23th. It was converted by the Parliament on February 2014, 21th. Furthermore, a law stating that what has been set up is meant to answer to the Opcat is needed.		the Bureau of Human Rights Defender (Ombudsman).		designed by Organic Law 1/2009, 3 November, in effect from 5th November 2009. In Catalonia it was designated as a NPM the Catalan Ombudsman, Sindic de Greuges, by Law 24/2009, 23rd December.	30 March 2009
	FRANCE	GREECE	ITALY	LATVIA	POLAND	PORTUGAL	SPAIN	UK
If the NPM exist, which type of the NPM is it (a separate body; a separate department within the National Human Rights Institution (NHRI)/Ombudsman's Office; NHRI or Ombudsman's Office itself; NHRI or Ombudsman's Office together with non-governmental organisations	A Separate Body	No. It is a discrete section within the structure of the Ombudsperson, under the Deputy Ombudsman for Human Rights.	A separate body within the Ministry of Justice.		No. Separate department within the National Human Rights Institution	No. The NPM is exercised by the Ombudsman	In Spain the NPM is exercised by the Ombudsman, with an Advisory Council as a body of technical and legal cooperation in the exercise of the functions of NPM. In Catalonia, It creates the Group of work on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment and the Advisory Council for the Prevention of Torture and other Cruel, Inhuman or Degrading bodies should assist and advise the Ombudsman in the exercise of their duties	The NPM is formed from the collective action of constituent bodies coordinated by Her Majesty's Inspectorate of Prisons (HMIP). Recently, a steering group has been formed which in 2012–13 consisted of: Her Majesty's Inspectorate of Prisons (HMIP); Criminal Justice Inspectorate Northern Ireland (CJINI); Mental Welfare Commission for Scotland (MWCS); Health Inspectorate Wales (HIW); Independent Custody Visiting Association (ICVA)

	FRANCE	GREECE	ITALY	LATVIA	POLAND	PORTUGAL	SPAIN	UK
/experts; several separate bodies etc.)?							in this field	
Are the mandate and powers of the NPM clearly set out in a constitutional or legislative text?	In the law n° 2007-1545 dated 30 Octobre 2007 and its subsequent decree of application n°2008-246 dated 12 March 2008.	Yes.	Yes, they are (in a legislative text).		No. The mandate and powers of the NPM are set out only in OPCAT	Yes. In one resolution of the Council of Ministers 32/2013.	Organic Law 1/2009, 3rd November (Spain). Law 24/2009, 23rd December (Catalonia)	No
How was the NPM elected?	It was designated by a presidential decree on 13 June 2008	By Law 10th January 2014	By decree issued by the Prime Minister after a deliberation of the Government and after having collected the opinions of the competent Parliamentary Commissions.		The Minister of Justice decided that the duties of NPM should be performed by Human Rights Defender Bureau.	By Government	Spain on October 15, 2009 by a Final Layout Organic Law 3/1981 of the Ombudsman Catalonia by Law 24/2009, 23rd December	The constituent bodies are approved by government. The Chief Inspector of Prisons is appointed by the Minister of Justice
Had civil society any form of participation? how? Who?	No	Yes. In the context of “public consultation” after the Ministry of Justice published the relevant draft law, in March 2012. Only eight comments by six individuals had been recorded then, either proposing	No		No	Yes. Applications are open (from 9 September 2014 to 9 December 2014) to associations whose objectives and relevant activities under the Convention against Torture and its Protocol. The civil society candidates will be approved by the Ombudsman.	Spain: Yes but just in a formal way. Participation of Civil Society was nothing more than an attempt to give legitimacy to the already agreed designation of the Office of the Ombudsman as national mechanism. Catalonia: Yes. In the	Not Directly. During 2006 and 2007, the government consulted with relevant bodies about the composition of the UK’s NPM and the extent to which existing bodies complied with OPCAT.

European Prison Observatory

National monitoring bodies of prison conditions and the European standards

	FRANCE	GREECE	ITALY	LATVIA	POLAND	PORTUGAL	SPAIN	UK
		some clarifications or challenging penitentiary policy priorities and the necessity to create the NPM, as well as questioning the Ombudsperson's sufficiency and credibility to accomplish such a mission					Advisory Board, a little, 12 places, 4 are reserved for persons proposed by organizations	
Who finally decided?	The designation of the NPM is at the discretion of the President of the Republic.	The Parliament	Government			Ombudsman	Spain: Government Catalonia: Parliament	Government
Is the visiting mandate of the NPM extended to all places of deprivation of liberty? Point out the places	Yes: Prisons; Health institutions; Police custody facilities; Detention centers for migrants; Closed educational centers; Court cells. Since a new legislation of May 2014, the NPM can also control the execution of a return decision through a removal procedure of illegally staying foreign nationals until final destination.	Yes, all places of deprivation of liberty, penal and administrative.	Yes it is. It is extended to "the prison facilities, the judiciary psychiatric hospitals, the health facilities for people subjected to security measures, the therapeutic and shelter communities or in any case the public and private facilities where people subjected to alternative measures or to the pre-trial measure of home arrest are hosted, the juvenile prisons and the shelter		Yes, except guarded centers for foreigners are excluded from NPM control.	Yes	Yes	Yes, although inspections of military detention facilities are by invitation only

			communities for minors subjected to some measure disposed by the judicial authority, and, upon announcement and without disturbances for the ongoing investigations, the lockups in police stations”. It is also extended to the centres for the administrative detention of migrants.					
	FRANCE	GREECE	ITALY	LATVIA	POLAND	PORTUGAL	SPAIN	UK
Does the NPM have its own budget? indicate its annual amount, or specify how is financed.	Yes. The budget for 2012 was of 4 205 996€ (2013 figure not available)	Yes	No. It “avails itself of the structures and the resources made available by the Ministry of Justice”.		No. It’s a part of the State budget which is allotted to the Ombudsman fulfilling the role of the NPM	No. It’s a part of the State budget which is allotted to the Ombudsman	No. The budget for the NPM is integrated inside the budget for the Ombudsman; Spain Ombudsman, 2012: the total budget was of 14.492.900€. Catalan Ombudsman, 2012: the total budget was of 6.998.820€	No. The member organisations have budgets for which they are accountable to their respective authorities
	FRANCE	GREECE	ITALY	LATVIA	POLAND	PORTUGAL	SPAIN	UK
Does the NPM have its own staff? If yes, how many people are employed there, and what is their professional background?	Yes. The team is composed by (in addition to the General Controller): A general secretary ;15 full time controllers ; 17 external controllers working on a permanent or ponctual basis ;5	No. The NPM staff are members of the currently existing Citizen’s Advocate personnel, who undertake additional duties without being relieved of their other obligations.	Yes. The NPM is a collegial body composed by the president and two members, “chosen among people not employed in the public administration and capable to guarantee		No. They are usually supported by the staff of Ombudsman’s local offices and external experts. Depending on the needs monitoring staff consists of lawyers, educators, psychologist and physicians. It	It is not clear yet	Yes, Advisory Council of the Spain: 1 designed by the General Council of Spanish Lawyers; 1 designed by Medical Organization Collegiate-General Council of Official Colleges of Physicians;	No. The NPM consists of various bodies that have different combinations of staffing and qualification. Not all will be employed on NPM tasks.

<p>If not, specify who fulfils the duties of the NPM?</p>	<p>controllers affected to the department of complaints; An administrative team of 4 persons. Staff members are:</p> <p>Magistrates, civil servants (including retired civil servants), hospital practitioners, seconded military staff members, etc. ; Civil society members with various backgrounds (lawyers, human rights activists, etc.).</p>	<p>Actually, a group consisting of one Depury Ombudsperson, twelve specialists and four deputies, one of them as co-ordinator and one as deputy co-ordinator, are assigned to perform the duties of the NPM. Three officers (actually one) offer administrative support.</p>	<p>independence and competence in subjects connected to the human right protection". The NPM has at its disposal a division composed by staff of the Ministry of Justice, "chosen according to the knowledge acquired in the fields of competence" of the NPM.</p>		<p>consists of 14 people.</p>		<p>1 designed by General Council of Psychologists; 5 chosen from nominations submitted to the Ombudsman personally or on behalf of organizations or associations representing civil society. Catalonia: 2 lawyers; 2 members proposed professional associations in the field of Health; 4 members nominated by nongovernmental organizations defending human rights, especially those working for the prevention of torture; 2 members proposed university research centres in the field of human rights; 2 professionals with experience in the field of torture prevention and working with persons deprived of liberty.</p>	
	<p>FRANCE</p>	<p>GREECE</p>	<p>ITALY</p>	<p>LATVIA</p>	<p>POLAND</p>	<p>PORTUGAL</p>	<p>SPAIN</p>	<p>UK</p>
<p>What are the main competencies</p>	<p>Visit places of deprivation of liberty and issue reports and recommendations</p>	<p>The NPM mandate is fourfold: visiting all detention places, reporting and</p>	<p>It promotes the collaboration with the other institutional bodies having similar</p>		<p>To check the treatment of detainees in places of detention; to make recommendations to the</p>	<p>To examine the treatment of persons deprived of liberty in places of detention, make</p>	<p>Spain: Perform regular inspections, unannounced, to places of deprivation</p>	<p>The competencies of the NPM are a function of the selection and allocation of staff and lay persons to</p>

of the NPM?	after these visits. He can chose to make the recommendations public or not; Investigate individual complaints; Transmit any information to the competent judicial and administrative authorities regarding an act that may be subjected either to public prosecution or to disciplinary sanctions;	publishing reports, submitting proposals and conducting research and expert investigation. This last competency is provided in the Citizen’s Advocate founding law, while all other competencies are assigned to the NPM by the OPCAT.	tasks, it monitors that whoever is limited in his/her personal freedom be hosted in conditions complying with international and national normative, it visits all the places listed above, it examines the case files of people deprived of their freedom and whatever document related to detention conditions, it asks the competent administrations for information and documents, it formulates recommendations to the competent administrations, it reports once a year to the Presidents of the two Chambers of the Parliament and to the Ministries of Interior and Justice.		competent authorities; to submit proposals and observations concerning existing or draft legislation; to draw up an annual report on the activities.	recommendations to the competent authorities and submit proposals and observations about the current legislation or draft legislation on the matter. "Resolution of the Council of Ministers 32/2013.	of liberty; conducting inspection records and reports; making recommendations to the authorities; making proposals and observations about the legislation or draft legislation on the subject Catalonia: all competencies are assigned to the NPM by the OPCAT.	perform specific monitoring and reporting tasks within the diverse membership. For example, the HMIP is organized into teams that specialize in the inspection of specific types of custody, such as young offender institutions, immigration detention and police custody. Inspection staff include healthcare inspectors, drugs inspectors, researchers, editorial and administrative staff.
	FRANCE	GREECE	ITALY	LATVIA	POLAND	PORTUGAL	SPAIN	UK
Does the NPM require approval from the authorities to perform their duties? If yes, Why activity	No	No. It is up to the NPM to decide if a prior notice is needed. In any case, these authorities can raise justifiable objections against a NPM visit to a specific detention	No, only in particular cases. It only has to announce its visits to the lockups in police stations.		No	No	No	

European Prison Observatory

National monitoring bodies of prison conditions and the European standards

needed.		place, subjected to the approval of the higher administrative authority within 24 hours. Justifications should be grounded on urgent and imperious reasons regarding national defense, public safety, natural disasters or serious turmoil in the detention place to be visited.						
	FRANCE	GREECE	ITALY	LATVIA	POLAND	PORTUGAL	SPAIN	UK
Is provided a limit exercise period? If yes, which is it.	Yes, 6 years		Yes, 5 Years		No	No	Spain: Yes, 5 years (as the Spanish ombudsman). Catalonia: Yes, 9 years (as the Catalan Ombudsman)	Yes, 5 years, as Her Majesty's Chief Inspector of Prisons
	FRANCE	GREECE	ITALY	LATVIA	POLAND	PORTUGAL	SPAIN	UK
It is expected some control of this NPM? If Yes, by whom and how?	No. It reports to the president of the republic and, as other independent bodies, is subjected to control by the parliament.	No. It submits an annual report to the president of the Parliament.	Yes, It can be revoked by the same authority which appointed it, without any specific procedure.		No	No	No. It reports to the Parliament	Yes. The NPM describes its accountability in terms of scrutiny by the public, NGOs and international human rights bodies.
	FRANCE	GREECE	ITALY	LATVIA	POLAND	PORTUGAL	SPAIN	UK
Are provided reasons of revoke the office?	No. the legislation provides that he cannot be removed from office before term unless he resigns	No. Only the amendment of the Law which ratified the OPCAT can result in the	Yes: Turned up incompatibility, serious violation of the NPM's duties, and definitive conviction		No	No	Yes: act with gross negligence in fulfilling the obligations and duties of the office or having been convicted	No

European Prison Observatory

National monitoring bodies of prison conditions and the European standards

	or is unable to fulfil his duty	revocation of the Ombudsperson's Office, namely a legislative initiative by the government or a proposal to introduce a new law by the opposition.	for a not unintentional crime.				by final judgment for a serious crime	
--	---------------------------------	--	--------------------------------	--	--	--	---------------------------------------	--

NATIONAL PREVENTIVE MECHANISMS IN EPO COUNTRIES

In this Report we're going to show what is happening in the different EPO countries with de National Preventive Mechanisms, what about their special interests, just considering the last Reports made by these. In some cases it has worked with existing monitoring agencies in the country by the absence of NPMS, that's what happens in Portugal (during 2013), Italy , Greece or Latvia .

Comparing all the OEP countries it can be seen that the NPM monitoring focused basically in the following issues: Detention Conditions and Hygiene; Contacts with the outside world; Discipline and Punishment; Healthcare and ill-treatment.

DETENTION CONDITIONS AND HYGIENE

The European Penitentiary Rules (EPR) establish that "The accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation (Rule 18.1) and "In all buildings where prisoners are required to live, work or congregate: a. the windows shall be large enough to enable the prisoners to read or work by natural light in normal conditions and shall allow the entrance of fresh air except where there is an adequate air conditioning system; b. artificial light shall satisfy recognised technical standards; and c. there shall be an alarm system that enables prisoners to contact the staff without delay" (Rule 18.2). It's clear that these recommendations are not correctly followed in the countries of the EPO.

The last report of the NPM of **Poland** shows that in the last years the capacity of the detention facilities in Poland increased by several thousand places. What is more, Poland still does not respect the standard adopted by Council of Europe in the matter of space for one prisoner. The NPM points out that in January 2013 1705 inmates were serving their sentence in cells which did not meet the standards of 3 m² per prisoner. In **Spain** the NPM's report from 2013 highlights the overcrowding of some prisons, the insufficient number of medical personnel and in the older Prisons, Puerto I and La Modelo, it observed pipes with bad smell, mosquitoes, lack of air conditioning or heating and humidities. Catalan Authority observed in La Modelo that in the prison yards there was trash and the places where the searches are performed smelled bad. The appalling conditions on imprisonment are also reflected in **Greece** where there is credible evidence of poor material conditions (inadequate heating and cooling, widespread lack of hot water, low food quality and quantity); extremely low levels of hygiene (wing areas infested with insects and bugs, dirty mattresses and blankets, insufficient provision of articles for personal hygiene by the prison social service to prisoners, especially foreign nationals, who lack social contacts and visits to support them financially or materially). More or less the same situations were observed by the Ombudsman's office of **Latvia**, and the CPT with the situation of life-sentenced prisoners. The regime applied to life-sentenced prisoners on the low regime level (about 65 percent of all such prisoners) remains very impoverished, the vast majority of them being confined to their cells for up to 23 hours per day. In fact, the CPT recommended revising the existing legal standards on living space for prisoners without any further delay, so as to offer at least 4 m² per prisoner in multi-occupancy cells.

In **Italy**, the visits realized by Antigone Observatory also certified that the overcrowding is maintained despite the declaration of the "state of emergency" at the beginning of 2010. This situation leads to poor

hygiene and poor conditions of the facilities. In the same sense the Provedor de Justiça from **Portugal** has denounced the situation of overcrowding in Portuguese prisons. In almost identical terms, the CPT expressed in the last visit to **France** (2010) where was stated the overcrowding and poor material conditions of detention, especially in remand prisons: assignment of two prisoners in cells of 10,5 square meter in prisons that have just been put into service (despite the principle of individual cells), no complete compartmentalization of sanitary facilities, lack of heating, etc. The CPT had questioned the government on the usefulness of a further increase in the number of prison places in relation to the interest of development of non-custodial measures. The CGLPL also several times stressed the consequences of overcrowding: mattresses on the ground, lack of privacy and risks of conflict within cells, greater shortage of access to work and activities; reduced possibilities of dialogue and care on the part of prison officers, reduced possibilities of relations (telephone, visiting room sessions) with the outside, deterioration of working conditions of staff, etc. Recently, to deal with the emergency (end of the moratorium November 25, 2014), he also proposed to “resume the use of individual cells for certain categories of inmates, as stipulated in regulations”.

This issue is being reported consistently in all the EPO countries as it's demonstrated in **Greece** too by the Report of the Citizens' Advocate which indicated the problem of the severe overcrowding. During 2013 the complaints about overcrowding increased (Citizens' Advocate, Annual Report 2013, p. 68). Judicial prisons are operating up to 300% over their official capacity. This figure would be even higher, were it not for the fact that many prisoners are detained at police centres until they can be admitted to prison facilities. This Report shows that in May 2013 it was estimated that approximately 800 people were in police detention awaiting admission to prisons. In the 2013 annual report of the Ombudsperson the situation in prisons is described as a “prison explosion”.

In **England and Wales** no improvement in the rate of overcrowding was observed, with 60 per cent of prisons overcrowded. In **Scotland** four prisons were inspected by HMCIPS in 2012-13. Positive developments were noted following an inspection at the women's prison, Cornton Vale, which had revealed 'massive overcrowding' and 'degrading' conditions. In fact, The Committee against Torture (2013a) was concerned about the consequences of prison overcrowding and has endorsed the specific concerns raised by the UK NPM about inappropriate placement of children, and about the need for mental health care and accommodation to be provided to detainees.

CONTACTS WITH THE OUTSIDE WORLD

The European Penitentiary Rules (EPR) establish that “Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons” and “Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact” (Rules 24.1 and .2). The same rules establish that “The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible” (24.4).

The NPM of **Poland** indicates that in most of the visited facilities, due to lack of special room, there was no possibility to be granted with visit in a separate, more private and unsupervised compartment and it

suggested also abandoning the practice of establishing CCTV systems in rooms dedicated to unsupervised visits. The main issues highlighted by the *Provedor de Justiça* from **Portugal** are related with the problems for inmates residents on the islands of the Azores or for inmates who are not in the mainland to develop these contacts with their families.

In this question, the CPT in **Latvia** recommended significantly increasing the visit entitlement for prisoners serving a sentence in a closed prison; all prisoners, irrespective of their regime level, should be entitled to the equivalent of one hour of visiting time per week and, preferably, should be able to receive a visit every week. The maximum number of allowed phone calls should also be increased.

DISCIPLINE AND PUNISHMENT

The European Penitentiary Rules (EPR) establish that “Special high security or safety measures shall only be applied in exceptional circumstances.” and that “There shall be clear procedures to be followed when such measures are to be applied to any prisoner.” (Rules 53.1 and .2). The ERP remember that “Disciplinary procedures shall be mechanisms of last resort.” and “Any allegation of infringement of the disciplinary rules by a prisoner shall be reported promptly to the competent authority, which shall investigate it without undue delay.” (Rules 56.1 and 58). “Punishment shall not include a total prohibition on family contact”, “Solitary confinement shall be imposed as a punishment only in exceptional cases and for a specified period of time, which shall be as short as possible” and “Instruments of restraint shall never be applied as a punishment” (Rules 60.4, .5 and .6). We must remember that “Prison staff shall not use force against prisoners except in self-defence or in cases of attempted escape or active or passive physical resistance to a lawful order and always as a last resort” and “The amount of force used shall be the minimum necessary and shall be imposed for the shortest necessary time” (Rules 64.1 and .2). Finally, it’s necessary to show that “The use of chains and irons shall be prohibited” and “Handcuffs, restraint jackets and other body restraints shall not be used except: a. if necessary, as a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority unless that authority decides otherwise; or b. by order of the director, if other methods of control fail, in order to protect a prisoner from self-injury, injury to others or to prevent serious damage to property, provided that in such instances the director shall immediately inform the medical practitioner and report to the higher prison authority” (Rules 68.1 and .2).

Control and restraint have been matters of concern expressed by non-governmental organizations in **England and Wales** such as the Prison Reform Trust and the Howard League for Penal Reform (Prison Reform Trust 2014; Howard League for Penal Reform 2013). HMIP shared the concerns of the Justice Committee in 2013 about the rise in restraint use in youth custody settings. A new system of restraint has been rolled out in these settings. Discussions about common standards and training for the use of restraint, approved by the Joint Ministerial Board on Deaths in Custody, have involved The National Council for Independent Monitoring Boards (2014). However the permissible techniques have been the subject of controversy and concern among officials and non-governmental bodies (Howard League for Penal Reform 2013). HMIP was also critical of the approval of techniques designed to inflict pain. Specific areas of controversy are the rate of strip-searching, described by HMIP as ‘pointless’, and the use of restraints for prisoners undergoing hospital stays (Prison Reform Trust, 2014; Howard League for Penal Reform, 2013).

In the report from the NPM of **Spain** it’s observed that the communication to the Judge of Surveillance of the use of instruments of restraint does not occur immediately as indicated in the law, but the next day, the

use of mechanical restraints can exceed 12 hours getting to 24 hours in some cases and during this period there isn't any control and the injuries resulting from the use of coercive means are not described properly or there are no allegations of inmates. Sometime the files aren't given to the judges. Particularly serious, NPM shows that in some prisons (Puerto I, Puerto III and Villabona) isolation sanctions exceeding 14 consecutive days provided by law. In **Latvia**, CPT reported again that it can see no justification for the systematic handcuffing of almost all life-sentenced prisoners whenever they were escorted inside the prison; it calls upon the Latvian authorities to carry out a proper individual risk assessment in respect of these prisoners with a view to adjusting the security measures applied to them accordingly. The same Report urged to take immediate steps to carry out a new and comprehensive individual risk assessment in respect of all the cases of life-sentenced prisoners at Daugavgrīva and Jelgava Prisons in which the use of handcuffs was re-imposed.

It is very interesting to note as the Committee against Torture (2013a) was concerned that the use of electrical discharge weapons (TASERs) has increased and called for them to be banned from custodial settings in **UK** *"The Committee is of the view that the use of electrical discharge weapons should be subject to the principles of necessity and proportionality and should be inadmissible in the equipment of custodial staff in prisons or any other place of deprivation of liberty"*.

HEALTHCARE and ILL-TREATMENT

In **Italy**, visits to health facilities inside prisons and conversations with the staff by Antigone's Observatory confirm that this is a key critical matter. The feedback made by the ombudsmen is related to various aspects: delays and difficulties in order to access to external visits; difficulties in order to access to alternatives to prison for health reasons; complications to be visited by some specialists (the dentist in particular) and the lack of computerized medical records and need to implement telemedicine. It's interesting to take notice that aspects that rarely emerge from the Italian Ombudsmen's report are the issue of ill-treatments or medical confidentiality. The same situation happened in other countries as **Spain**, for example. Here, the Report of the NPM says nothing about potential cases of ill-treatment but it's significant that the CPT's report from Spain in its visit detected more than 400 situations of possible ill-treatment in different places of deprivation of liberty.

In **Portugal** the report of CPT for 2013 highlighted the lack of healthcare in prisons (nurses, doctors and dentist), the lack of medical inspection at the time of admission, lack of observation of lesions on admission (EP Lisbon) and the situation of prisoners with mental disorders (EP Monsanto). The report of CPT for Portugal stated that "Once again, the CPT recommends that the Portuguese authorities ensure that all prison staff are made to understand that resort to ill - treatment is unacceptable and will result in severe disciplinary sanctions and/or criminal prosecution". The NPM of Poland recognized several cases of ill-treatment in three penitentiary units. Inmates in those units complained about violation of their physical integrity and beating. However, none of them were interested in notification to the Prosecutor's Office.

Furthermore, in **Greece**, it's demonstrated that there is insufficient medical care (considerable delays for medical screening of newly admitted inmates, lack of medical confidentiality, an inadequately equipped and seriously understaffed central Prison Hospital, lack of medical personnel and equipment, inadequate medical visits conditions, lack of recreational facilities and a vague legal context for its operation, more than 100 HIV positive inmates in extremely overcrowded conditions and insufficient infrastructure for the disabled). The same Report shows the widespread inter-prisoner violence and the exploitation due to

serious understaffing. Acute shortage of staff results in insufficient inmate supervision and support. To alleviate this situation the Interparliamentary Committee for the Penitentiary System recommended the separation of inmates according to the length of their sentences.

It's interesting to note that in the case of **Latvia**, CPT recommended steps to be taken to abolish the practice of employing prisoners as nursing assistants and to ensure that no prisoner has access to the personal medical data of other prisoners.

In this field of health, the CPT during its visit to **France** highlighted the conditions under which prisoners are transferred to local health-care establishments and receive medical treatment: frequent use of handcuffs and foot shackles during visits to medical facilities outside prison, maintaining and/or presence of members of the escort during medical consultations, sometimes against the advice of medical staff. The Committee recalled that to treat or examine prisoners subjected to coercive means is a highly questionable practice from the point of view of ethical clinical perspective and that ultimately the decision has to come from within health staff. The CGLPL had stressed particularly in his annual report 2012 that in almost all prisons visited, visits to medical facilities outside prison are always made with handcuffs and shackles, i.e. by implementing the highest level of security, without any adaptation to the person and in particular his age or health status, contrary to the regulations. The CGLPL also noted that handcuffs and foot shackles are often maintained during all the stay, with the continued presence of guards, when intended for clinical examination, and sometimes in case of hospitalization (for surgery for example) when the room is not specifically designed to receive prisoners (handcuffing in bed, two guards outside the front door). In the same sense as in France, as we said before, in **England and Wales** the use of restraints for prisoners undergoing hospital stays has been questioned (Prison Reform Trust, 2014; Howard League for Penal Reform, 2013).

REFERENCES

AA.VV. (2013), L'Europa ci guarda. Decimo rapporto sulle condizioni di detenzione in Italia, Antigone, VIII, 2

Association for the Prevention of Torture (2011) Implementation of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Federal and other Decentralised States. March 2011

Association for the Prevention of Torture (2014) 'European Court dismisses allegations of torture against the UK' September 19, 2014 http://www.ap.t.ch/en/news_on_prevention/european-court-dismisses-allegations-of-torture-brought-against-the-uk/#.VFd8_RZniul

Autoritat Catalana per a la Prevenció de la Tortura (2013), Informe de l'Autoritat Catalana de Prevenció de la Tortura. Desembre 2013.
<http://www.sindic.cat/site/unitFiles/3579/Informe%20ACPT%202013%20definitiu.pdf> (pp. 54-59)

Care Quality Commission (2013) Annual report and accounts 2012/13

Carver, R (2011) Torture, international law and the enigma of prevention Presented at the conference "Instituciones Nacionales de Derechos Humanos (INDDHH) y la Implementación de las Recomendaciones del EPU Relacionadas a la Prevención de la Tortura," Universidad de Palermo, Buenos Aires, December 2011 (co-organizer: School of Advanced Studies, University of London)

Carver, R. (2014) Does torture prevention work? Research project commissioned by the Association for the Prevention of Torture. Report of exploratory phase. Association for the Prevention of Torture.

CGLPL, Annual reports 2010/2011/2012/2013 <http://www.cgpl.fr/rapports-et-recommandations/rapports-annuels-d%E2%80%99activite/> (only in French)

Citizens' Advocate (2013). Report to General Secretary of the Ministry of Justice, Transparency and Human Rights (22-5-2013). http://www.synigoras.gr/resources/docs/stp_ethsia_2013.pdf

Citizens' Advocate (2008). Special report on prison leaves.

Committee against Torture (2013a) Concluding observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session (6-31 May 2013) Advance Unedited Version

Committee against Torture (2013b) Fiftieth session. Summary record of the 1139th meeting. CAT/C/SR.1139

Committee against Torture (2013c) Fiftieth session. Summary record of the first part (public)* of the 1136th meeting. Para 23.

Committee against Torture (2014) Seventh annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Fifty-second session 28 April–23 May 2014

Council of Europe, Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2014), Report on the eleventh visit to Greece, April 2013. <http://www.cpt.coe.int/documents/grc/2014-10-16-eng.htm>

Driegen, N.R. (2012) Between international ideals and national practices. On the Autonomy, Effectiveness and Efficiency of National Preventive Mechanisms established under UN Law. Research Thesis. Utrecht University, School of Governance (USG)

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2013) Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 to 24 October 2012.

Greek Parliament (2013). Report of the Inter-parliamentary Committee for the Penitentiary System.

HM Chief Inspector of Prisons for Scotland (2013) Annual Report

HM Government (2014) Monitoring places of detention. Fourth annual report of the United Kingdom's National Preventive Mechanism 1 April 2012- 31 March 2013

HM Inspectorate of Prisons (2013) Annual report 2012-13

HM Inspectorate of Prisons, Expectations: Inspection criteria

Howard League for Penal Reform (2013) Statement submitted to the UN Committee against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment: 5th Periodic Review of the United Kingdom of Great Britain and Northern Ireland.

Independent Monitoring Board (2013), Annual Report 2012-13 HMP Magilligan

International Journal of Human Rights 16:6, 865-882

Latvijas Republikas Tiesībsargs. Par vizītēm Iļģuciema cietumā 16.10.2013, 13.11.2013, 10.04.2014, 11.04.2014. (unpublished report)

Mecanismo Nacional de Prevención de la Tortura (2014), Informe Anual 2013. Ed. Defensor del Pueblo, Madrid (pp.105-146) Depósito legal: M-16611-2014. ISSN: 2254-3937.

Mental Welfare Commission for Scotland (2013) Annual Report 2012-13

Ministry of Justice (2014) Prison rating system dataset, 2013-14, Prison and probation trusts performance statistics: 2013 to 2014.

National Commission for Human Rights (2011). Annual Report 2011.

http://www.nchr.gr/images/pdf/aithsies_ektheseis/2011/EKTHESI_EEDA_2011.pdf

Nat Ombudsman Law (Tiesībsarga likums), (06.04.2007), Section 13.

http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Ombudsman_Law.doc

Ombudsman (Tiesībsargs) (2010). Opinion of the Ombudsman of 28 June 2010a bout health care in prisons (Tiesībsarga 2010.gada 28.jūnija atzinums par medicīnisko palīdzību ieslodzījuma vietās): available in Latvian http://www.tiesibsargs.lv/img/content/atzinumi/atzinums_par_medicinisko_palidzibu_ieslodzijuma_vietas_28.06.2010.pdf

Ombudsman of the Republic of Latvia (2013). Ombudsman's 2013 Annual Report, p.75-87. Available in English at

http://www.tiesibsargs.lv/files/content/zinojumi/Tiesibsarga%20gada%20zinojums_2013_ENG.pdf

Ombudsman of the Republic of Latvia (2013). Extracts from annual reports on civil and political rights – 2009-2012 (Izvilkumi no gada pārskatiem pilsonisko un politisko tiesību jomā no 2009.gada līdz 2012.gadam). Available in Latvian at

<http://www.tiesibsargs.lv/files/content/zinojumi/PPN%20gada%20zinojumu%20sadalas%202009-2012.pdf>

Opinions and Recommendations of the French 'Contrôleur général des lieux de privation de liberté' 2008/2014 http://www.cglpl.fr/wp-content/uploads/2014/10/Avis-et-Recommandations-CGLPL_EN-for-web.pdf (in English); http://www.cglpl.fr/wp-content/uploads/2014/10/Avis-et-Recommandations-CGLPL_ES-for-web1.pdf (in Spanish).

Piļāne, Ineta (2014). Presentation „Achievements, problems and prospects of the Office of the Ombudsman in monitoring places of detention” (in Latvian) for the international conference "Global, regional and national mechanisms for the prevention of torture and inhuman or degrading treatment: learning from one other" on 12-13 November in Riga, Latvia. Available in Latvian at http://cilvektiesibas.org.lv/site/attachments/21/11/2014/Tiesibsargs_prezentacija_CPT_konferencei_12112014_1.pdf

Prison Reform Trust (2014) Prison: the facts Bromley Briefings Summer 2014

Report to the Latvian Government on the visit to Latvia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 12 to 17 September 2013. CPT/Inf (2014) 5. Available in English at <http://www.cpt.coe.int/documents/lva/2014-05-inf-eng.htm>

Report to the Latvian Government on the visit to Latvia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 15 September 2011 <http://www.cpt.coe.int/documents/lva/2013-20-inf.eng.htm>

Steinerte, E. (2014) 'The Jewel in the Crown and Its Three Guardians: Independence of National Preventive Mechanisms Under the Optional Protocol to the UN Torture Convention' Human Rights Law Review (2014) 14(1): 1-29

Steinerte, E., Murray, R. and Laing, J (2012) 'Monitoring those deprived of their liberty in psychiatric and

social care institutions and national practice in the UK'

The sixth annual report of the National Council for Independent Monitoring Boards.

UK NPM. Ensuring the independence of NPM personnel. Guidance for members of the UK National Preventive Mechanism.

WEB SITES VISITED

http://www.apr.ch/content/files/npm/eca/Portugal_Ombudsman%20annual%20report%202013_NPM%20annex.pdf

http://www.igsj.mj.pt/sections/biblioteca/relatoriodeatividades1317/downloadFile/file/RELATORIO_DE_ATIVIDADES_2013.pdf?nocache=1405416487.95

<http://www.cpt.coe.int/documents/ita/2013-32-inf-eng.pdf>

http://www.consiglio.vda.it/difensore_civico/nuove_funzioni_i.asp

<http://www.consiglioregionale.piemonte.it/cms/comunicati/2014/maggio/2190-il-garante-per-le-carceri.html>

<http://www.difensoreregionale.lombardia.it/garante-dei-detenuiti/>

<http://www.consiglio.regione.toscana.it/oi/default.aspx?idc=42>

<http://www.assemblea.emr.it/garanti/attivita-e-servizi/detenuti>

<http://www.garantedetenutilazio.it/garante-detenuiti-lazio>

<http://www.ombudsman.marche.it/index.php?id=3>

<http://www.regione.umbria.it/sociale/garante-dei-detenuiti>

<http://www.consiglio.regione.campania.it/garantedetenuti>

http://www.consiglio.puglia.it/altre_strutture/garantepersone.asp

https://pti.regione.sicilia.it/portal/page/portal/PIR_PORTALE/PIR_LaStrutturaRegionale/PIR_PresidenzadellaRegione/PIR_UffGarantedetenuti

MÓNICA ARANDA OCAÑA

PhD in Law from the University of Barcelona (UB). Master in Criminal Justice System and Social Problems from the same University. Professor in the Department of Criminal Law and Criminal Sciences of the Faculty of Law (UB); Collaborator of the Open University of Catalonia (UOC) and Professor of the Master Degree course on Penal Execution of the University of Costa Rica. Coordinator of the Legal Penitentiary Clinic from the Innovation Project Teaching right to Law, Faculty of Law (UB). Founding member of the University Research Centre Observatory of the Penal System and Human Rights (UB). Member of the Board of Directors of the electronic Journal Criminal Critical and Power. Research in various research projects local, national and European on prisons. Author of different publications, national and comparative, concerning Spanish penal system and penitentiary.

THE EUROPEAN PRISON OBSERVATORY

The European Prison Observatory is a project coordinated by the Italian Ngo Antigone, and developed with financial support from the Criminal Justice Programme of the European Union. The partner organizations are:



Università degli Studi di Padova - Italy

Observatoire international des prisons - section française - France

Special Account of Democritus University of Thrace Department of Social Administration (EL DUTH) - Greece

Latvian Centre for Human Rights - Latvia Helsinki

Foundation for Human Rights - Poland

ISCTE - Instituto Universitário de Lisboa - Portugal

Observatory of the Penal System and Human Rights - Universidad de Barcelona - Spain

Centre for Crime and Justice Studies – United Kingdom

The European Prison Observatory studies, through quantitative and qualitative analysis, the condition of the national prison systems and the related systems of alternatives to detention, comparing these conditions to the international norms and standards relevant for the protections of detainees' fundamental rights.

The European Prison Observatory highlights to European experts and practitioners 'good practice s' existing in the different countries, both for prison management and for the protection of prisoners' fundamental rights.

Finally it promotes the adoption of the CPT standards and of the other international legal instruments on detention as a fundamental reference for the activities of the available national monitoring bodies.

European Prison Observatory

Via Monti di Pietralata 16 - 00157 Roma
Tel. +39 0644363191, Fax +39 06233215489
info@prisonobservatory.org
www.prisonobservatory.org



With financial support from the
Criminal Justice Programme of
the European Union