



Bridging views for a rights-based approach to pre-trial detention

D3.2 European Standards Guide

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Introduction to the European Standards Guide

Background and purpose

The rights of persons in detention occupy a progressively larger part of fundamental rights concerns in western democracies, recognising the inherent power asymmetry between the state and the detainee and the corresponding positive obligations for the protection of this particularly vulnerable group. These obligations are especially heightened in the case of pretrial detainees, who face severe restrictions on their liberty that deeply affect their dignity, health and fundamental rights, despite being legally presumed innocent.

The European Court of Human Rights (ECtHR) has consistently emphasised that during their imprisonment “*prisoners continue to enjoy all fundamental rights and freedoms, save for the right to liberty*”.¹ This principle is also enshrined in the European Prison Rules (EPR), which provide that “*persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody*”. The reality, however, is that the conditions of pretrial detention across Europe often fall short of regional and international standards, due to structural and systemic barriers most commonly related to overcrowding, understaffing, and limited legal remedies against detention conditions combined with ineffective external oversight.

Where individual states fail, recourse is often sought before national and regional courts applying regional laws and standards. The **Council of Europe** (CoE) has developed an extensive body of such standards, through the European Convention of Human Rights (ECHR) and its interpretation by the European Court of Human Rights (ECtHR); the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the European Committee monitoring its implementation (CPT); as well as the soft law produced by the Committee of Ministers, most prominently, the European Prison Rules. These standards mandate the protection of prisoners’ rights and establish concrete safeguards to ensure they are exercised effectively, including the right to an effective remedy, in accordance with Article 13 ECHR.

The **European Union** (EU) has recently begun to address detention issues within the scope of EU law (i.e., in cases involving cross-border judicial cooperation in criminal matters). The Court of Justice of the European Union (CJEU) has ruled, in its seminal judgement in the Case of *Aranyosi and Căldăraru*,² that Member States executing a

¹ Khoroshenko v. Russia, Application No [41418/04](#) § 116.

² Joined Cases [C-404/15 and C-659/15 PPU](#) (Grand Chamber), 5 April 2016.



European Arrest Warrant (EAW) must determine whether the requested person is subjected to a real risk of inhuman or degrading treatment due to the detention conditions in the issuing Member State, and decide on whether to postpone or end the surrender procedure accordingly. In response, the European Commission has issued in 2022 a Recommendation on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions,³ providing a specific, albeit non-binding, framework on detention in areas under EU competence. The Recommendation invites Member States to ensure that detainees have access to legal assistance, effective complaints mechanisms to challenge their detention conditions, access to information on the rules governing their detention, access to translation and interpretation services – if needed, and other procedural guarantees facilitating their access to justice.

This Guide contains a compendium of regional standards on access to justice as a key safeguard of prisoners' rights. It provides European lawyers with essential knowledge and practical guidance to successfully invoke the European framework on detention in their litigation before national and European courts and to facilitate redress of human rights violations experienced by their clients who are remanded in custody pending their criminal trial. Finally, the guide provides a comparative analysis of the two key regional frameworks (CoE and EU) and the added value of each in specific cases.

Scope

This Guide focuses exclusively on the rights of suspects and accused persons held in pretrial detention. Its analysis concerns rights, complaints, and requests that relate specifically to the conditions of detention and the mechanisms available to challenge or seek redress for rights violations. It does not address other forms of deprivation of liberty or procedural guarantees relating to the main criminal proceedings. Specifically, the following are excluded from the guide's scope: police custody, immigration and asylum detention, detention of convicted prisoners, civil/administrative detention, and mandatory commitment to psychiatric facilities.

Geographical scope: the Guide covers countries under the jurisdiction of EU and/or the CoE without specific focus on the Member States targeted in the DIGNITY project (Greece, Portugal, Ukraine). However, in some cases, references are made to

³ Commission Recommendation (EU) 2023/681 of 8 December 2022.



judgments concerning these countries. These will encapsulate general principles with broader applications.⁴

Relevant definitions

- **Pre-trial detention:** Deprivation of liberty of a suspect or accused person before sentencing, based on a judicial order of remand.
- **Remand prison/facility:** A facility specifically designated to hold persons in pre-trial detention, usually separated from convicted prisoners.
- **Suspect:** Any person notified or otherwise officially informed by competent authorities that they are suspected of a criminal offence, or who is subject to investigative measures in that capacity.
- **Accused person:** Any person charged with a criminal offence and placed in pre-trial detention pending trial or sentencing.
- **Complaint mechanism:** A formal channel, judicial or administrative, through which detainees may challenge their conditions of detention or seek redress.
- **Effective remedy:** A legal avenue that allows detainees to obtain a fair and timely review of alleged violations of their rights, in line with Article 13 ECHR and Article 47 of the EU Charter.
- **Vulnerable groups:** Detainees who, due to age, gender, health status, disability, or other characteristics, require specific safeguards.
- **Soft law standards:** Non-binding instruments such as the European Prison Rules, CPT standards, and EU recommendations, which, while lacking formal binding force, provide authoritative guidance for interpretation and practice.
- **Pilot judgement:** a special procedure used by the European Court of Human Rights to address systemic or structural problems in a State that cause numerous similar violations of the Convention (Rule 61 of the Rules of the Court).
- **Quasi-pilot judgement:** **similar to a pilot judgment, but without formally applying the pilot judgment procedure** under Rule 61. In such cases, the Court signals the need for **general measures or reforms** to prevent future violations but **does not suspend related cases** or set deadlines.

⁴ For a detailed analysis of the implementation of existing standards on pretrial detainees' access to justice in the three target countries of the DIGNITY project (Greece, Portugal, Ukraine), please refer to the research report published in the frame of the project.



Background

This chapter explores the evolution of the Council of Europe and EU frameworks on the rights of detainees. It offers an overview of the regional normative framework, including law, case law, and soft law, as a precursor to the detailed analysis of the standards related to access to justice and outlines key rights of pretrial detainees related to the conditions of their detention.

The Council of Europe

Historical Evolution

From its inception, the CoE has regarded prison standards as integral to its human rights mission. The 1950s and 1960s saw the first recommendations on humane prison treatment, followed by the adoption of the 1973 European Standard Minimum Rules for the Treatment of Prisoners. In 1987, these were replaced by the **European Prison Rules**, a non-binding but highly influential soft law text. Over time, the Committee of Ministers issued targeted recommendations on issues such as overcrowding (1999) and conditional release (2003). The establishment of the **European Committee for the Prevention of Torture (CPT)** in 1987 under the **European Convention for the Prevention of Torture** introduced a system of preventive monitoring. The ECtHR, for its part, developed its case law from the 1970s onwards, with seminal judgments in the 1990s and 2000s setting the basis for a rights-based approach to detention conditions. Thus, the CoE gradually shifted from broad principles to a dense network of binding jurisprudence and non-binding but authoritative standards.

The ECHR through the lens of ECtHR jurisprudence

The ECHR remains the cornerstone of detainees' rights in Europe. Article 3, prohibiting torture and inhuman or degrading treatment, is non-derogable and has provided the legal basis for extensive case law on prison conditions. The ECtHR has clarified that States must *"organise their penitentiary system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties"*.⁵ The Court frequently considers Article 3 in conjunction with Article 13 ECHR on the right to an effective remedy that guarantees both preventive and compensatory effects in cases of violation. Among a plethora of relevant rulings, several pilot and quasi-pilot judgments have dealt with systemic problems:

⁵ Ebedin Abi v. Turkey, Application no. [10839/09](#) § 29; see also Benediktov v. Russia, no. [106/02](#), § 37, 10, Sukhovoy v. Russia, no. [63955/00](#), § 31, 27.



- In *Ananyev and others v. Russia* (pilot judgement), ⁶ the Court confirmed that inadequate conditions of detention were a recurrent structural problem, especially when it comes to shortage of sleeping room, limited access to light and fresh air and non-existent privacy when using sanitary facilities. It also required Russia to set up effective preventive and compensatory domestic remedies, enabling detainees to obtain prompt and effective examination of their complaints by an independent authority or court empowered to order remedial action.
- In *Torreggiani and others v Italy* (pilot judgement), ⁷ the Court focused on the severe shortage of personal space over long periods of detention – ranging from fourteen to fifty-four months. It found that these conditions were not an isolated incident but stemmed from a systemic problem arising out of a chronic dysfunction of the Italian prison system.
- In *Varga v Hungary* (pilot judgement), ⁸ the Court dealt once more with the severe shortage of personal space, combined with lack of privacy, poor material conditions (lack of ventilation, insect infestations, limited access to showers), and limited out-of-cell time. It cited CPT reports of chronic overcrowding and encouraged Hungary to provide effective remedies guaranteeing genuinely effective redress for Convention violations originating in prison overcrowding.

The ECtHR has also issued judgments concerning detention conditions in Greece, Portugal, and Ukraine:

- In *Nisiotis v. Greece* (quasi-pilot judgement) ⁹ the Court addressed the severe overcrowding at Ioannina prison, leading to extremely limited personal space with 30 prisoners sharing a 50 m² dormitory, lack of general hygiene, and transmission of communicable diseases, which, taken together, amount to inhuman and/or degrading treatment. Although not a pilot judgement, ¹⁰ the Nisiotis case established the systemic and chronic nature of prison overcrowding in Greece. Its execution is monitored by the CoE Committee of Ministers.
- *Petrescu v. Portugal* (quasi-pilot judgement) ¹¹ also concerned prison overcrowding, lack of hygiene and heating, and unsanitary conditions. Although

⁶ Application Nos. [42525/07](#) and [60800/08](#).

⁷ Application Nos [43517/09](#), [46882/09](#), [55400/09](#) et al.

⁸ Application Nos [14097/12](#), [45135/12](#), [73712/12](#) et al.

⁹ Application No [34704/08](#).

¹⁰ This procedure was inserted into the Rules of the Court on 21 February 2011.

¹¹ Application No [23190/17](#).



the Court did not resort to the pilot-judgment procedure, it relied on CPT reports and on the fact that the material conditions of detention in Portugal had not been examined, as most cases in recent years had been struck out following friendly settlements, to conclude that these issues are systemic and structural and that a better integrated complaints mechanism should be established to ensure effective redress of rights violations.

- *Sukachov v. Ukraine* (pilot judgement) ¹² concerned overcrowding and other recurrent issues related to the material conditions of detention and was issued as around 120 prima facie meritorious applications against Ukraine were pending before the ECtHR. The Court addressed the minimum domestic standard of 2.5 m² of personal space per detainee and recommended a more frequent use of non-custodial measures. It stressed, in particular, the need to establish effective remedies, focusing on preventive measures and the setting up of a supervisory authority with power to investigate complaints and render binding and enforceable decisions. In view of the persisting and long-lasting nature of this issue, the Court requested that a specific time limit is set for the implementation of this measure, no later than 18 months following the judgement.

ECtHR and EAW ¹³

The ECtHR has dealt with detention conditions in the EU Members States in cases concerning European Arrest Warrants (EAWs). The Court's approach is underpinned by the **presumption of equivalent protection** (the Bosphorus presumption), established in *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland*, ¹⁴ and further developed in *Michaud v. France*. ¹⁵ Equivalent protection entails that Member States of both the CoE and the EU are presumed to remain compliant with the Convention when implementing obligations stemming from their membership in the EU, on the condition that *"the full potential of the mechanism for supervising fundamental rights provided for by EU law has been deployed"*. ¹⁶ The presumption also applies to the EU

¹² Application No [14057/17](#).

¹³ For a comprehensive list of relevant cases related to respect for fundamental rights in the framework of the EAW procedure, please refer to the Joint Factsheet on the European Arrest Warrant and Fundamental Rights ECtHR and CJEU Case-Law, issued by the ECtHR and the European Union Agency for Fundamental Rights, accessible at <https://fra.europa.eu/en/publication/2025/european-arrest-warrant-fundamental-rights-ecthr-cjeu-case-law>.

¹⁴ Application No [45036/98](#).

¹⁵ Application No [12323/11](#).

¹⁶ *Avotiņš v. Latvia* [GC], Application No [17502/07](#), § 101



mutual recognition mechanisms, as long as they are not used “automatically and mechanically”.¹⁷

In this framework, the Court has dealt with detention conditions in the issuing Member State, under Article 3 ECHR:

- In *Bivolaru and Moldovan v. France*¹⁸ it found that the conditions for surrender enshrined in the EAW Framework Decision¹⁹ - i.e. that the executing Member State must refuse the execution if detention conditions in the issuing state pose a real and individualised risk of being subjected to inhuman or degrading treatment or punishment – do not afford an autonomous margin of manoeuvre and the presumption of equivalent protection is applied in the case in question. It did, however, find that the surrender of one of the applicants to Romania did present a serious risk that they would be subjected to treatment violating Article 3 ECHR, thereby reinforcing the due diligence obligation incumbent upon Member States to ensure that the surrender of the requested person does not result in a violation of their rights.
- In *Ignatova and Others v. the United Kingdom*²⁰ the Court concluded that the same obligation to ensure protection from torture and inhuman and degrading treatment applies in cases where surrender to a Member State entails a risk of being subjected to such treatment in a third country. The applicants in this case argued that their surrender to the Italian authorities would lead to their removal to Tunisia where they would be exposed to a real risk of being subjected to torture – a fact known to the United Kingdom as the executing State.

The CPT

The CPT is the key European monitoring body for detention conditions, visiting places of detention and issuing reports with detailed country-specific recommendations. While not legally binding, its findings are often cited by the ECtHR and national courts as authoritative guidance.

In addition to its monitoring role, the CPT also issues [annual General Reports](#) which usually include sections on specific topics, such as combating prison overcrowding, the decency threshold, and complaints mechanisms. Its 26th General Report (2016)

¹⁷ Ibid., § 116.

¹⁸ Application Nos [40324/16](#) and [12623/17](#).

¹⁹ 2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

²⁰ Application No [46706/08](#).



addresses the topic of remand detention, emphasising the significance of the relevant standards for a large portion of the European prison population (25% on average) and stressing the need for heightened vigilance in light of the presumption of innocence. The standards mentioned include:

- Reception and induction programmes, providing oral and written information with due regard to the needs of prisoners with reading and writing difficulties and foreign nationals who do not speak the language(s) spoken by staff;
- Separation of remanded and sentenced prisoners in a way that allows, however, for participation in joint, out-of-cell activities if separate activities cannot be accommodated;
- Minimum personal living space of 6 m² for a single-occupancy cell and 4 m² per prisoner for a multiple-occupancy cell (excluding sanitary facilities), and avoidance of dormitories;
- Contact with the outside world, allowing a minimum of one-hour weekly visitation as well as an additional hour remote communication, including facilitated by Voice over Internet Protocol (VoIP) services;
- Placement in solitary confinement or conditions that amount to this in practice (e.g., complete prohibition of contact with other prisoners and/or the outside world), imposed only when strictly necessary and never to apply pressure to induce cooperation with the justice system.

The European Prison Rules

The [European Prison Rules](#) (adopted by the Committee of Ministers, most recently revised in 2020) codify best practices for prison administration, reflecting human rights principles. They address admission procedures, healthcare, discipline, contact with the outside world, and complaints mechanisms. Although formally soft law, they exert considerable influence and are frequently invoked in litigation and monitoring.

The EPR explicitly apply to remanded prisoners (Rule 10). The standards related to their detention are incorporated into Part VII of the Rules (Rules 94-101) and include additional safeguards such as: having the option to be accommodated in single cells (to the extent possible); being allowed to wear their own clothing; having at their disposal appropriate facilities to consult with their lawyer; potentially receiving additional visits and have access to additional forms of communication; having the option to work but not being required to; being allowed to follow the regime of sentenced prisoners if they so request.



The European Union

The EU has gradually entered the domain of detention, primarily through its impact on the operation of mutual recognition instruments and the effective functioning of judicial cooperation in criminal matters. The Charter and the CJEU play a central role here, while the 2022 EC Recommendation on detention represents a significant policy step toward minimum standards across the Union.

Historical Evolution

The European Union's engagement with detention issues has evolved incrementally. The **1999 Tampere European Council** first emphasised mutual recognition of judicial decisions, but without substantive attention to detention conditions. The **Hague Programme** (2004–2009) marked a gradual recognition of fundamental rights concerns. The **Stockholm Programme** (2010–2014) went further, explicitly acknowledging the need to address pretrial detention and prison conditions to secure mutual trust.

The **Roadmap on procedural rights** resulted in a series of directives (2009–2016) on rights in the frame criminal proceedings such as access to interpretation, information, and legal assistance and foresaw the need to address the topic of detention. The ensuing **2011 Green Paper on detention** launched a debate on EU minimum standards, though legislative follow-up stalled. The “Roadmap Directives” do not address the issue of detention conditions, with the exception of Directive 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, which sets out conditions for the treatment of children in the case of deprivation of liberty, in line with their best interests (Article 12).

Most recently, the Commission issued a **Recommendation on procedural rights of suspects and accused persons in criminal proceedings and on detention conditions**. While not binding, it invites Member States to ensure that detention is a measure of last resort, to improve material conditions, and to guarantee effective remedies. It emphasises access to legal assistance, complaint mechanisms, and alternatives to pretrial detention.

Detention within the scope of EU law – CJEU Jurisprudence ²¹

The EU can act only within the limits of the competences conferred upon it by the Member States. ²² In the area of criminal law, this competence is rooted in Title V, Chapter 4 of the Treaty on the Functioning of the European Union (TFEU) on Judicial

²¹ Ibid., 12.

²² Article 5 Treaty on European Union.



Cooperation in criminal matters, which focusses on mutual recognition and cross-border cooperation, without mention to detention. It follows that, although the EU Charter of Fundamental Rights (CFR) contains provisions equivalent to those of the ECHR in terms of protection from torture and inhuman or degrading treatment or punishment (Article 4), protection in the event of removal, expulsion or extradition (Article 19), and effective remedies (Article 47), these only apply within the scope of application of EU law (Article 51).

Nevertheless, the Court of Justice (CJEU) has had the opportunity to examine detention conditions within the context of mutual recognition:

- In *Aranyosi and Căldăraru*,²³ it held that surrender under an EAW may be postponed or refused if detention conditions in the issuing State risk violating Article 4 CFR. This jurisprudence highlighted the direct impact of detention standards on the functioning of EU criminal law cooperation. However, the Court considered cases where, according to information that is “*objective, reliable, specific and properly updated*” and that demonstrates systemic or generalised deficiencies, or deficiencies which may affect certain groups of people or places of detention.
- In *Generalstaatsanwaltschaft Bremen*,²⁴ the Court found that even if the issuing Member State provides for legal remedies that make it possible to review the legality of detention conditions from the perspective of fundamental rights, the executing judicial authorities must still perform an individual assessment of the situation of each person concerned in order to assess if, on account of those conditions, there is a real risk of inhuman or degrading treatment.
- In *Dorobantu*,²⁵ the Court dealt with the assessment of the information available regarding the detention conditions in the issuing Member State, in particular in the prison intended to detain the requested person. It held that the executing authority could request from the issuing authority any information deemed relevant and could rely on assurances provided by the latter where a definite infringement of Article 4 CFR.
- In *E.D.L.*,²⁶ the Court ruled that Member States must not execute an EAW if a surrender would expose the requested person to “*a real risk [...] of suffering a serious, rapid and irreversible decline in his or her state of health or a significant*

²³ Joined cases [C-404/15](#) and [C-659/15](#) (PPU)

²⁴ Case [C-220/18](#) (PPU).

²⁵ Case [C-128/18](#).

²⁶ Case [C-699/21](#).



reduction in life expectancy". Crucially, in this case, the CJEU did not apply the two-step test established in *Aranyosi and Căldăraru* regarding the systemic nature of deficiencies in the issuing state's prison system.

- In *GN*,²⁷ the Court acknowledged that refusal to execute a European Arrest Warrant (EAW) may also be justified in circumstances beyond those falling within the scope of Article 4 CFR, where *"systemic or generalised deficiencies in the conditions of detention of mothers of young children and of the care of those children in the issuing Member State"* could lead to a violation of the right for respect of private and family life (Article 7 CFR) and the best interests of the child (specifically Article 24 (2) and (3) CFR).
- On the other hand, in *Breian*,²⁸ the Court ruled that when examining detention conditions in the issuing Member State, the executing judicial authority could not refuse to execute an EAW on the basis of information concerning the detention conditions in prisons in the issuing Member State which it had obtained itself, without requesting supplementary information from the issuing judicial authority. Furthermore, the executing judicial authority was not allowed to apply a higher standard as regards detention conditions than that guaranteed by Article 4 of the Charter or demand a higher level of national protection of fundamental rights from another Member State than that provided by EU law. Thus, they could not require the issuing judicial authority to provide the executing judicial authority with a "precise plan for ... the execution of the sentence" or "precise criteria for determining a particular regime of execution" required for in the national law of the executing Member State.

The rights of detainees

Detainees retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody (EPR 2). Restrictions to these rights must be exceptional, proportionate and justified by legitimate aims. That being said, the rights of detainees have been systematised in law and jurisprudence in several key categories listed below.²⁹ Although this guide focuses on the right of access to justice, as a key guarantor for the exercise of all rights in detention, this section serves to exemplify the type of issues that may give rise to violations which can be redressed through effective remedies.

²⁷ Case [C-261/22](#).

²⁸ Case [C-318/24](#).

²⁹ The list follows the typology followed in the ECtHR Guide on Prisoners' Rights, accessible at <https://ks.echr.coe.int/web/echr-ks/all-case-law-guides>. The cases referred to below concern ECtHR judgments.



I. Conditions of imprisonment, involving:

- Admission and record-keeping ³⁰
- Placement ³¹
- Accommodation ³²
- Hygiene ³³
- Clothing and bedding ³⁴
- Nutrition ³⁵
- Exercise and recreation ³⁶
- Searches and control ³⁷
- Transport of prisoners ³⁸

³⁰ Relevant cases include [Hadzhieva v. Bulgaria](#) (information on family situation); [Norman v. the United Kingdom](#) (confidentiality of family and personal information); [Cătălin Eugen Micu v. Romania](#) (medical screening at a reasonable time after admission); [S. and Marper v. the United Kingdom](#) and [Gardel v. France](#), (personal data protection).

³¹ Relevant cases include [Vintman v. Ukraine](#) and [Khodorkovskiy and Lebedev v. Russia](#), (maintenance of close family relationships); [Labaca Larrea and Others v. France](#) and [Fraile Iturralde v. Spain](#) (transfers in the context of terrorism and serious crime); [Bamouhammad v. Belgium](#) and [Stanislav Lutsenko v. Ukraine](#) (concerns in the event of unwarranted multiple transfers).

³² Relevant cases include [Muršić v. Croatia](#), [Samaras and Others v. Greece](#), [Varga and Others v. Hungary](#), [Orchowski v. Poland](#), [Ananyev and Others v. Russia](#) (personal space in combination with additional factors, e.g., out-of-cell time, duration of detention, etc.); [Lautaru and Seed v. Greece](#) and [İlerde and Others v. Türkiye](#) (calculation of cell space).

³³ Relevant cases include [Ananyev and Others v. Russia](#), [Szafranski v. Poland](#), [Aleksandr Makarov v. Russia](#), [Longin v. Croatia](#) (access to toilets and sanitary facilities, privacy; [Ananyev and Others v. Russia](#) and [Neshkov and Others v. Bulgaria](#) (vermin infestations).

³⁴ Relevant cases include [Ananyev and Others v. Russia](#) (lack of individual sleeping space); [Nazarenko v. Ukraine](#) (obligation to wear prison uniforms).

³⁵ Relevant cases include [Dudchenko v. Russia](#), [Kadikis v. Latvia \(no. 2\)](#), [Stepuleac v. Moldova](#) (insufficient food); [Korneykova and Korneykov v. Ukraine](#) (adequate nutrition when breastfeeding); [D and E.S. v. United Kingdom](#), [Jakóbski v. Poland](#), [Erlich and Kastro v. Romania](#) (food complying with religious beliefs); [Ebedin Abi v. Turkey](#) (special dietary requirements due to health reasons).

³⁶ Relevant cases include [Gladkiy v. Russia](#), [Tunis v. Estonia](#) (out-of-cell time - duration); [Moiseyev v. Russia](#), [Mandić and Jović v. Slovenia](#) (suitable facilities).

³⁷ Relevant cases include [Wainwright v. the United Kingdom](#), [Leroy and Others v. France](#), [Van der Ven v. the Netherlands](#), [Roth v. Germany](#) (proportionality and justification of body searches); [Syrianos v. Greece](#) (sanctions for refusing body search); [Valašinas v. Lithuania](#), [Adamčo v. Slovakia \(no. 2\)](#), [S.J. v. Luxembourg \(no. 2\)](#) (breach of dignity); [Dejnek v. Poland](#), [Vasilică Mocanu v. Romania](#), [Gorlov and Others v. Russia](#) (violation of privacy).

³⁸ Relevant cases include [Tomov and Others v. Russia](#) (list of requirements for the transport of prisoners); [Yakovenko v. Ukraine](#), [Vlasov v. Russia](#), [Jatsõšõn v. Estonia](#) (inadequate space within transport vehicles); [Voicu v. Romania](#), [Engel v. Hungary](#), [Tarariyeva v. Russia](#) (safety measures against injury while on the move); [Sudarkov v. Russia](#), [Dudchenko v. Russia](#), [Guliyev v. Russia](#) (transport by train).



II. Contact with the outside world, involving:

- Family contacts and visits ³⁹
- Right to marry ⁴⁰
- Protection of different means of communication ⁴¹

III. Healthcare in Prison, involving:

- Care for physical illnesses, disabilities and old age ⁴²
- Infectious diseases ⁴³
- Mental health care ⁴⁴
- Drug addiction ⁴⁵
- Other health-related issues ⁴⁶

IV. Good order in prison, involving:

- Use of force ⁴⁷
- Use of instruments of restraint ⁴⁸
- Disciplinary measures and punishment ⁴⁹

³⁹ Relevant cases include [Khoroshenko v. Russia](#) (obligation to assist contact with family); [Aliiev v. Ukraine](#), [Trosin v. Ukraine](#) (restrictions to the right of family life); [Kučera v. Slovakia](#) (restrictions during pre-trial detention); [Lorsé and Others v. the Netherlands](#), [Piechowicz v. Poland](#) (high security prisons); [Dickson v. the United Kingdom](#), [Aliiev v. Ukraine](#) (conjugal visits); [Płoski v. Poland](#), [Schemkamper v. France](#), [Sannino v. Italy](#), [Lind v. Russia](#) (permission to visit an ailing relative or to attend a funeral).

⁴⁰ Relevant cases include [Frasik v. Poland](#), [Chernetskiy v. Ukraine](#) (justification of restrictions).

⁴¹ Relevant cases include [Enea v. Italy](#), [Nuh Uzun and Others v. Turkey](#), [Gullotti v. Italy](#) (restriction/monitoring of correspondence); [A.B. v. the Netherlands](#), [Davison v. the United Kingdom](#), [Lebois v. Bulgaria](#), [Bădulescu v. Portugal](#) (communication through telephone); [Ciupercescu v. Romania \(no. 3\)](#), [Kalda v. Estonia](#), [Jankovskis v. Lithuania](#) (use of the internet).

⁴² Relevant cases include [Serifis v. Greece](#), [Holomiov v. Moldova](#), [Xiros v. Greece](#), [Dorneanu v. Romania](#), [Price v. the United Kingdom](#), [Hüseyin Yıldırım v. Turkey](#).

⁴³ Relevant cases include [Poghossian v. Georgia](#), [Kotsaftis v. Greece](#), [Salakhov and Islyamova v. Ukraine](#), [Dikaïou and Others v. Greece](#), [Martzaklis and Others v. Greece](#).

⁴⁴ Relevant cases include [Sławomir Musiał v. Poland](#), [Murray v. the Netherlands](#), [Rooman v. Belgium](#), [Kudła v. Poland](#).

⁴⁵ Relevant cases include [Marro and Others v. Italy](#), [Patsaki and Others v. Greece](#).

⁴⁶ Relevant cases include [Aparicio Benito v. Spain](#), [Elefteriadis v. Romania](#) (passive smoking), [Ünsal and Timtik v. Turkey](#), [Nevmerzhtsky v. Ukraine](#), [Yakovlyev v. Ukraine](#), [Ciorap v. Moldova](#), [Karabet and Others v. Ukraine](#) (hunger strike).

⁴⁷ Relevant cases include [Tali v. Estonia](#), [Bouyid v. Belgium](#), [Davydov and Others v. Ukraine](#), [Kalkan v. Denmark](#), [Kukhalashvili and others v. Georgia](#).

⁴⁸ Relevant cases include [Korneykova and Korneykov v. Ukraine](#), [Nevmerzhtsky v. Ukraine](#), [Gorodnichev v. Russia](#), [Aggerholm v. Denmark](#).



- Inter-prisoner violence ⁵⁰

V. Freedom of thought, conscience and religion ⁵¹

VI. Freedom of expression ⁵²

VII Right to property ⁵³

VIII. Education ⁵⁴

IX. Prohibition of discrimination ⁵⁵

The above list is not exhaustive. The ECtHR Guide on prisoners' rights contains additional categories of rights – less relevant to pretrial detainees. It also addresses the rights of special categories of detainees, including women, children, and third-country nationals. For a full list of relevant case law, please refer to the Guide, cited above, under footnote 29. The following chapter contains an in-depth analysis of the right to access to justice and to an effective remedy.

⁴⁹ Relevant cases include [Campbell and Fell v. the United Kingdom](#), [Ezeh and Connors v. the United Kingdom](#) (increase in detention time), [Štitić v. Croatia](#), [Ramishvili and Kokhredze v. Georgia](#), [Ivan Karpenko v. Ukraine](#), [Ramirez Sanchez v. France](#), [A.T. v. Estonia \(no. 2\)](#), [X v. Turkey](#) (solitary confinement), [Enea v. Italy](#) (restrictions to rights), [Keenan v. the United Kingdom](#) (segregation as punishment in the case of mental illness).

⁵⁰ Relevant cases include [Premininy v. Russia](#), [Yuri Illarionovitch Shchokin v. Ukraine](#), [D.F. v. Latvia](#),

⁵¹ Relevant cases include [Mozer v. the Republic of Moldova and Russia](#) (visits from a priest or pastor); [Moroz v. Ukraine](#) (denial of participation in religious celebrations and confiscation of religious books for pretrial detainees); [Constantin-Lucian Spînu v. Romania](#) (attendances of religious service during Covid-19); [Abdullah Yalçın v. Turkey \(no. 2\)](#) (refusal to allocate a room for congressional prayers); [Korostelev v. Russia](#) (punishment for manifestation of religious belief); [Saran v. Romania](#), [Neagu v. Romania](#), [Mariș v. Romania](#) (ascertaining changes in religious affiliations).

⁵² Relevant cases include [Mesut Yurtsever and Others v. Turkey](#), [Mehmet Çiftci v. Turkey](#), [Mirgadirov v. Azerbaijan and Turkey](#) (freedom to receive information); [Donaldson v. the United Kingdom](#), [Nilsen v. the United Kingdom](#), [Yankov v. Bulgaria](#), [Zayidov v. Azerbaijan \(no. 2\)](#), [Bidart v. France](#), (restrictions to freedom of expression).

⁵³ Relevant cases include [Laduna v. Slovakia](#) (repayment of debt); [Michał Korgul v. Poland](#), [Siemaszko and Olszyński v. Poland](#) (deposition of savings); [Tendam v. Spain](#) (care for seized items).

⁵⁴ Relevant cases include [Velyo Velez v. Bulgaria](#), [Uzun v. Turkey](#), [Koureas and Others v. Greece](#) (arbitrary vs. justified restrictions); [Velyo Velez v. Bulgaria](#) (access to education for pretrial detainees); [Mehmet Reşit Arslan and Orhan Bingöl v. Turkey](#) (use of electronic material).

⁵⁵ [Ēcis v. Latvia](#) (blanket ban on leave based on gender); [Chaldayev v. Russia](#), [Varnas v. Lithuania](#), [Gülray Cetin v. Turkey](#) (differences in treatment based on remanded/convicted status); [Martzaklis and Others v. Greece](#), [Bechi v. Romania](#) (segregation of HIV+ prisoners), [X v. Turkey](#) (placement in protective solitary confinement due to sexual orientation).



Comparative Assessment of the CoE and EU Frameworks

While both frameworks contribute to the protection of pretrial detainees, they differ significantly in terms of their scope and potential effects.

Territorial scope. The Council of Europe, through the ECHR, covers all 46 of its member states with binding obligations. The EU framework applies only to the 27 EU Member States and only within the scope of EU law.

Binding force. ECtHR judgments are binding on the respondent state regarding the case at hand (Article 46(1) ECHR): the state is obliged to abide by the judgment, which may include individual measures (compensation, release) and general measures (law or policy reform). Therefore, they do not strictly establish legal precedent and are not binding to third states. However, the Court applies the principle of legal certainty and tends to follow its established reasoning unless there are specific reasons to depart. This may lead to *de facto* precedents, but the threshold applied is significantly lower than that which is required, e.g., to overturn a precedent in Common law systems.

Pilot and quasi-pilot judgments address structural and systemic issues, providing a simplified procedure for dealing with 'repetitive' cases. In pilot judgments, the Court identifies a structural problem that has resulted in a breach, and then prescribes remedial measures that the respondent state must adopt to comply with the Convention and the Court's case law. Pending 'clone' applications can then be disposed of more efficiently: the Court can either rule in line with the pilot judgment or dismiss them once appropriate reforms are in place. Quasi-pilot judgments achieve a similar outcome without formally invoking the pilot procedure — they highlight systemic failings and invite general measures, thereby streamlining the handling of repetitive cases.

The CoE framework also includes **significant soft law**, most notably the European Prison Rules. While not legally binding, the Rules are widely regarded as authoritative standards of good practice. In some member states they are expressly referenced in legislation, thereby acquiring binding effect in domestic law. Elsewhere, they may be used as interpretive guidance in legal reasoning, but domestic courts are not formally bound to apply them and may choose not to do so in relevant cases.

The **EU framework** also combines binding and non-binding instruments. The Charter of Fundamental Rights of the European Union has the same legal value as the Treaties and is binding on EU institutions and on Member States, but only when they are acting within the scope of EU law. Its provisions therefore apply primarily in contexts such as mutual recognition and judicial cooperation. The principle of mutual recognition, enshrined in Article 82 TFEU and operationalised most prominently through the



European Arrest Warrant, is binding and directly shapes national practice. By contrast, the EU **has not adopted secondary legislation harmonising detention conditions**, and instruments such as the 2011 Green Paper on detention or the 2022 Commission Recommendation remain soft law without binding force.

Level of detail. The **Council of Europe** has developed highly detailed jurisprudence and soft law on detention. The ECtHR has built a dense body of case law on Article 3 of the ECHR, specifying minimum standards for cell space, access to light and ventilation, healthcare, discipline, and complaint mechanisms, while also clarifying the scope of Article 13 effective remedies. This jurisprudence is complemented by the CPT's thematic standards, the European Prison Rules, and a series of Committee of Ministers' recommendations, which together provide granular guidance on nearly every aspect of detention life. National courts and prison administrations across Europe frequently draw on these standards, and the ECtHR itself often cites CPT findings and the European Prison Rules in its judgments. In effect, the Council of Europe framework amounts to a comprehensive "codex" of detention standards, both binding and interpretative.

By contrast, **EU** instruments remain more general, reflecting the Union's limited competences in the field. The EU has not adopted binding directives harmonising prison conditions; instead, it has approached detention indirectly, mainly as a factor influencing the functioning of mutual recognition mechanisms. Its soft law instruments are framed in broad policy terms rather than setting out concrete, measurable obligations. Accordingly, while the Council of Europe provides detailed, substantive benchmarks on detention conditions, the EU's contribution is primarily procedural and functional: ensuring that poor detention conditions do not undermine mutual trust and judicial cooperation among Member States.

Redress mechanisms. The ECtHR provides an external judicial avenue for individuals once domestic remedies have been exhausted, ensuring binding judgments that require both individual and general measures of compliance. In addition, under Protocol No. 16, the Court may issue advisory opinions at the request of the highest national courts, offering authoritative guidance on Convention interpretation even before a final domestic ruling. This strengthens consistency and gives national judges a preventive tool to avoid violations.

Within the EU, remedies depend primarily on national systems but are reinforced through the doctrines of **direct effect** and **effectiveness**. Certain provisions of EU law, including the Charter of Fundamental Rights, where applicable, may be directly invoked before national courts if they are sufficiently clear, precise, and unconditional. Moreover, under the principle of effectiveness, Member States must ensure that rights



conferred by EU law can be effectively exercised in practice, which limits the ability of domestic procedural rules to restrict access to remedies. The CJEU's preliminary ruling procedure (Article 267 TFEU) plays a crucial role here: national courts can (and in the case of courts of last instance, must) refer questions about the interpretation of EU law, including the Charter, to the CJEU. Through such rulings, the Court indirectly shapes the remedies available in Member States.

Practical impact. Despite the ECtHR's rich case law and the detailed standards developed by the Council of Europe, structural problems persist because **implementation at the national level is often partial or slow**. Overcrowding, inadequate healthcare, and ineffective remedies have been condemned repeatedly, yet follow-up monitoring by the Committee of Ministers shows that many states continue to struggle with entrenched deficiencies. Limited political will, resource constraints, and fragmented prison administrations all contribute to this implementation gap. As a result, detainees often must return to Strasbourg with "repetitive" applications, reflecting the systemic inertia that pilot and quasi-pilot judgments are designed to address but cannot fully overcome.

By contrast, the EU's added value lies less in substantive standard-setting and more in its **functional leverage**. Because instruments of mutual recognition, such as the EAW, require mutual trust between Member States, compliance with detention standards is linked to the operability of EU instruments. The Union's approach is thus indirect but effective: by embedding detention standards into the machinery of judicial cooperation, it turns compliance into a condition for smooth participation in the Area of Freedom, Security and Justice.



European standards on access to justice

Access to justice is both a process and a goal and is crucial for individuals seeking to benefit from other procedural and substantive rights.⁵⁶ As such, it is a key component of all legal systems founded on democratic values, fundamental rights protection, and the rule of law.⁵⁷ In the European legal system, access to justice is rooted in the rights to a fair trial (article 6 ECHR and 46 CFR), and the right to an effective remedy (articles 13 ECHR and 47 CFR). In the context of detention conditions and the rights of detainees, access to justice is more commonly viewed through the lens of Articles 3 ECHR and 4 CFR (or, indeed, other Convention or CFR provisions), in conjunction with the Articles 13 ECHR and 47 CFR, respectively. However, the right to a fair trial has also been applied in the framework of detention (e.g., right of defence and legal representation in disciplinary proceedings). Note, however, the ECtHR examines challenges to detention conditions under the civil limb of the right (Article 6 § 1) and has established in multiple occasions that the criminal limb of Article 6 is inapplicable in these cases.⁵⁸

Despite the differences in the scope of application of the two regional legal systems (see previous chapter), there is significant overlap between the ECHR and the Charter. Article 53 CFR establishes a uniform level of fundamental rights protection across the different legal systems applicable in each member state – within their respective fields of application. It is well established that CFR rights which correspond to ECHR rights are given the same meaning and scope as those laid down in the Convention.⁵⁹ In the same vein, the European Commission Recommendation on Detention mentions that the level of protection provided by the Member States “*should never fall below the standards provided by the Charter or by the ECHR, as interpreted by the case law of the Court of Justice and of the European Court of Human Rights*”. This means that the well-developed ECtHR case law on access to justice in detention is often key to the interpretation of Union law in this area.

⁵⁶ Handbook on European law relating to access to justice, European Union Agency for Fundamental Rights and Council of Europe, 2016.

⁵⁷ European Commission for Democracy through Law (Venice Commission), Rule of Law checklist, 2016.

⁵⁸ See for example *Ezeh and Connors v. The UK* [GC], application nos. [39665/98](#) et [40086/98](#), *Enea v. Italy* [GC], application no. [74912/01](#), *Gülmez v. Turkey*, application no. [16330/02](#), and others.

⁵⁹ See Declarations Concerning Provisions of the Treaties, Declaration concerning the Charter of Fundamental Rights of the European Union “*The Charter of Fundamental Rights of the European Union ... confirms the fundamental rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms*”.



This chapter provides an overview of the legal and soft law framework on the key components of access to justice, primarily through the lens of the ECtHR jurisprudence, focusing on five core procedural safeguards, established by the Court:

- **Access to legal information**
- **Access to legal advice and representation, including legal aid**
- **Practical access to courts and procedures**
- **Effective remedies**
- **Adversarial nature of proceedings.**

Although the focus of this Guide is access to justice for pretrial detainees in relation to the conditions of their detention, some general principles may be drawn from judgements focusing on different topics, such as access to justice in relation to the main criminal proceedings or access to justice for convicted detainees.

Each procedural standard below is analysed using a comparative, layered approach:

1. **General Description:** a concise description of the standard itself and its purpose in relation to access to justice.
2. **EU Framework:** reference to the relevant soft law standards ⁶⁰ and CJEU case law Examination of the relevant Legal Standards.
3. **CoE Framework:** review of the relevant legal standards, as derived from ECtHR case law (including the context and indirect/direct application of each ruling to pre-trial detention), as well as soft law. ⁶¹

This structure allows practitioners to identify the convergent legal requirements and leverage specific arguments across regional systems to address practical gaps in national implementation.

⁶⁰ As already explained, the EU has fallen short of adopting binding rules on pretrial detention.

⁶¹ Although there are no Committee of Ministers recommendations that comprehensively and explicitly address the enforcement of rights in detention for pre-trial detainees, the following offer insight into the Council of Europe's broader position on issues relevant to this context: the 'Recommendation on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse' (2006); Recommendation No. R (81)7 on measures facilitating access to justice; Recommendation No. R (93)1 on effective access to the law and to justice for the very poor; Recommendation CM/Rec(2012)12 to address the situation of foreign prisoners; the 2021 guidelines on legal aid.



Access to legal information

General description

This standard establishes the foundational duty to ensure that **pre-trial detainees are promptly, clearly, and fully informed** about all legal elements necessary to protect their rights and challenge the prison administration. This information must include house rules, the laws and regulations governing daily prison life (such as searches, visits, and disciplinary sanctions), and the existence and features of available remedies. The information must be provided both orally and in writing, in a form tailored to each detainee's personal needs and circumstances. For example, it must consider the detainee's level of literacy, linguistic proficiency in the official language, disability, etc. The detainees must be able to keep on their person the letter of rights given to them by prison authorities. In addition, detainees should be able to access independent legal resources and information on their rights (for example through legal material available in the prison library).

EU standards

Commission Recommendation (EU) 2023/681 (61): Member States should ensure that all detainees are clearly informed of the rules applicable in their specific detention facility.

CoE standards

➤ Case law

Kalda v. Estonia (2016) ⁶² concerned a convicted prisoner's complaint about being denied access to certain **websites containing legal information** and fundamental rights materials. The Court considered that the accessibility of such information promotes public awareness and respect for human rights and gave weight to the applicants' argument that the Estonian courts used such information and that he needed access to it for the protection of his rights in the main proceedings. It should be noted that, in this case, the applicant already had limited access to the internet, by virtue of Estonian law, including to official databases of legislation and judicial decisions. However, his complaint concerned the denial to access the websites of the Council of Europe Information Office in Tallinn, the Chancellor of Justice, and the Estonian Parliament. The Court found that there has been a violation of Article 10 ECHR. ⁶³

Nuh Uzun and others v. Turkey (2022) ⁶⁴ concerned the scanning and storage of the applicants' correspondence in the National Judicial Network Server for an indefinite

⁶² Application no. [17429/10](#).

⁶³ Similar: *Ramazan Demir v. Turkey* (2021), Application no. [68550/17](#).

⁶⁴ Application no. [49341/18](#).



period of time, and the accessibility of the legal basis on which this measure was ordered. The applicants argued that this interference with their right to private and family life was not prescribed by law, pursued no legitimate aim and was arbitrary. The Court observed that for an interference with a Convention right to be considered as “*prescribed by law*” it must be sufficiently accessible, foreseeable and precise, in order to enable the individual – with the help of informed advice if necessary – to regulate his or her conduct.⁶⁵ The Court noted that the measure in question was not based on any legislative or administrative provision, but on an internal, unpublished instruction issued by the Ministry of Justice, intended to be distributed to public prosecutors and prison management.⁶⁶ It, therefore, found a violation of Article 8 ECHR.

➤ **Soft law**

The CPT: Prisoners should be provided with oral information and a comprehensive information booklet which should exist in an appropriate range of languages. Particular attention should be paid to ascertain that the information provided is understood by prisoners with reading and writing difficulties and by foreign nationals who do not speak the language(s) spoken by staff.⁶⁷

The EPR: Prisoners must be informed, at admission and as often as necessary after that, of the regulations governing prison discipline and of their rights and duties in prison. The information must be provided in writing and orally in a language they understand. They must also be allowed to keep in their possession a written version of the information they were given (Rule 30).

Untried prisoners (pre-trial detainees) must be explicitly informed of their right to legal advice (Rule 98).

[Access to a lawyer: legal advice, representation and legal aid](#)

General description

The role of lawyers and their professional associations is fundamental in upholding the rule of law, securing access to justice and ensuring the protection of human rights and fundamental freedoms.⁶⁸ This role is even more pronounced in cases involving deprivation of liberty, where the lawyer often becomes the only bridge between the detainee and society. Although the right to legal advice and representation is well established both for the main criminal proceedings and for complaints related to detention conditions filed with courts, it is less so when it comes to internal administrative procedures aimed at challenging detention conditions within prisons.

⁶⁵ § 84.

⁶⁶ The Government submitted that it should be considered as a circular.

⁶⁷ CPT 26th General Report (2016).

⁶⁸ Council of Europe Convention for the Protection of the Profession of Lawyer.



This is all the more true for the right to legal aid, which remains underexplored in case of purely prison-related matters.

Access to a lawyer entails being represented by a lawyer of one's choosing, being able to benefit from legal aid when lacking financial means, being able to consult with a lawyer under conditions of privacy and confidentiality, ensuring that the lawyer is able to participate effectively in the procedures, and, in the context of deprivation of liberty, facilitating communication with one's lawyer, including though confidential correspondence.

EU standards

Commission Recommendation Commission Recommendation (EU) 2023/681 (58-60): Member States should ensure that detainees have effective access to a lawyer and respect the confidentiality of meetings and other forms of communication, including legal correspondence, between detainees and their legal advisers. Detainees should be able to keep in their possession documents relating to their legal proceedings.

CoE standards

➤ Case law

Campbell v. the United Kingdom (1992): ⁶⁹ this seminal case concerned the confidentiality of the applicant's correspondence with his lawyer, while detained after his conviction and sentencing to life imprisonment. The correspondence was opened, read, scrutinised and redacted by the prison authorities for the "prevention of disorder or crime". The Court examined the case under Article 8 § 2 ECHR and focused on whether the interference with the right to private and family right was necessary in a democratic society. In this respect, it specified the content of "reasonable cause", establishing that prison authorities may only open – not read – a letter from a lawyer to a prisoner when they have reasonable cause to believe that it contains an **illicit enclosure** which the **normal means of detection have failed to disclose**. The reading of a prisoner's mail to and from a lawyer, on the other hand, should only be permitted in **exceptional circumstances** when the authorities have reasonable cause to believe that **the lawyer-client privilege is being abused** in that the contents of the letter endanger prison security or the safety of others or are otherwise of a criminal nature. What may be regarded as "reasonable cause" will depend on all the circumstances, but

⁶⁹ Application no. [13590/88](#).



it **presupposes the existence of facts or information which would satisfy an objective observer** that the privileged channel of communication was being abused (§ 48).⁷⁰

Gülmez v. Turkey (2008):⁷¹ the case concerned the application of the right to a fair trial in disciplinary proceedings against a pre-trial detainee. The applicant maintained that his rights were violated as the domestic courts had delivered their decisions on his appeal against the disciplinary sanctions imposed on him without holding a hearing. The Court found a violation of Article 6 § 1 ECHR. It based its decision on the fact that the judges who examined the applicant's cases, took their decisions on the basis of the documents in the case file while the applicant's defence submissions had only been taken into account just before the Disciplinary Board imposed the various sanctions. It also found that applicant was not given the opportunity to defend himself through a lawyer before the domestic courts who determined his disciplinary appeals, contrary to Rule 59 (c) of the European Prison Rules which stipulates that prisoners charged with disciplinary offences shall be allowed to defend themselves in person or through legal assistance when the interests of justice so require.

Canavcı and Others v. Türkiye (2024):⁷² the case concerned the monitoring and recording through technical devices of the applicants' meetings with their lawyers while in pre-trial detention, pursuant to a legislative decree adopted under the state of emergency declared in the aftermath of the coup attempt of 15 July 2016. The Court examined the legality of the impugned measures using the following criteria: it observed that (a) the legislation in question did not specify how the collected information would be used, kept or destroyed, (b) the discretionary powers left to the authorities were not defined, c) no sufficient safeguards against abuse and arbitrariness were established, d) the authorities that ordered the measures did not rely on an individualised assessment but rather on general points as regards the possibility that the meetings might constitute a risk to the security of the nation and the prison, including the fact of the applicants' membership in FETÖ/PDY (an organisation considered by the national authorities to have instigated the coup attempt), e) the duration of the measures and the conditions for their termination were not specified, and could extend for the duration of the state of emergency, undermining the principle of legal certainty, f) there was no provision for a mechanism

⁷⁰ See also: *Namazli v. Azerbaijan*, Application no. [8826/20](#) (2024), which concerned the inspection of a lawyer's documents by prison staff before and after meeting his client in prison in the absence of any suspicion of wrongdoing; *Lanz v. Austria*, Application no. [24430/94](#), which confirmed the right of an accused person to communicate with his defence counsel out of hearing of a third person (the case concerned a pre-trial detainee's access to a lawyer in relation to the main criminal proceedings).

⁷¹ Application no. [16330/02](#).

⁷² Application no. [24074/19](#).



requiring an automatic and permanent review of the measures' necessity. In light of the above the Court concluded that the measure did not meet the requirements of the "prescribed by law" criterion and was thus unlawful.

➤ **Soft law**

The CPT dealt with access to a lawyer as a means for preventing ill treatment in its 21st General Report, noting that *"the existence of that possibility will have a dissuasive effect upon those minded to ill-treat detained persons"* and that *"a lawyer is well placed to take appropriate action if ill-treatment actually occurs"*.

In the same report, the CPT deals with the issue of access to a lawyer of one's choice – which can be particularly relevant when it comes to legal aid. Although it recognises that it may exceptionally be necessary to delay this right for a certain period, it emphasises that this should not result in the right of access to a lawyer being totally denied during the period in question. In such cases, access to another independent lawyer in consultation with the local Bar Association or Law Society should be organised.

Finally, the CPT addresses the issue of solitary confinement as a disciplinary sanction, and stresses the need for an effective appeal process, necessitating the ready availability of legal advice for prisoners in this situation.

The EPR: Prisoners are entitled to legal advice, and the prison authorities must provide them with reasonable facilities for gaining access to it, including time and opportunities to do so (Rule 23.1). Legal advice may be sought for any matter, including interference with fundamental rights within the prison. When prisoners cover the costs of their legal representation on their own, the EPR support their right to have the lawyer of their choice (Rule 23.2). This is not the case for legal aid. However, prison authorities must inform prisoners of this option and facilitate it to extent possible, including by providing assistance with the costs of telephone calls and letters (Rule 23.3). ⁷³ Consultations, communications and correspondence with their lawyers must be confidential (Rule 23.4). ⁷⁴ Any restriction to such confidentiality must be exceptional, ordered by a judicial authority and aimed at preventing serious crime or major breaches of prison safety and security (Rule 23.5).

Practical access to courts and procedures

General description

⁷³ Guidance Document on the European Prison Rules, Penal Reform International and the Council of Europe (2023).

⁷⁴ See also *Campbell v. the United Kingdom* (ibid. 75), and case law referenced in footnote 76.



This standard shifts the focus from the existence of a right to the practical reality of exercising it within a restricted custodial environment. It mandates that mechanisms for lodging complaints and accessing judicial review must be physically and procedurally accessible to all detainees, free from bureaucratic hurdles, excessive delays, or hidden costs. Most critically, the standard demands absolute protection from any form of punishment, intimidation, or negative consequence (reprisals) instigated by state authorities in response to a detainee's attempt to seek justice.

EU standards

Commission Recommendation Commission Recommendation (EU) 2023/681 (preamble 28): Victims of crime committed in detention often have limited access to justice notwithstanding the obligation of States to provide for effective remedies in cases where their rights have been violated. In line with the objectives of the EU Strategy on victims' rights (2020-2025), it is recommended that Member States ensure effective remedies for violations of detainees' rights as well as protection and support measures. Legal assistance, and mechanisms for submitting requests and complaints, should be easily accessible, confidential and effective.

(62) Member States should ensure that detainees can freely submit confidential requests and complaints about their treatment, through both internal and external complaint mechanisms.

CoE standards

➤ Case law

Neshkov and Others v. Bulgaria (2015 – Pilot Judgement): ⁷⁵ the case concerned detention conditions in Bulgaria and the availability of effective remedies against them. Among other elements that rendered remedies effective, based on its established case law, the Court also considered practical barriers to access to justice in the framework of Article 13 ECHR. Specifically, it noted that despite the existence of a remedy under Bulgarian law, the application of the relevant provision by Bulgarian courts no longer satisfied the conditions of effectiveness. The Court noted, among others, the overly strict burden of proof and the application of domestic time-limits without taking into account the continuous nature of the violations. Lastly, although this aspect was not considered as part of its decision-making, the Court also reminded that effective remedies entail that prisoners must be able to avail themselves of them without having to fear that they will incur punishment or negative consequences for doing so (§ 191).

⁷⁵ Applications nos. [36925/10](#), [21487/12](#), [72893/12](#), [73196/12](#), [77718/12](#) and [9717/13](#).



Barbotin v. France (2021): ⁷⁶ the case concerned the effectiveness of complaint mechanisms against detention conditions in France on the basis of procedural costs. The Court found that the remedy in question was effective in theory, as it offered access to judicial review on the merits of the case, allowed for compensation to be sought, and was enforceable. However, it concluded that the remedy did not meet the standards of Article 13 ECHR in the case in question, given that the applicant (who partly benefited from legal aid) had been ordered to pay the legal expert's fee, which, in light of the very low amount of compensation he was awarded, left him owing the State EUR 273, despite the fact that the Conseil d' État had acknowledged that his detention conditions violated his right to be free from torture and inhuman or degrading treatment.

➤ **Soft law**

The CPT examined complaints mechanisms in its 27th General Report, where it highlighted several practical barriers and set out general principles for their effectiveness. In terms of accessibility, the report emphasises the prompt provision of information of all internally or externally available avenues of complaint and the modalities for exercising their rights to lodge complaints (including appeals of the relevant decisions). The information must be provided both orally and in writing, in a language that prisoners understand and with specific regard to the age, gender, state of health, any disability, or any circumstances which may render them particularly vulnerable. Special provisions must be in place to enable indigent prisoners to exercise their rights. While appropriate support must be available, lodging complaints must not be contingent on legal representation.

Furthermore, the confidentiality of the complaints mechanisms and the safety of detainees must be prioritised. Access to complaints bodies must be direct and confidential (e.g. by installing locked complaint boxes in appropriate locations). Staff who have persons deprived of their liberty directly in their charge should not be in a position to filter complaints. In addition, efforts should be made to ensure complainants are free from intimidation and reprisals. In this regard, the CPT suggests sending a clear message to staff that any kind of threats, attempts to prevent complaints from reaching the relevant complaints bodies, or intimidatory or retaliatory action will not be tolerated and will be the subject of appropriate sanctions.

The EPR address requests and complaints mechanisms and provide that Prisoners shall have ample opportunity to make requests or complaints, without censorship as to their substance (Rule 70.1). Practical information about request and complaint

⁷⁶ Application no. [25338/16](#).



procedures must be communicated effectively to all prisoners (Rule 70.4). Requests and complaints must be dealt with promptly and procedures must ensure the effective participation of complainants (Rule 70.6). Prisoners must be able to lodge requests or complaints confidentially, if they choose to do so (Rule 70.8). They must not be exposed to any sanction, retaliation, intimidation, reprisals or other negative consequences as a result of having submitted a request or complaint (Rule 70.9). Prisoners may make a request or complaint personally or through a legal representative and are entitled to seek legal advice about complaints and appeal procedures and to legal assistance when the interests of justice require (Rule 70.10). No consideration is to be given to complaints made by legal representatives or organisations without consent of the prisoner to whom they concern (Rule 70.11). Competent authorities must also consider written complaints from relatives or organisations concerned with the welfare of prisoners (Rule 70.12).

Effective remedies

General description

The core demand of this standard is that the available legal avenue for addressing a violation of rights, particularly concerning detention conditions, must be genuinely "effective." When it comes to detention conditions that are contrary to Article 3 ECHR, this effectiveness is twofold: the remedy must be capable of providing preventive relief (stopping an ongoing violation, such as ordering a facility transfer or immediate improvement) and compensatory relief (redressing past harm). The decision-maker must be independent of the detaining authority and possess the binding legal authority to implement the required corrective measures, ensuring the remedy offers a realistic and reasonable prospect of success.

EU standards

Commission Recommendation Commission Recommendation (EU) 2023/681 (62-63): Member States should facilitate effective access to a procedure enabling detainees to officially challenge aspects of their life in detention through internal and external complaint mechanisms. Member States should ensure that detainee complaints are handled promptly and diligently by an independent authority or tribunal empowered to order measures of relief, in particular measures to terminate any violation of the right not to be subjected to torture or inhuman or degrading treatment.

CoE standards



➤ Case law ⁷⁷

Ananyev and Others v. Russia (2012 – Pilot Judgement): ⁷⁸ the case concerned the effectiveness of remedies against detention conditions in Russia. The Court examined various internal and external remedies available to pre-trial detainees and assessed each one in terms of its effectiveness:

1. **Complaint to the prison authorities:** ineffective due to insufficient safeguards of independence.

As the officials before whom a complaint could be lodged were the ones responsible for ensuring adequate detention conditions, the Court observed that *“in deciding on a complaint concerning conditions of detention for which they are responsible, they would in reality be judges in their own cause”* (§§ 100-101).

2. **Complaint to a prosecutor:** ineffective due to procedural shortcomings.

Despite recognising the important supervising role of the prosecutors – including inspecting prisons, filing reports, and initiating court proceedings – the Court concluded that this mechanism fell short of the requirements for an effective remedy: there was no legal requirement on the prosecutor to hear the complainant or ensure his or her effective participation in the ensuing proceedings that would entirely be a matter between the supervising prosecutor and the supervised body. Moreover, the complainant would not be a party to any proceedings and would only be entitled to obtain information about the way in which the supervisory body dealt with the complaint (§§ 102-104).

3. **Complaint to an ombudsman:** ineffective due to lack of legally binding decision-making power.

The Ombudsman’s role is to identify human rights issues, highlight problems in their annual reports and work out solutions in co-operation with the authorities (§§ 105-106).

4. **Judicial complaints about infringements of rights and freedoms:** ineffective due to judicial practice.

⁷⁷ For a comprehensive list of relevant case law, see ECtHR Guide on Article 13 of the European Convention on Human Rights (updated 2025), and ECtHR Practical Guide on Admissibility Criteria (updated 2025).

⁷⁸ Ibid. 5.



The Court first noted that the judicial process established in the Russian Code of Civil Procedure is – in theory – accessible and capable of providing an appropriate redress (examination of merits, binding and enforceable decisions, no cost to the complainant). However, upon testing the practical application of the remedy, it observed the Government was not able to produce any examples of successful claims, nor was the Court itself aware of any such examples in the 18 years the remedy has existed. In addition, the Court observed that this procedure did not have an effective preventive effect due to structural problems, including chronic overcrowding and non-enforcement of final judicial decisions, rendering it mostly declaratory (§§ 107-112).

5. Claim for compensation: ineffective due to not offering reasonable prospects of success.

The Court had numerous opportunities to examine the effectiveness of this remedy and largely relied on its past findings. It highlighted the “*unduly formalistic*” approach of Russian courts, which relied on an exhaustive list of instances of strict liability whereby the Treasury was obligated to pay damages, which did not include detention conditions. In all other cases the claimant had to show that the damage was caused through an unlawful action or omission on the part of a State. In addition, the courts consistently absolved the authorities of all liability, citing “objective factors”. The Court concluded that the above conditions rendered this remedy *theoretical and illusory rather than adequate and effective*. Finally, the Court examined the level of compensation awarded, which it found to be unreasonably low (e.g., less than 50 euros in cases concerning violations of Article 3 ECHR), with the Russian courts citing lack of funds (§§ 113-118).

Neshkov And Others v. Bulgaria (2015 – Pilot Judgement): ⁷⁹ the Court examined the features of an effective remedy against detention conditions. The case is a key reference judgement as it compiles the Court’s case law standards for a remedy to be considered effective against the violation of Convention rights, including in relation to the admissibility criterion of having exhausted domestic remedies before lodging an application (§§ 177-191). Specifically, the Court found that the following conditions must be met:

- the availability at national level of a remedy to enforce **the substance of the Convention rights and freedoms**;

⁷⁹ Ibid. 81.



- (for complaints under Article 3) relief that entails improvement of conditions for ongoing violations and compensation for any resulting damage (without an excessive burden of proof for the claimant);
- an authority (not necessarily judicial) with appropriate powers and procedural guarantees; in particular the authority must:
 - be independent of the authorities in charge of the penitentiary system;
 - secure the inmates' effective participation in the examination of their grievances;
 - ensure the speedy and diligent handling of the inmates' complaints;
 - have at its disposal a wide range of legal tools for eradicating the problems that underlie these complaints; and
 - be capable of rendering binding and enforceable decisions (*Ananyev and Others v. Russia*); ⁸⁰
- the capability of providing relief in reasonably short time-limits (*Torreggiani and Others*); ⁸¹
- the examination of the proportionality of restrictions to rights and freedoms;
- the examination of the case in accordance with the relevant principles laid down in ECtHR case law;
- the capability of resolving situations of massive and concurrent violations of prisoners' rights related to overcrowding and resulting from the inadequate conditions in a given correctional facility;
- the presumption that conditions giving rise to Article 3 violations entail non-pecuniary damage and require the award of compensation that is not conditional on the claimant's ability to prove it through extrinsic evidence;
- the ability of prisoners to avail themselves of remedies without having to fear that they will incur punishment or negative consequences for doing so.

Stella and Others v. Italy (2014): ⁸² the case concerned the assessment of admissibility criteria (Article 35 ECHR) in relation to the exhaustion of domestic remedies. Specifically, the Court examined the issue from the standpoint of interim legislative and policy developments, adopted by the Italian state pursuant to the *Torreggiani* pilot

⁸⁰ Ibid. 5.

⁸¹ Ibid. 6.

⁸² Application no. [49169/09](#).



judgement. In this respect, it strongly emphasised that its role is subsidiary to the national systems safeguarding human rights and that it is not a court of first instance, thus reaffirming the need to first exhaust domestic remedies. Although the remedies referred to in Article 35 must offer a sufficient degree of certainty, not only in theory but also in practice, in order to be considered effective, mere doubts as to the prospects of success of a given remedy do not constitute an exception to the obligation to exhaust it before resorting to the ECtHR.

The Court also noted that the exhaustion of domestic remedies is, in principle, assessed at the date on which the application is lodged with the Court. However, this is also subject to exceptions justified by the circumstances of the case, which certainly include *“situations where, following a pilot judgment on the merits in which the Court has found a systemic violation of the Convention, the respondent State makes available a remedy to redress at domestic level grievances of similarly situated persons”*.⁸³ Thus, the Court concluded that the case at hand should be examined on the basis of the new provisions.

The Court, then, proceeded to examine the newly introduced remedies (both preventive and compensatory) and found that they satisfy the requirements of effectiveness. Specifically, in relation to the **preventive remedy**, it noted the binding force of decisions taken by the sentencing judge, the new, favourable context for the effective implementation of judicial decisions, the adoption of an Action Plan that had already led to a significant reduction in the prison population, and the measures to renovate existing prisons.

In relation to the **compensatory remedy**, it first affirmed that the new remedy is applicable to the applicants, as the law introducing it explicitly referred to applications already lodged with the Court. It then proceeded to examine the types of redress afforded to those detained in conditions violating Article 3 ECHR, which included a reduction of sentence for those still serving their sentences and monetary compensation for those who have served their sentences or whose remaining sentence does not allow for the full application of the reduction. In this respect, the Court reiterated that a reduction in sentence may constitute satisfactory redress, provided that the national authorities have, explicitly or in substance, acknowledged and then remedied the violation of the Convention within a reasonable time. It concluded that, decisions that satisfy these conditions constitute effective remedies. Finally, the court examined the amount of compensation to be awarded in cases of

⁸³ Łatak v. Poland, Application no. [52070/08](#).



violation, which, although lower than that set by the Court, could not be considered unreasonable.

In light of the above, the Court declared the applications inadmissible for failure to exhaust domestic remedies.

➤ **Soft law**

The CPT: as mentioned in the previous section on practical access to justice, the CPT examined complaints mechanisms in its 27th General Report. There, it laid out some basic principles on their effectiveness, including a) prompt, thorough, and expeditious processing, b) capability to provide remedy, determine responsibility, and impose suitable sanctions, if appropriate, c) availability of legal assistance, if required, d) perceived fairness and independence of complaints bodies, e) reasoning on inadmissibility, f) no financial or legal sanctions for complainants.

The EPR: ⁸⁴ prisoners are entitled to effective request and complaints mechanisms, in accordance with Rule 70 (see previous section). In terms of the effectiveness of the available mechanisms, the Rule provides that requests and complaints may be lodged with the director of the prison or other authority within the prison system and to a judicial or other independent authority with reviewing and remedial power (Rule 70.1). Informal alternatives methods of resolving a request or complaint may be considered first, if appropriate (Rule 70.2), however, not when they concern ill-treatment or other serious human rights violations (Rule 70.3). Complaints relating to death or ill-treatment in prison must result in an effective investigation in accordance with Rule 55 (Rule 70.5). All requests and complaints must be dealt with as soon as possible and through a process that ensures, to the maximum possible extent, the prisoners' effective participation (Rule 70.6). Rejections of complaints must be reasoned and promptly communicated to the prisoner concerned, who must have the option to appeal the decision (Rule 70.7).

Adversarial nature of proceedings

General description

The final standard ensures that the process for challenging the conditions of detention is fair and balanced. The adversarial principle is key: a detainee must be able to present their case, access the evidence against them (access to the case file), challenge that evidence, and be judged by an impartial decision-maker. This is known as "equality of arms"—the defence and prosecution must be treated equally. Crucially, this requires

⁸⁴ As revised through Recommendation Rec (2006)2-rev of the Committee of Ministers to member States on the European Prison Rules, July 2020.



translation and interpretation for detainees that do not know the language. For pre-trial detainees, these guarantees are vital for challenging the very basis of their detention and any internal disciplinary measures.

EU standards

Commission Recommendation Commission Recommendation (EU) 2023/681 (67): Member States should ensure that foreign nationals and other detainees with particular linguistic needs deprived of liberty have reasonable access to professional interpretation services and translations of written materials in a language that they understand.

CoE standards

➤ Case law

Shmelev and Others v. Russia (2020): ⁸⁵ the case concerned the effectiveness of remedies against pre-trial detention conditions post reforms related to the Court's pilot judgement in *Ananyev*. ⁸⁶ The Court considered the parties' arguments related to Article 13 on the basis of the newly enacted legislation (Compensation Act), in line with its established case law on the matter, ⁸⁷ and focused heavily on the effectiveness of the remedies established therein in terms of the guarantees they provide for an adversarial procedure. In this respect, the judgement lays down the features of the new law that support adversarial proceedings: the claimant has the right to be assisted by an advocate or another representative of his choice, ensuring their rights of effective participation; courts may apply preliminary measures and are reminded to dismiss motions for withdrawal of complaints if they have reasons to believe that they have been obtained illegally, or would not be in the public interest; the burden of proof has shifted to the administration; the courts are instructed to bear in mind the difficulties faced by detainees in collecting evidence, and are encouraged to play an active role in identification and obtaining of evidence; the consideration of complaints is subject to strict time limits (a complaint should be considered within a month); and, the writ of execution should be automatically forwarded to the respondent authority within one day of the judgment's delivery, irrespective of whether the claimant has made a request to that effect. The applications were deemed inadmissible.

Ivan Karpenko v. Ukraine (No. 2) (2025): ⁸⁸ the case concerned an unrepresented prisoner who was denied participation via videolink in oral hearings concerning the monitoring of his correspondence by the prison administration. The judgement

⁸⁵ Application no. [41743/17](#).

⁸⁶ Ibid. 5.

⁸⁷ See, e.g., *Stella and Others v. Italy*, *ibid.* 88.

⁸⁸ Application no. [41036/16](#).



focused on the application of the adversarial principle and the principle of equality of arms, as fundamental components of the concept of a “fair hearing” within the meaning of Article 6 § 1 ECHR (§ 27). The Court first acknowledged that the right to an oral hearing may be subject to exceptions based on the circumstances of each case, including in cases where the applicant was in custody, due to the obvious difficulties involved in transporting prisoners from one location to another, provided that they were represented by their lawyer. However, personal participation in the proceedings should be viewed as essential *in cases where the character and way of life of the person concerned was directly relevant to the subject matter of the case or where the decision involved the person’s conduct or experience* (§ 30). In such cases, the Court has previously found that the proceedings could be carried out at the place where the claimant is being detained, or to use a videolink.⁸⁹ In this regard, the Court rejected the domestic courts’ justification that there was a legal lacuna in terms of the possibility to use videolinks and noted that they had failed to assess the nature of the case in relation to the necessity of the applicant’s presence. Hence, it concluded that a violation of Article 6 § 1 of the Convention had taken place.

➤ **Soft law**

The CPT indirectly referenced procedural safeguards in its 21st General Report, dealing with solitary confinement as a disciplinary measure. In this respect, it noted that there should be *“an effective appeal process which can reexamine the finding of guilt and/or the sentence in time to make a difference to them in practice. A necessary concomitant of this is the ready availability of legal advice for prisoners in this situation”*.

The EPR:⁹⁰ Prisoners must receive information in a language they understand (Rule 30.2). Prisoners charged with disciplinary offences shall: a. be informed promptly, in a language which they understand and in detail, of the nature of the accusations against them; b. have adequate time and facilities for the preparation of their defence; c. be allowed to defend themselves in person or through legal assistance when the interests of justice so require; d. be allowed to request the attendance of witnesses and to examine them or to have them examined on their behalf; and e. have the free assistance of an interpreter if they cannot understand or speak the language used at the hearing (Rule 59).

⁸⁹ Yevdokimov and Others Applications nos. [27236/05](#), [44223/05](#), and others, § 42.

⁹⁰ Revised, *ibid.* 90.



Practical guidance for practitioners

This section aims to provide a comparative assessment of the CoE and EU frameworks, clarify their scope, and examine the added value of each for the legal practitioner. It also includes practical guidance and model argumentation for cases with a regional scope.

Practical Guidance for Arguing Pre-trial Detention Cases before the ECtHR

This section aims to provide practitioners with hands-on tools for effectively litigating pre-trial detention cases before the European Court of Human Rights, translating the above-mentioned standards into litigation approaches. It highlights admissibility requirements, relevant Convention provisions, evidentiary approaches, and model arguments that can be adapted to individual cases, strengthening the practical enforceability of detainees' rights by bridging the gap between legal standards and practice. The summary guidance below offers general orientations for practitioners and should be read alongside the official guidance issued by the ECtHR and other relevant bodies.

1. Exhaust domestic remedies ⁹¹

- Applications are only admissible if all **effective domestic remedies** have been used (Article 35 ECHR).
- Lawyers should document which channels were pursued, including administrative and judicial complaints regarding detention conditions.
- Where remedies exist only on paper but are ineffective in practice (delayed, non-independent, or lacking enforcement), present evidence of their ineffectiveness.

2. Frame the claim under the correct Convention provisions, for example: ⁹²

- **Article 3 ECHR:** inhuman or degrading treatment due to overcrowding, poor hygiene, lack of medical care, violence, or solitary confinement.
- **Article 8 ECHR:** interference with family life and correspondence (restricted visits, calls, or mail).

⁹¹ For detailed guidance, see CCBE Q&A Guide on the European Court of Human Rights, accessible at https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/PD_STRAS/PDS_Guides_recommendations/EN_PDS_20181019_ECHR-Guide_2018.pdf.

⁹² See above, pp. 14-17.



- **Article 13 ECHR:** absence of an effective remedy for complaints about detention conditions.

3. Establish victim status

- To qualify as a victim, an applicant must, in principle, be **directly, personally, and adversely affected** by an alleged violation of the Convention rights.
- A person may act as an **indirect victim** if they have a **close personal link** to a direct victim (e.g., family members of deceased or disappeared persons) [*McCann and Others v. the United Kingdom*; *Karner v. Austria*; Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania [GC] - [47848/08](#) – concerning applications by NGOs]
- An individual may be deemed a potential victim if they can show that a law or policy affects them **personally and imminently**, even without a specific application of that law [*Klass and Others v. Germany*; *Open Door and Dublin Well Woman v. Ireland*]
- Victim status may be lost if the State **acknowledges a violation** and **provides adequate redress** before or after the application is made.

4. Use evidence strategically

- The Court relies heavily on **objective material**: CPT reports, NGO findings, prison statistics, and previous ECtHR case law.
- Applicant evidence (medical records, photographs, affidavits) should corroborate objective data.

5. Where applicable, highlight systemic issues with reference to case law

- Place the applicant's case in a **structural context**, pointing to repeated ECtHR judgments or CPT findings.

Model argument: *"The Court has already condemned systemic overcrowding in [State] in X v [State] and Y v [State]. The applicant's experience confirms that no effective measures have been taken, warranting a finding of a continuing structural violation."*

6. Manage expectations and timing

- Strasbourg proceedings are lengthy; relief may take years. Lawyers should manage clients' expectations
- In urgent cases, interim measures may be pursued, in accordance with Rule 39 of the Rules of the Court.

Arguing before National Courts - Seeking an Advisory Opinion from the ECtHR



This section is designed to guide practitioners on how to persuade national courts of last instance to seek an advisory opinion from the European Court of Human Rights under Protocol No. 16. Unlike individual applications, advisory opinions are requested by domestic courts and aim to clarify unsettled questions of Convention interpretation before a final judgment is given at the national level. The guidance provided here outlines admissibility considerations, strategic arguments, and practical questions lawyers can raise to assist courts in framing a persuasive request. The purpose is to enable practitioners to use this preventive mechanism to strengthen Convention compliance domestically and reduce the risk of repetitive litigation in Strasbourg.

1. Confirm jurisdiction and availability

- Advisory opinions are available only to the highest courts and tribunals designated by states that have ratified Protocol No. 16 ECHR.⁹³
- Lawyers should first verify whether their state has ratified, and which courts are entitled to make requests.

2. Establish the Convention hook

- The request must concern interpretation or application of ECHR rights, such as Article 3 (treatment in detention) or Article 13 (remedies).

3. Demonstrate necessity for interpretation

- Stress that the domestic case cannot be resolved without clarification of Convention standards.

4. Show the added value of Strasbourg's guidance

- Advisory opinions are non-binding, but they prevent inconsistencies and anticipate how Strasbourg would later decide.
- Stress benefits for the domestic court: an advisory opinion strengthens the legitimacy of domestic judgments and reduces exposure to later findings of violation.

5. Avoid settled case law

- The ECtHR will refuse questions already answered by its well-established jurisprudence. Avoid arguing for advisory opinions on settled matters.

⁹³ For a full list of CoE Member States that have ratified Protocol 16 ECHR, see https://www.coe.int/en/web/conventions/full-list%3B?module=signatures-by-treaty&treaty-num=214&utm_source=chatgpt.com. Portugal has neither signed nor ratified the Protocol.



7. Address admissibility criteria

- The ECtHR may decline questions that are ill-posed, irrelevant, or hypothetical. Lawyers should assist the national courts by framing their argumentation as genuine uncertainties of law with wider implications.

Model question: *“Is Article 5(3) ECHR to be interpreted as requiring heightened scrutiny of judicial decisions authorising pre-trial detention where evidence of systemic overcrowding in remand prisons exists?”*

Arguing for a preliminary ruling request

1. Establish the EU law hook

- The CJEU can only answer questions on the **interpretation or validity of EU law** (Article 267 TFEU).
- This requires identifying the relevant **EU legal basis**:
 - Primary law: the **TEU** (e.g. Article 6 TEU on fundamental rights) and the **TFEU** (e.g. Article 82 TFEU on judicial cooperation).
 - Secondary law: instruments such as the **Framework Decision on the European Arrest Warrant** (2002/584/JHA) or procedural rights directives.
 - **Charter of Fundamental Rights (CFR)**: binding, but only when Member States are implementing EU law (Article 51(1) CFR) – cannot be invoked in purely domestic detention cases.

2. Demonstrate the necessity for interpretation

- The question referred must be **relevant to the outcome** of the case. For instance, grounds for refusing to execute a EAW. Frame your arguments to showcase this relevance.

3. Stress the obligation of courts of last instance

- Courts of last resort are **obliged** to refer questions where EU law interpretation is necessary, unless the answer is already clear; failure to do so may expose the state to liability.

4. Highlight novelty or ambiguity

- Argue that the legal question is unsettled or ambiguous.
- Stressing divergence in Member States’ practices strengthens the case for referral.



5. Formulate questions carefully

- Questions should be **concise, neutral, and directed at the interpretation of EU law**, not its application to the facts. Formulate your argument before the domestic court accordingly.

6. Emphasise benefits of referral

- Remind the court that a reference provides authoritative guidance from the CJEU, ensuring consistency across the EU and protecting the court from later criticism.
- Point out that preliminary references strengthen, rather than diminish, the national court's role within the EU legal order.

7. Use Treaty principles strategically

- Cite Article 6 TEU, which recognises the Charter as binding primary law and requires the Union to respect the ECHR as general principles.
- Cite Article 82 TFEU, which provides the legal basis for judicial cooperation in criminal matters and mutual recognition. Linking the case to these provisions shows that the issue lies squarely within EU law and thus within the CJEU's jurisdiction.

ANNEX I - Table of Standards

STANDARD	PROTECTED UNDER EU FRAMEWORK (when falling under the scope of EU law)	PROTECTED UNDER CoE FRAMEWORK	NOTES
1. Access to Legal Information	Commission Recommendation 2022 (par. 61)	ECHR Arts. 6, 13 (Fair Trial, Effective Remedy); CPT Standards ; European Prison Rules (EPR) Rules 30-32.	Information must be prompt, comprehensive, and comprehensible (including translation for non-nationals).
2. Access to Legal Advice & Representation (including Legal Aid)	Commission Recommendation 2022 (par. 28,58,29)	ECHR Art. 6(3)(c) (Right to Legal Assistance); CPT Standards (Fundamental Safeguard), EPR 23 (timely, confidential access and legal aid 23.3)	Right requires confidentiality and effective presence of the lawyer (Campbell, Gülmez).
3. Practical Access to Courts & Procedures (Complaints, No Reprisals)	Commission Recommendation 2022 (preamble 22, 28 and par. 61-63)	ECHR Arts. 13 (Effective Remedy) and 34 (individual application), EPR Rules 70-71.	Focus is on removing procedural, physical, and financial barriers (Barbotin) and ensuring absolute protection from retaliation (Neshkov).



4. Effective Remedies (Preventive & Compensatory)	Commission Recommendation 2022 (preamble 22, 28)	ECHR Arts. 3, 13 (Prohibition of Ill-Treatment, Effective Remedy).	Remedy must be able to stop an ongoing violation (preventive) and provide redress for past harm (compensatory) . ECtHR pilot judgments (Torreggiani, Ananyev) established that compensation alone is insufficient for Article 3 violations.
5. Adversarial Nature of Proceedings (Equality of Arms)	Commission Recommendation 2022 (par. 58-63, 67-70)	ECHR Art. 6 (Fair Trial, Equality of Arms), EPR 30.2 (information in a language they understand) and 59-61 (adversarial proceedings)	Guarantees the right to access and challenge evidence and to be judged by an impartial decision-maker . Essential for challenging the lawfulness and necessity of pre-trial detention.



ANNEX II – Preliminary Ruling (CJEU) vs. Advisory Opinion (ECtHR)

Criterion	CJEU – Preliminary Ruling (Art. 267 TFEU)	ECtHR – Advisory Opinion (Protocol No. 16 ECHR)
Scope	Interpretation or validity of EU law (Treaties, secondary law, Charter where EU law applies).	Interpretation of ECHR rights and freedoms (and Protocols).
Who may request	Any national court; courts of last instance must refer where an unsettled EU law question is decisive.	Only the highest courts or tribunals designated by states that ratified Protocol No. 16.
Availability	Binding obligation on courts of last instance unless acte clair (CILFIT doctrine).	Optional; ECtHR has discretion to accept or decline request.
Binding nature of ruling/opinion	Binding on the referring court, and authoritative for all national courts across the EU. Creates de facto precedent.	Non-binding; advisory only, but carries strong persuasive authority and is expected to guide domestic courts.
Effect on individuals	Individuals cannot directly request; they must persuade the national court to refer. The interpretation given applies to their case.	Same: individuals cannot request; they must persuade the national court of last instance to seek an opinion. The guidance shapes the domestic decision but does not itself resolve the case.



Focus	Ensures uniform interpretation and application of EU law; safeguards consistency of the EU legal order.	Provides authoritative guidance on Convention interpretation to prevent violations and harmonise standards across states.
Relation to higher principles	Operates within the framework of TEU/TFEU and the Charter; enforces principles of primacy, direct effect, and effectiveness of EU law.	Operates within the ECHR system; supplements Strasbourg's individual complaint procedure by offering preventive guidance.
Admissibility criteria	Question must be relevant to resolving the case; not hypothetical. Court may reject irrelevant or poorly formulated requests.	Opinion must concern a genuine legal uncertainty; ECtHR may reject if already settled in well-established case law or framed too fact-specifically.
Impact on national courts	National courts must apply the interpretation given; failure to refer can trigger state liability (Köbler).	Domestic courts retain discretion, but ignoring an advisory opinion increases the risk of later findings of violation in individual applications.
Strategic value for lawyers	Opens the door to enforce EU fundamental rights (Charter) indirectly in detention cases linked to EU cooperation (e.g. EAW).	Offers preventive clarification of Strasbourg standards, enhancing Convention-compliant decision-making and reducing risk of repetitive litigation.



Use in detention cases	Aranyosi and Căldăraru (CJEU): executing courts must postpone/refuse EAWs where detention conditions risk breaching Article 4 CFR.	Advisory opinions could clarify unresolved standards on issues like minimum cell space, treatment of vulnerable detainees, or requirements for effective complaint mechanisms (building on Muršić and other ECtHR case law).
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Sources

Legal framework and soft law

[Commission Recommendation \(EU\) 2023/681 of 8 December 2022 on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions](#)

[2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States](#)

[European Prison Rules](#)

[Recommendation on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse \(2006\)](#)

[Recommendation No. R \(81\)7 on measures facilitating access to justice; Recommendation No. R \(93\)1 on effective access to the law and to justice for the very poor](#)

[Recommendation CM/Rec \(2012\)12 to address the situation of foreign prisoners; the 2021 guidelines on legal aid](#)

[Council of Europe Convention for the Protection of the Profession of Lawyer](#)

Guidance and grey literature

[Joint Factsheet on the European Arrest Warrant and Fundamental Rights ECtHR and CJEU Case-Law, ECtHR and the European Union Agency for Fundamental Rights](#)

[Handbook on European law relating to access to justice, European Union Agency for Fundamental Rights and Council of Europe](#)

[Guidance Document on the European Prison Rules, Penal Reform International and the Council of Europe](#)

[CPT Annual Reports](#)

[CCBE Q&A Guide on the European Court of Human Rights](#)

[ECtHR Guide on Prisoners' Rights](#)

[ECtHR Guide on Article 6 of the European Convention on Human Rights - Right to a fair trial \(civil limb\)](#)

[ECtHR Guide on Article 13 of the European Convention on Human Rights](#)

[ECtHR Guide to good practice in respect of domestic remedies](#)

[ECtHR Practical Guide on Admissibility Criteria](#)



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