PERMANENT DELEGATION OF THE COUNCIL OF EUROPE TO THE UNITED NATIONS AND OTHER INTERNATIONAL ORGANISATIONS IN GENEVA

The Secretariat of the Council of Europe extends its gratitude to the Special Rapporteur on for extrajudicial, summary or arbitrary executions for the opportunity to provide written contributions on the above-mentioned topic to inform his forthcoming report at the 53rd regular session of the Human Rights Council in June 2023. The Secretariat of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the Transversal Challenges and Multilateral Projects Division, Department for the Implementation of Human Rights, Justice and Legal Co-operation Standards, both from the Directorate General of Human Rights and Rule of Law – DGI, contributed to this.

**Inputs submitted by the Secretariat of the Council of Europe on deaths in custody.**

States have a responsibility to ensure that detained individuals are protected from harm and ill-treatment. Deaths in police custody or prison are matters of great concern and an expression of the ultimate failure in the duty of care of corrective services, depicting a detention system in crisis. They may be due to natural causes, such as an ageing population, but they may also be due to the detention environment, i.e., ill-treatment or inadequate conditions of detention which directly lead to deaths (police brutality, inter-prisoner violence, drugs, alcohol or psychoactive substances abuse, suicide, etc.).

While some guidelines for investigating deaths in custody have been developed by the [International Committee of Red Cross (ICRC](https://www.icrc.org/en/publication/4126-guidelines-investigating-deaths-custody)) and some sparse academic research exist[[1]](#footnote-2), it has to be noted that in the European region no common definition nor a detailed methodology are available, and existing recommendations in this field are not sufficiently implemented. Civil society organisations are seeking to put this issue on the global penal reform agenda[[2]](#footnote-3). As a consequence, no (or little) adequate guidance or training is provided to relevant personnel.

The European continent has established a number of standards to address the issue, such as, but not limited to, the [Recommendation R(99)3](https://www.coe.int/t/dg3/healthbioethic/texts_and_documents/RecR%2899%293.pdf) of the Committee of Ministers to member States on the harmonisation of medico-legal autopsy rules, or the recently revised[[3]](#footnote-4) [Recommendation Rec(2006)2-rev](https://rm.coe.int/09000016809ee581) of the Committee of Ministers to member States on the European Prison Rules, establishing standards for the treatment of prisoners, including access to legal representation, health care and communication with the outside word.[[4]](#footnote-5)

The European Convention on Human Rights establishes in its article 2 the right to life and places a positive duty on the States to conduct an effective investigation following deaths in custody. The European Court of Human Rights can also hear cases related to articles 3, 13 or 14 when dealing with the issue. The Strasbourg Court requires member States not only to ensure an *effective remedy* before a national authority - notwithstanding that the violation has been committed by persons acting in an official capacity - but also to take *corrective action*.

Furthermore, the European Union has developed its legal and policy framework to address the issue. The Charter of Fundamental Rights of the European Union guarantees the right to life and prohibits torture and inhumane treatment.

In addition, monitoring bodies have been established to ensure that member States comply with these standards. This is the case of the European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment ([CPT](https://www.coe.int/en/web/cpt/home)), which conducts regular visits to all places of deprivation of liberty, including prisons and police stations. On several occasions, the CPT has expressed concerns about the impartiality or effectiveness of investigations in cases of complains of ill-treatment by the police.[[5]](#footnote-6)

Since the entry into force of the Optional Protocol to the UN Convention Against Torture (OPCAT) in 2006, the Council of Europe has been providing assistance to NPMs across Europe. In continuation of previous efforts and cooperation, the joint Council of Europe/European Union project, the European NPM Forumconsists of an interactive peer-to-peer “network” bringing together National Preventive Mechanisms (NPMs) from EU Member States. The Forum goes beyond and supports non-EU Member States, as well as non-Council of Europe member States, notably countries in the MENA region (Morocco and Tunisia). It provides a platform for exchange and discussion to assist European NPMs, as key players in the protection of fundamental human rights of persons deprived of their liberty in all places of deprivation of liberty, in carrying out their mandate effectively and independently. Better monitoring by NPMs will ensure better protection of human rights of all persons deprived of their liberty.

Factors contributing to deaths in custody are multiple and fall within the scope of the NPM mandate: inadequate conditions of detention, insufficient access to health care, limited contacts with families and inadequate safeguards against suicide.

Since many of these deaths are preventable, it has been suggested that member States may decide that in their NPM’s preventive mandate could include non-judicial investigations into these deaths. Depending on the situation[[6]](#footnote-7), this may go above and beyond a strictly preventive mandate of NPMs.

NPMs are independent oversight bodies, which should receive regular information, or as death occurs, and could have a statutory duty to investigate in parallel or to oversee investigations on deaths in custody conducted by other relevant institutions[[7]](#footnote-8). In addition, the independent body must have a clear mandate and access to all relevant information concerning the person in custody and access to freely interview staff and detainees.

Member States should act upon the recommendations provided by the monitoring bodies, raise awareness and adopt measures addressing possible causes and preventing such deaths in light of relevant international standards, soft law instruments, and developments in European and international jurisprudence.

Due to lack of budgetary and human resources, official data collection, publication and analysis of deaths following the use of force is lacking in many member States. Civil society organisations are increasingly becoming active in trying to fill this gap, but little is still known about the precise causes in a given case. Member States should aim at digitalised and publicly available and accurate data on deaths in custody, identifying trends and sharing promising practices (such as the involvement of family members), so as to further decrease deaths in custody.

Transparency on systemic issues that may have contributed to a death, a clear mandate of the monitoring body and clear investigation methodology are imperative as they have the potential to reveal a trend, which could be effectively tackled once identified.

These are some of the core issues that may be discussed in the framework of the European NPM Forum. The Project will continue providing an opportunity for NPMs to regularly meet through workshops and conferences, tailored to the most current needs and challenges faced by NPMs, such as the issue of deaths in custody.

Guided by common values, with the aim to develop common, aligned recommendations and standards, thus maximising efficiencies, the Project stands ready to work together and create synergies to achieve mutual, sustainable goals in terms of human rights protection.

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

*Please find herewith extracts of CPT visit reports on the issue.*

“The Committee is concerned that, in the wake of serious incidents such as a death, no action or inquiry is undertaken aimed at identifying possible means to improve the system of prevention in place.

The CPT recommends that the authorities institute a practice of carrying out thorough inquiries into deaths in custody with a view to learning lessons and improving operating procedures within the prisons.

Further, such inquiries are necessary in order to provide the relatives of the deceased person(s) with relevant information concerning the circumstances of the death. “ *"The former Yugoslav Republic of Macedonia": Visit 2006 [para. 107]*

“The CPT notes that the causes of prisoner deaths were often not recorded in a medically satisfactory or consistent manner. (…)

The CPT recommends that the [...] authorities introduce a clear policy and comprehensive procedure on the identification of the causes of death of detained persons – including when the death occurs in (or on the way to) hospital – and clear criteria on the classification of deaths as suicides.

The CPT recommends that the […] authorities ensure that a thorough investigation is carried out into every death in prison by an authority independent of the prison system to ascertain, *inter alia*, the cause of death, the facts leading up to the death, including any contributing factors, and whether the death might have been prevented. Further, whenever a person dies in prison (or soon after transfer from prison), an autopsy should be carried out[[8]](#footnote-9) and the prison’s management and medical services should be informed of the outcome.      .

Finally, an analysis should be undertaken of each death in prison to consider what general lessons may be learned for the prison in which the death occurred and whether in the case of self-inflicted death there are any systemic, nationwide measures that need to be taken. “

*Italy: Visit 2010 [para. 10 and para. 28]*

“In this context, the [prison administration] should also take proactive measures to become a requesting party for all autopsies undertaken in respect of prisoners […]. Further, the Committee recommends that the [prison administration] systematically share the content of any autopsy report with the relevant prison management, as well as with its health-care staff, in particular with a view to ascertaining whether there are lessons to be learned as regards operating procedures in respect of future similar episodes. “*North Macedonia: Visit 2019 [para. 94]*

*CPT Hudoc database*

More information can be found in the Hudoc database, e.g. using the keywords ‘suicide’ and ‘autopsy’ : [HUDOC-CPT (coe.int)](https://hudoc.cpt.coe.int/eng#{%22sort%22:[%22CPTDocumentDate%20Descending,CPTDocumentID%20Ascending,CPTSectionNumber%20Ascending%22],%22CPTKeywords%22:[%22fmpv%22,%22fmpz%22]})

1. See [Working paper: Guidelines on Investigating Death in Custody](https://snis.ch/wp-content/uploads/2021/11/2008_Elger_Working-Paper.pdf) (2011) from the University Centre for Legal Medicine of Geneva and Lausanne, the Geneva Academy of International Humanitarian Law and Human Rights, the University of Bern, the ICRC and the International Centre for Prison Studies. [↑](#footnote-ref-2)
2. See [Deaths in prison: Examining causes, responses, and prevention - Penal Reform International](https://www.penalreform.org/resource/deaths-in-prison-examining-causes-responses-and-prevention/) in cooperation with *prison*DEATH [↑](#footnote-ref-3)
3. Revised on 1 July 2020 [↑](#footnote-ref-4)
4. In cooperation with Penal Reform International, the European NPM Forum is preparing the publication of the Full Guide of the European Prison Rules which will soon be published. [↑](#footnote-ref-5)
5. See for example CPT reports for Austria, Azerbaijan, Bulgaria, Cyprus, Portugal, Romania, United Kingdom, etc. [↑](#footnote-ref-6)
6. For example, the Italian NPM has both a preventive and protective mandate [↑](#footnote-ref-7)
7. See ICRC guidelines. [↑](#footnote-ref-8)
8. The Committee acknowledges that there may be highly exceptional cases in which, as prescribed by law, an independent authority may decide that an autopsy is not required. [↑](#footnote-ref-9)