

PREVENTION OF VIOLENCE AND ILL-TREATMENT IN LITHUANIAN PRISONS

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Abstract. *The reports of the Council of Europe’s Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment show that Lithuanian prisons still do not provide safe prison conditions for inmates. Considering that, the article aims to present whether Lithuanian legal regulation meets international and EU requirements and how Lithuania’s court and Seimas ombudsperson review system facilitate ensuring the protection of prisoners from violence and ill-treatment. The focus is on fulfilling the obligations of the prison authorities to ensure nonviolent prison conditions for inmates. The article analyses international, EU, and Lithuanian laws on ensuring the safety of prisoners and the decisions of Lithuanian Ombudsperson and Lithuanian courts on this issue for the period of 2022-2024.*

Keywords: *prisons, rights of prisoners, human rights, violence, ill-treatment.*

Introduction

The risk of human rights violations during imprisonment is a serious concern that requires special attention. When sentences are carried out in an environment that does not respect human rights and dignity, the purpose of the imprisonment becomes meaningless. Additionally, social reintegration for the convicted person becomes nearly impossible. It is paradoxical that through its structures, the state may violate the laws it prohibits citizens from violating (Sakalauskas & Norvaišytė, 2022, p. 342).

A sudden change in life and the experience of isolation can heighten inmates' feelings of vulnerability and insecurity. Therefore, daily living conditions in prison should not appear to punish the convict more than what was intended by the indictment. The execution of a prison sentence should not inflict additional suffering beyond the deprivation of liberty itself (Sakalauskas & Norvaišytė, 2022, p. 434).

The reports of the Council of Europe’s Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) show that Lithuanian prisons still do not provide safe prison conditions for inmates. The report on the CPT ad hoc visit to Lithuania in February 2024, published on 18 July 2024, emphasises that the Lithuanian authorities are still far from fulfilling their responsibility to protect prisoners. Illicit drug use, informal prisoner hierarchy, and catastrophically low staff presence inside dormitory-type accommodation are the main causes of inter-prisoner violence. The report also highlights the authorities' failure to conduct effective investigations into all credible allegations of ill-treatment, including those inflicted by fellow prisoners.

Furthermore, the report states that the Committee is concerned about treating detained individuals from the lowest caste of inmates in Lithuania. In some instances, this treatment „could amount to modern slavery”, which could be considered as degrading treatment under Art. 3 of the European Convention on Human Rights. States are required to take all necessary measures to prevent such treatment.

Notably, Seimas Ombudspersons are authorised to check how detainees' human rights and freedoms are ensured in Lithuanian prisons under the national violence preventive mechanism established by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and optional protocol (Law of Seimas Ombudspersons, 1998, Art. 3 (3) & 19¹) and Lithuanian courts have right to assess actions of prisons' staff and award damages to the victims of violence and ill-treatment.

Thus, the question arises of whether the Lithuanian legal framework facilitates the necessary standards in providing a nonviolent environment for inmates set by international and EU law and how effective Lithuania's court and Seimas ombudsperson review system is. Accordingly, the article aims to present whether Lithuanian legal regulation meets international and EU requirements and how Lithuania's court and Seimas ombudsperson review system facilitate ensuring the protection of prisoners from violence and ill-treatment. The main focus is on fulfilling the obligations of the prison authorities in ensuring nonviolent prison conditions for inmates.

Methodology of the research: Analysis and generalisation methods were applied to the study. International, EU, and Lithuanian laws on ensuring the safety of prisoners and the decisions of Lithuanian Ombudsperson and Lithuanian courts on this issue for the period 2022-2024 were analysed. The article summarises and highlights the gaps in the Lithuanian practice of ensuring detainees' safety in prisons by applying the generalisation method. This method is also applied to present the conclusions.

International and EU requirements for ensuring fundamental rights in prisons

In assessing the suitability of the measures to prevent violence and ill-treatment in Lithuanian prisons, the common minimum standard on this issue, defined in international universal and regional documents and EU laws, should be discussed.

First, it should be mentioned that international universal and regional documents, as well as EU laws, clearly stress that no one can be subjected to torture or cruel, inhuman or degrading treatment or punishment. This notion is embedded in Art. 5 of the Universal Declaration of Human Rights (1948), which the United Nations General Assembly proclaimed as “a common standard of achievement for all peoples and all nations” (UN Resolution 217 A, 1948). The state's commitment to ensure this principle can also be found in Art. 7 of the International Covenant on Civil and Political Rights (1996), Art. 3 of the European Convention on Human Rights (1950), and Art. 4 of the Charter of Fundamental Rights of the European Union (2000).

Under international law, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from them or a third person information or confession, punishing them for an act they have committed or is suspected of having committed, or intimidating or coercing them or other persons or for any reason based on discrimination of any kind when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity (UN Resolution 3452 (XXX), 1975, Art.1(1); Convention Against Torture, 1966, Art.1). The UN Convention Against Torture in Art. 2 establishes the obligation of each state to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

Alice Jill Edwards, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, emphasised the prohibition of torture - an *erga omnes* and *jus cogens* norm, as an absolute human right, “reflected in its non-derogability.” Such treatment is “prohibited in peacetime, in armed conflict and during other public emergencies and is without

territorial limits” (Edwards, 2022, § 28). In the case of torture, there is not only a human rights violation actionable by individuals against Governments and by Governments against Governments but also a crime under international law (Edwards, 2022, § 29).

Edwards also noted that “[l]esser forms of cruel, inhuman or degrading treatment or punishment are prohibited under customary international law” (2022, § 28). Under Art. 16 (1) of the UN Convention Against Torture, each contracting state undertook to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture. Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment also asks states to condemn the same way any other act of torture and other cruel, inhuman or degrading treatment or punishment (1975, Art. 2). Declaration requires all states not to permit or tolerate not only torture but also other cruel, inhuman or degrading treatment or punishment (Art. 3) and take effective measures to prevent such treatment or punishment from being practised within its jurisdiction (Art. 4). Similarly, the Nelson Mandela Rules (2015) ask states to take all necessary measures to protect all prisoners not only from torture but also any other cruel, inhuman or degrading treatment or punishment. No circumstances whatsoever may be invoked to justify mistreatment. In no circumstances can restrictions or disciplinary sanctions amount to such treatment or punishment (Rule 43 (1)).

International and EU documents specifying the rights of people in prisons indicate that all persons deprived of their liberty must be treated with humanity and with respect due to their inherent dignity and value as human persons. This requirement can be found in the International Covenant on Civil and Political Rights (1966, Art. 10 (1)), Basic Principles for the Treatment of Prisoners (1990, Art. 1), Nelson Mandela Rules (2015, Rule 1), Charter of Fundamental Rights of the European Union (2000, Art. 1), and the European Commission Recommendation on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions (2022, § 11). The Committee of Ministers issued an additional Recommendation concerning foreign prisoners, which asks member states to treat foreign prisoners with respect for their human rights and due regard for their particular situation and individual needs (2012, § 3).

International documents require ensuring all prisoners' rights to all prisoners without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (Covenant on Civil and Political Rights, 1966, Art. 2(1); Basic Principles for the Treatment of Prisoners, 1990, Art. 2; Nelson Mandela Rules, 2015, Rule 2 (1)). In addition to the grounds listed for the prohibition of discrimination, the European Convention on Human Rights also specifies the prohibition of discrimination on grounds related to a person's association with a national minority (1950, Art. 14). The Nelson Mandela Rules go further; they specify that prisoners' religious beliefs and moral precepts must be respected (2015, Rule 2 (1)).

Following the states' commitments embedded in the international agreements and EU laws, the guidelines—Prisons' Rules—at universal, regional, and EU levels specify conditions for fulfilling the requirements. International universal rules – the Nelson Mandela Rules (2015) and the Bangkok Rules (2010), focus on a prisoner–prison authority relationship, whereas other rules – European Prison Rules (2006), Recommendation concerning foreign prisoners (2012) and European Commission Recommendation on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions (Commission's Recommendation) (2022), in addition to the issues addressed by international universal rules, also consider general safety requirements in the prisons and the need to protect prisoners from violence or ill-treatment by fellow inmates.

Aiming to ensure inmates' safety in prisons, the following recommendations should be highlighted, summarising the provisions in the mentioned rules and recommendations.

Firstly, rules and recommendations indicate general safety requirements. Under the Commission's Recommendation, the EU member states are asked to take all reasonable measures to ensure the safety of detainees and to prevent any form of torture or ill-treatment (§ 52). The Recommendation concerning foreign prisoners asks prison staff to ensure good order, safety and security through dynamic security and interaction with foreign prisoners (§ 32.1). The recommendation asks states to put every effort into enhancing mutual respect and tolerance and preventing conflict between prisoners, prison staff, or other persons working or visiting the prison (§ 32.3). The European Prison Rules indicate that good order in prison should be maintained by considering the requirements of security, safety, and discipline (§ 49).

The prison must ensure that inmates are protected from staff as well as from other fellow inmates' violence or ill-treatment. The Commission Recommendation (2022, § 52) asks Member States to take all reasonable measures to ensure that detainees are not subject to violence or ill-treatment by prison staff and are treated with respect for their dignity. European Prison Rules indicate that prison staff could use force against prisoners only in self-defence situations, in cases of attempted escape, or active or passive physical resistance to a lawful order. The use of force should always be a last resort. The force should be the minimum necessary and imposed for the shortest time (§§ 64.1 & 64.2).

The recommendation concerning foreign prisoners (2012, § 32.2) requires prison staff to be alert to potential or actual conflicts between groups within the prison population that may arise due to cultural or religious differences and inter-ethnic tensions. The obligation to ensure protection against inmates' violence applies not only to foreign prisoners but also to other prisoners. Following the ECHR decision in case *T v. Lithuania* (Application no. 29474/09) for the establishing the violation of the Article 3 right (prohibition of torture) of the European Convention on Human Rights, it is enough to demonstrate that the authorities had not taken all steps which could have been reasonably expected of them to prevent real and immediate risks to the prisoner's physical integrity, of which the authorities had or ought to have had knowledge. (2013, § 53).

Secondly, rules and recommendations ask states to apply minimum-security measures to ensure a secure prison environment. The European Prison Rules state that only the minimum necessary security measures should be applied to inmates to achieve secure custody (§ 51.1). To ensure that the Rules recommend that after admission, each prisoner's assessment is conducted as soon as possible to determine whether they pose a safety risk to other inmates, prison staff, or other persons or are likely to harm themselves (§ 52.1). Following the assessment, special measures can be applied against the prisoner to ensure the safety of others and the prisoner. However, every possible effort should be made to allow these prisoners to participate safely in daily activities. Each prisoner should be able to contact staff anytime, including at night (§§ 52.2 – 52.5).

Thirdly, as a last resort, special high security or safety measures could be imposed on prisoners who threaten the security or safety of the other inmates and prison staff. European Prison Rules acknowledge that special high security or safety measures could be imposed on prisoners who threaten security or safety. However, the rules indicate that such measures should only be applied in exceptional circumstances and only for as long as security or safety cannot be maintained by less restrictive means (2006, §§ 53.1- 53.2). The Rules indicate that disciplinary procedures should be mechanisms of last resort (§ 56.1). Whenever possible,

prison authorities should use mechanisms of restoration and mediation to resolve disputes with and among prisoners (§ 56.2).

Special high security or safety measures may include the separation of a prisoner from other inmates in solitary confinement (§ 53.3). However, such measures should be applied individually, considering only the current risk, should be proportionate to that risk and shall not entail more restrictions than are necessary to counter that risk (§§ 53.7- 53.8). In addition, the Bangkok Rules state that punishment by close confinement or disciplinary segregation cannot be applied to pregnant women, women with infants and breastfeeding mothers (2010, Rule 22).

Fourthly, prison rules give particular attention to the instruments of restraint. Nelson Mandela Rules stresses that instruments of restraint should never be applied as a sanction for disciplinary offences (Rule 43 (2)). The use of chains, irons, or other restraint instruments that are inherently degrading or painful should be prohibited in any circumstances. Other instruments of restraint, such as handcuffs, restraint jackets and other body restraints, could only be used when authorised by law and are needed as a precautionary measure against escape during a transfer or to prevent a prisoner from injuring themselves or others or damaging property (Rule 47 (1)). Instruments of restraint should only be imposed when no lesser form of control would be effective in addressing the risks posed by a prisoner. The method of restraint should be the least intrusive, necessary, and reasonably available and proportional to the level and nature of the risks (European Prison Rules, 2006, Rules 68.1 & 68.2.). Instruments of restraint must be used only for the time the risks are present (European Prison Rules, 2006, Rule 68.3.). The Bangkok Rules stresses that instruments of restraint shall never be used on women during labour, during childbirth and immediately after birth (2010, Rule 24).

Fifthly, the Nelson Mandela Rules also pay attention to the procedure for searches of inmates and cells. Rules specify that searches should be conducted only in a manner that respects the inherent human dignity and privacy of the individual being searched. While implementing the searches, the principles of proportionality, legality, and necessity should be respected. Searches should not be used to harass, intimidate or unnecessarily intrude upon a prisoner's privacy (Nelson Mandela Rules, 2015, Rule 50 & 51). Intrusive searches, including strip and body cavity searches, should be undertaken only if strictly necessary (Nelson Mandela Rules, 2015, Rule 52 (1)). In addition, the Bangkok Rules require respecting women prisoners' dignity during personal searches. Women staff should only do the search (2010, Rule 19).

Finally, European Prison Rules address the issue of weapons. Under the Rules, lethal weapons should be carried by the prison staff within the prison perimeter only in case of operational emergency when there is a need to deal with a particular incident (2020, §§ 69.1 & 69.2)

In summary, international and EU documents indicate that preventing violence and ill-treatment should be the primary consideration of all EU member states.

Lithuanian legal framework on prevention of violence and ill-treatment

The Lithuanian Penal Code establishes the procedure, conditions and principles for executing punishments (Penal Code, Art. 1 (1)). The principle of humanism enshrined in the Code requires that the measures applied during the execution of punishments must not limit the rights and freedoms of the sentenced person if this is not justified and necessary. In addition, torture, cruelty, humiliation, and medical, biological and other scientific experiments on convicts are prohibited (Art. 4 (1)). However, the Code does not provide a more detailed explanation of how this humanism principle should be implemented in practice. This issue is regulated in other legal acts.

As already mentioned in the previous section, the prisoner must be protected both from the violence of the prison staff and from the violence of other inmates.

Discussing the protection from violence by prison staff, it could be said that the Law on the system of execution of punishments (2022) foresees that Lithuanian prison service officers must, in the institutions of deprivation of liberty, respect and protect the human dignity of the prisoners, ensure and protect their human rights and freedoms, and protect them from imminent danger to their health and/or life (Art.11). The law specifies in what circumstances prison staff have the right to use coercion and/or firearms. Under the law, prison staff can use coercion to protect themselves or to protect others from imminent danger to life or health, to force the convict to comply with the demands or instructions of the officers, to repel an attack on a firearm, special equipment, means of communication and to recover these objects, to repel attacks on buildings, vehicles, property, territories, to enter territories, premises or means of transport during a search or seizure or searching hiding sentenced person or to prevent criminal acts. The coercion measures can also be used in cases of riots conducted by convicted or arrested persons, group resistance to the administration of a prison, illegal group actions violating the internal order of a prison, and hostage-taking situations (Art.13(3)).

The law allows prison staff to use coercion measures just in proportion to the existing danger, considering the specific situation, the nature of the violation of the law, the intensity, and the offender's characteristics. When there is no imminent danger to the life or health of the prison staff or other persons, the use of physical coercion and special measures (except for handcuffs, means, or tools for arresting, tying or restraining persons) is prohibited against persons with disabilities, vulnerable persons, pregnant women and minors (Art. 13 (8)). However, contrary to what the International and EU documents recommended, the law does not distinguish women after birth.

In addition, the Code of Conduct for employees of the Lithuanian Prisons Service requires prison staff to respect the honour and dignity of every person and their fundamental rights and freedoms when performing their duties. They cannot act in a way that is considered torture or other cruel, inhuman, or degrading treatment or punishment, nor encourage or tolerate such actions (2023, § 8 (1)). When other measures are ineffective, the guards can use a restraint, such as tying a person to a special bed. (The instruction for organising protection and supervision, 2023, §§ 209 – 221).

Lithuanian Prisons Service's instructions for protection and supervision approved by the Minister of Justice distinguish situations when guards must record contacts with convicted persons to ensure proper behaviour from both sides, the prison staff and prisoners. Such records should be done when contacting convicted persons during their meal, when taking them out of the living quarters and accompanying them inside the prison territory, when escorting and conveying them, checking convicted persons for intoxication, conducting personal searches, checking their belongings, inspecting prison premises and its entrances, dealing with inmates who behave aggressively are drunk or intoxicated, when conducting inspections of prisoners and preventing criminal acts and violations (Instruction for organising protection and supervision, 2023, §§ 119 – 122).

Regarding ensuring protection from violence by other inmates, the Instruction for organising protection and supervision asks the prison administration to ensure protection and a safe environment for detained persons. Following the instructions, to reduce the number of cases of violent behaviour in places of execution of punishment, the director of the Lithuanian prison service issued the Description of the procedure for the prevention of violent behaviour and investigation of physical injuries of arrested and convicted persons, the preparation, processing and accounting of related documents at the places of execution of the sentence

(execution of the arrest) (2024), which establishes violence risk assessment measures and control methods, determines the actions of prison staff and their duties and control measures, establishes the procedure for cooperation between prison units in the event of violent behaviour being observed.

The Description focuses on preventing violence. It specifies that prevention aims to create a safe, favourable environment for the resocialisation of detained persons, where they and prison staff feel safe and respected, and their opinions and recommendations are listened to and considered (§ 6). In addition, the Description declares "zero tolerance" for any violence, including verbal harassment and bullying in everyday work (§ 7). It also provides a definition of violence. Under Description, violence (violent behaviour) means actions or omissions that cause intentional physical, mental, sexual, economic or other effects on a person, resulting in physical, material, psychological or other non-material damage (§ 7). Physical violence is considered unlawful and intentional physical impact against a person aiming to take their life, harm health, cause a helpless state, cause physical pain or other physical suffering. Physical violence can manifest in various beatings, hitting, punching, kicking, pushing, strangling, spitting, burning, stabbing, pinching, wounding, pulling hair, torture, etc. Psychological violence is the intentional effect on a person's mental state by making him fear that threats will result in violent physical or other behaviour. Examples of psychological violence are insulting words, remarks, prohibitions, threats aimed at hurting, intimidating, making a person dependent on the abuser, etc. Economic violence manifests in a ban on work, deprivation of money or other property, forcing the victim to get cash for various needs, etc (§ 8).

In addition, the Description also asks prison administrations to create and promote a positive culture in places where punishment is executed, develop prison staff's teamwork competencies, and train on violence prevention topics (§ 7).

To achieve the goals, the Description presents a violence prevention mechanism that can be divided into nine parts.

Measures for newly arriving prisoners. When a new detainee arrives, the receiving officer must assess their vulnerability, likelihood of violence, signs of hostility toward others, and tendencies toward conflict. This assessment should help accommodate the newcomer. Additionally, a psychologist conducts a psychological evaluation to assess the same aspects: vulnerability, propensity for violence, hostility levels, conflict tendencies, and communication characteristics. During the introductory interview, resocialisation specialists must identify whether the new detainee has difficulties communicating with other inmates. They should explain where the detainee can seek help if needed.

Prison staff must know detainees who tend to harm others. The description requires that the staff be attentive to prison surroundings, respond promptly to any conflicts or signs of escalation, and take necessary measures to protect the lives and health of prisoners. When possible, they should act to prevent severe damage.

Promotion of non-violent behaviour. Prison staff should observe detainees' adaptation characteristics, behaviours, and interactions during individual and group consultations. Any signs of violence must be reported to the anti-violence commission and relevant personnel. Resocialisation specialists should pay attention to how individuals communicate in their living environment. They should consult detainees on how to solve problems without violence and highlight the harmful impact of subculture on interpersonal relationships and personal development.

Reaction to sights of violence. Prison staff must take immediate action to prevent conflicts whenever they observe any signs or indications of potential conflict. In case of any violence—whether verbal, psychological, or physical—among inmates, the prison staff must assess the

situation and implement measures to prevent any incidents. When staff receive information about the rising probability of violence among detainees—or when there are visible signs of possible violence—they are required to relocate detainees at risk to a different cell or living area. Additionally, they must take measures to de-escalate the situation. In the future, instigators of violence should be monitored more closely in their living and communal areas.

Daily check of detainees. At the start of a shift, the officer on duty must check whether each prisoner is present and visually assess them for facial or bodily bruises, scratches, and signs of intoxication. If the officer observes any injuries on a prisoner's body, they must report this to the security and supervision officers (Instruction for organising protection and supervision, 2023, §§ 42 – 50). During duty shifts and inspections of detainees, prison staff should also pay attention to persons who avoid communication, are dressed not under the season, or are trying to conceal their appearance. Duty officers must also look for persons who do not participate in inspections or are sleeping in areas not designated for them. If such behaviour is noted, staff must investigate its reasons and check whether those prisoners are not victims of physical or mental violence.

Help the victims of violence. When prison staff observe signs of injury in detainees, they must provide them with emergency aid and then transfer them to a doctor for a more comprehensive examination. Inmates who have experienced psychological or physical violence can consult with a psychologist. Additionally, the psychologist provides methodological support to prison staff in managing the violent situation.

Recording of violence. When the injured inmate is found, the prison staff must register their injuries, including taking a photo of the body. They also must secure the scene where the violence took place and make its inspection, collect the evidence and register them. In addition, the staff must also perform a detailed investigation of the circumstances, including questioning the victim and witnesses.

Administrative arrangements. A special commission in the prisons collects data about cases of violence and its causes and provides recommendations on how to prevent violence in the future. The head of the prison must organise staff meetings at least once a quarter to discuss issues such as the prevention of violence, the microclimate, how to create peaceful communication between prison staff and inmates, and how to solve conflicts.

Training of prison staff. The heads of prisons must encourage guards and other prison staff to participate in training on risk management and the prevention of violence against vulnerable detainees.

In summary, legal regulation in Lithuania facilitates ensuring safe conditions for inmates in Lithuanian prisons. The question arises as to why there is still violence in Lithuanian prisons, about which the CPT reports remind Lithuania. It seems that what is declared and required in legal acts does not work in practice. The control mechanism is vital in ensuring the proper implementation of legal acts. Therefore, finding out how the control mechanism works in Lithuania is important. Next, this article analyses the decisions of the two control mechanisms, the Seimas Ombudsperson, acting under the national violence preventive mechanism, and the courts, assessing the lawfulness of the decisions and actions of the Lithuanian public bodies.

The findings of Seimas Ombudsperson regarding violence and ill-treatment in prisons

Article 3 (3) and Article 19¹ of the Law of Seimas Ombudsperson (1998) indicate that ombudspersons are authorised to check how detainees' human rights and freedoms are ensured in Lithuanian prisons under the national violence preventive mechanism established by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

and optional protocol (Optional Protocol, 2002). The purpose of the national mechanism for the prevention of torture is to identify the possible causes, risks and signs of torture and other cruel, inhuman or degrading treatment or punishment in places of restriction of liberty, to improve the treatment of persons whose liberty is restricted, the conditions of detention of these persons, as well as to prevent torture and other cruel, inhuman or degrading treatment or punishment (Procedure for the organisation of the NPT, 2022, point 3).

The analysis of the Ombudsperson's reports for the period 2022 – 2024 indicates that preventive measures are not enough to eliminate violence in Lithuanian prisons. It can be said that the violence in prisons is not the main focus area of Seimas Ombudsperson's institution. During this period, only one report was available, which only partially touched on the issue of violence in prisons. The report covered some violence issues under thematic study on the Prevention of Hepatitis B, Hepatitis C, Tuberculosis, Hiv/Aids, and Sexually Transmitted Infections (2023). The latest report, 14 June 2024, on the situation of human rights in the Panevezys prison discusses resocialisation, employment, psychological help, contact with the external world, and the feeding and healthcare of inmates. However, the theme of violence and ill-treatment is not covered in the report. The reasons are not clear. Maybe the number of personnel in the Seimas Ombudsmen's institution is too small to examine the situation in Lithuanian prisons more closely.

Discussing the findings in the thematic study on the Prevention of Hepatitis B, Hepatitis C, Tuberculosis, Hiv/Aids, and Sexually Transmitted Infections, and the availability of treatment for these diseases in Prisons conducted in 2023, it could be said that it indicates the manifestation of sexual abuse in prisons. In Alytus prison, a pre-trial investigation was launched due to the possible sexual abuse of a detainee. The staff of the Pravieniskiai 1st prison also informed that in 2022, one case of sexual abuse was recorded (§ 3.3.24.). In the Pravieniskiai case, the victim was examined by a doctor. In Alytus prison, the victim got help, which included the victim's isolation and counselling by the prison's psychologist. Personal interviews with the detainees of Pravieniskiai 1st prison (among them were detainees transferred from Marijampole and Alytus prisons) revealed that the number of victims of sexual abuse could be higher than recorded (§ 3.3.24.). More detainees noted they had experienced sexual abuse. Detainees explained they did not report to the authorities about sexual abuse against them because of the risk of being assigned to the lowest caste of the prison subculture hierarchy if the case of sexual abuse came to light. The convicts said the sexual abuse usually takes place in the shower or the toilet of the cell, without using condoms (§ 3.3.24.).

The study revealed that Alytus prison did not collect data on the sexual violence experienced by detainees, and they could not comment on whether the detainees have sexual relationships. Still, they were aware that used condoms were found in the places where the detainees stayed. The staff of the Pravieniskiai 1st prison also admitted that they had noticed cases when a detainee offered sexual services to other inmates for money, cigarettes, etc. (§ 3.3.24.).

Answers provided by the Marijampole prison staff in 2022 indicate that there is no approved procedure for help and assistance to the victim of sexual violence and how to prevent sexually transmitted diseases. In case of sexual violence, the prison staff would act considering the circumstances and the needs of the victim. The Pravieniskiai 1st prison staff also did not know what specific actions must be taken in case of sexual abuse (§ 3.3.24.). The action plans of the prisons also did not include specific measures for the prevention of sexual violence among inmates. Documents do not provide for actions that must be taken in prisons to protect a person who has suffered from sexual violence, provide him with the necessary assistance and prevent the spread of sexually transmitted diseases (§ 3.3.25.). Lithuanian Prison Service

confirmed that the prisons did not have approved algorithms dealing with the prevention of infectious diseases and the treatment of victims of sexual violence (§ 3.3.25.).

Victims of sexual violence admitted they were isolated from the perpetrators. Still, they were not provided with the necessary psychological help, and healthcare specialists did not examine their bodies. Detainees who experienced anal and oral sexual abuse complained that they were not tested for infectious diseases. They also noted that only pre-trial investigation officers communicated with them; however, they did not get complex assistance. Healthcare specialists, psychologists and resocialisation specialists claimed they are not informed about cases of sexual violence among convicts.

Considering the study's results, the Seimas Ombudsperson recommended that the Lithuanian Prison Service change the situation.

In addition, it is worth noting that the Seimas Ombudspersons also investigate applicants' complaints regarding human rights violations and freedoms in detention (Law on Seimas Ombudspersons, 1998, Art. 12 (1)). During the 2022-2024 period, several decisions touched on the issue of violence in prisons.

On 7 August 2023, the Seimas Ombudsperson, in decision No. 4D-2023/1-406, found that the prisoner possibly injured by the prison staff was not provided with immediate and appropriate medical care and an investigation on whether the officers did not exceed the use of necessary force was not carried out. In this case, the detainee of Marijampole prison claimed that his hand was injured (he was diagnosed with a sprained wrist and bruises) due to physical coercion measures - combative wrestling actions and handcuffs used by prison staff against the detainee. On the day of the injury, the detainee was consulted by the prison doctor, who did not find serious injuries. Just after three days, when the detainee repeatedly visited the doctor due to arm pain, he was escorted to the hospital, where he was diagnosed with a fracture of the palmar bone. The Seimas Ombudsperson noted that the prison did not investigate whether the physical force used by the prison staff was excessive. They also did not preserve the videos of the day of the injury. (Notably, this is a repeating practice when prison staff do not preserve videos even in cases where the detainees asked them to do that because of the need to investigate a complaint). Considering that, the Seimas Ombudsperson concluded that prison staff did not take the required measures to eliminate the dangerousness of their physical force actions against the detainee and to prevent the occurrence of such actions in the future and asked the director of the Lithuanian Prison Service to conduct the required investigation. The Seimas Ombudsperson also expressed concern about the inactivity of prison staff regarding ensuring the protection of the rights and freedoms of detainees. The situation when officers do not fulfil their positive duties to respond effectively in case of health impairment of the detainee is not compatible with the duties of the prison officers to respect and protect human dignity, ensure and protect human rights and freedoms, protect persons from threats to their health and life. The Seimas Ombudsperson asked the director of the Lithuanian Prison Service to take measures to ensure that officers immediately respond to information about detainees' injuries and take all necessary actions.

In another case, No. 4D-2022/1-638, 30 December 2022, the Seimas Ombudsperson found that in Panevezys prison, prison staff were performing preventive checks during the night 2-3 times, entering the living room, in the absence of necessity. The Ombudsperson concluded that such a measure was not proportionate to ensuring the regime of correctional institutions and, therefore, violated the human rights of detainees.

Lithuanian Courts' Case Law regarding violence and ill-treatment in prisons

Lithuanian court decisions also show manifestations of violence in Lithuanian prisons. During 2022-2024, six court decisions touched on violence issues in Lithuanian Prisons. In five administrative cases, the prisoners asked for damages for pain and suffering because of violence. In one criminal case, the prison guards were sentenced for unjustified use of violence against the prisoner.

In the Regional Administrative Court decision in administrative case Nr. eI1-2396-505/2024, 26 June 2024, the detainee appealed to the court, asking the court to order a detailed investigation into the circumstances of the violent behaviour of Alytus prison staff and to award 1,000 euros in non-pecuniary damage. The detainee stated that three officers of the Criminal Intelligence Department entered his cell and demanded that the detainee move to another cell and arrange the belongings of the inmates who had been in that cell before. When he refused to do so, four more officers were called, who came and started dragging the applicant around the entire cell, threw him to the ground, grabbed his hand and began to press his face to the wall, humiliating the detainee in front of another inmate. The officers acted without turning on the video recorder. Also, one officer threatened the detainee that if he cut himself, he would be "hanged". As a result, the detainee felt humiliated and ruined; he could not bear the emotional stress, so he injured himself and was escorted to the hospital. The detainee appealed to the head of the Alytus prison with a complaint about the actions of the Criminal Intelligence Department and Alytus prison officers. The Immunity and Internal Investigation divisions of the Prison Service interviewed the officers involved in the incident. They concluded that there was no evidence of disrespectful behaviour or inappropriate actions by the officers. The detainee appealed to the court, asking to request an order for a detailed investigation and pay non-pecuniary damage for pain and suffering.

The court decided that there was no need to conduct a detailed investigation. However, it found that the officers did not use video recorders during their service because they did not even have them. According to officers, using video recorders is not mandatory for investigators. The court stated that it is impossible to reconstruct the course of events in the cell and find the exact circumstances in such a situation. As a result, in the court's opinion, all doubts about the circumstances of the event must be considered in favour of the detainee. Considering this, the court awarded the detainee 70 EUR for non-pecuniary damage.

In another Regional Administrative Court decision in administrative case No II-7778-473/2024, adopted on 23 May 2024, the detainee appealed to the court to award non-pecuniary damage because, among other circumstances, a subculture was facilitated in the Praveniskiai 1st prison, and the inmates were divided into castes. According to him, he was humiliated by other "higher caste" inmates, subjected to psychological violence, and forced to "watch streams" so that other higher caste inmates could use mobile phones, drugs and alcohol. The detainee also stated that the canteen's dishes are divided into two groups. The inmates belonging to the higher caste get new dishes and more significant portions, while the inmates belonging to the lower caste are given old green dishes and smaller portions. Upper-caste inmates shop in the prison shop first, and then lower-caste convicts can shop.

Following the arguments provided by the court to prove such a claim, the detainee must show that he addressed the prison psychologists for help due to emotional distress, mental suffering, inconvenience, feelings of inferiority, and violation of dignity, which could have been caused by unsuitable prison conditions in Praveniškių 1st prison due to bullying of other inmates or manifestations of subculture. To prove that the portions of food were too small, or the dishes were not given out properly, he should have written complaints to the property and

management department of the prison. His complaint was rejected as unfounded since he did not have such evidence. The explanations provided by the prison service were sufficient for the court to justify such a decision.

The court decision shows that the burden of proving the claim is too excessive for the prisoners to fulfil. In the case of the existence of subcultures in prisons, the life of prisoners who start making complaints about the issues discussed in this court case would make their life in prison unbearable. The court should not require such evidence to prove the claim. It is worth noting that the subculture's existence in prisons is not once indicated in CPT reports and even in other court decisions (Supreme Administrative Court, Administrative Case No.TA-63-556/2022, 8 June 2022). Event lawyers in other countries ask courts not to hand over the suspects to Lithuania under the European Arrest Warrant because of the existence of subculture and violence in Lithuanian prisons. Therefore, there should be a presumption of subculture's existence in prisons unless the prison authorities can prove otherwise.

In the Regional administrative court decision in administrative case No. II-4330-422/2023, 25 September 2023, the prisoner complained to the court about the actions of the prison guards at the medical point, where he had to take medication under the supervision of the medical worker and the prison guard. According to the Prisoner, when he nodded that he had taken the medicine, the prison guard grabbed the applicant's jaw without gloves and pressed it with force. He stated that he experienced violence, psychological pressure, psychological pain, emotional depression, mental suffering, and physical pain. The court reasoned that the guard had the right to use coercion against the prisoner if there were suspicions that he did not swallow the medicine in the health care office. To verify the officers' actions, the court reviewed the video records. The video showed the officer raising his hand to the prisoner's face, but at that moment, the camera was directed at the people in the corridor. As a result, there was no video showing what happened after the hand was raised to the prisoner's face. Therefore, based only on the testimony of the prison staff, the court concluded that the prisoner's rights were not violated. Unfortunately, the court did not provide any argument about prison guards turning the camera away from the scene of action at a crucial moment; the facts presented in the case raise suspicions that the prison guards may be hiding the actual behaviour.

In the Vilnius Regional Administrative Court decision in administrative case II-809-596/2023, 14 March 2023, the prisoner asked for 11,600 EUR in non-pecuniary damage because he was not provided with safe prison conditions.

In this case, the director of the Vilnius Prison decided on 14 October 2021 to transfer the prisoner from the 2nd squad to the 7th squad. After the transfer to the new place, the inmates started threatening that if he did not move from the 7th squad, they would use physical violence against him. He informed the prison administration about this. He was isolated from other convicts for 48 hours. Later, he was temporarily transferred to another prison. On 22 October 2024, upon returning to Vilnius prison, in the place of residence in squad 7, other inmates started threatening him. The prisoner informed the authorities that he was in danger. However, according to him, the officers did not notice this. When he returned to the premises of the 7th squad, he was attacked and beaten. Because of this event, the victim-prisoner was transferred to a temporary detention cell for 48 hours. When, at the end of the 48-hour isolation period, the prison staff wanted to return him to his assigned place in squad 7, he wrote an explanation to the prison administration that he agreed to be in squad seven but informed that his health was at risk there and asked to be transferred to the squads 1-3. Instead of making any changes, the prison staff returned him to the temporary detention cell for 48 hours. This situation was repeated until 25 November 2021, when the director of the Vilnius prison decided to change his place of imprisonment from the 7th squad to the 5th squad, where, according to the prisoner,

the subculture existed. According to the prisoner, on the day of the transfer, he received threats from other prisoners not to try to move to the 5th squad. As a result, he informed the prison administration that his life and health were in danger if he was transferred to squad 5 and asked to be transferred to squads 1-3. He was again isolated for 48 hours. The isolation was repeated until 4 January 2022. In total, he spent 76 days in isolation.

In addition, in one month, in December, he was given three disciplinary sanctions for not stating any specific reasons or indicating persons for which his health or life would be in danger. The prison administration concluded that the prisoner's explanations, including the statement that he agrees to go to the assigned squad and that his life and health are in danger in that squad, are misleading the officials, with which the convict seeks favourable decisions.

The prisoner expressed his dissatisfaction several times because no one talks to him and does not solve his problems. He was also dissatisfied with the disciplinary sanctions imposed on him. He expressed his dissatisfaction in a raised tone, saying he takes measures as he had nothing to lose. As a result, he was included in the list of prisoners prone to assault. Finally, due to three disciplinary sanctions, he was transferred from the ordinary group prison conditions to the disciplinary group on 4 January 2022. On 1 February 2022, he was transferred from Vilnius prison to Praveniskiai prison.

In this case the court awarded 200 EUR non-pecuniary damage only for the fact that on 22 October 2021, when the prisoner was returned to squad 7, he was beaten. In the opinion of the court, if the protection of the prisoner was effective, other convicts would not have had the opportunity to commit illegal acts against him, and he would not have experienced physical violence (beating). However, the court did not award damages for a 76-day stay in the cell in isolation. It even justified the disciplinary sanctions against the prisoner, stating that he did not prove a threat to him and, therefore, was not right to refuse to go to designated squad 5. The court relied only on the explanations of prison authorities. They said that they asked prisoners in the 5th whether they knew the Prisoner and threatened him, and they answered negatively. Unfortunately, the court also did not consider the impact of subculture in this case. The court decision shows that to prove the threat to life, the prisoner must be beaten or must indicate which person threatens him. In a subculture environment, this is hardly possible, especially when there is no trust in prison authorities.

Finally, in Kaunas Regional Court Ruling in criminal case No 1A-32-954/20244, 4 March 2024, prison guards of Praveniskiai 2nd prison G.M. and L.T. were sentenced for exceeding their authority when, without any duty necessity or legal basis, they used special measures against prisoner A.M. on 18 August 2021, who was under their supervision, that is, they used electroshock "Taser" against him at least four times and hit him at least two times with a stick in different parts of his body, knocked him down and kept him pinned to the floor for some time. The victim tried to crawl out of the cell, but G.M. and L.T. pulled back the victim inside the cell. With such actions, they caused a blow wound on the forehead of the prisoner, an elongated bruise on his back, skin abrasions on his right elbow, both knees and legs and in this way, caused the victim physical pain and impaired his health. The court imposed a fine on the convicts, deprived them of the right to work in the civil service and ordered the victim of the convicts to pay a total of EUR 1000 in non-pecuniary damages.

The court ruling indicates that prison guards acted not incidentally but were prepared and intentionally acted violently. The court noted that both prison guards, although according to them they knew about prisoner A.M.'s aggressive behaviour for the second day, before entering the victim's cell, turned off the video recorders and removed them, leaving them at the security post in the corridor. Notably, according to the established procedure, the recorders must be used, among other things, when communicating with detainees. In addition, G.M. pulled out

the baton from the sleeve and G.T. unclipped the taser magazine at the moment of entering the victim's cell, showing preparation for the action.

The court ruling also shows that the internal investigation is ineffective. Notably, the prison's internal inspection, which finished on 25 August 2021, did not find any misuse of power by prison guards. It concluded that mental and physical coercion against prisoner A.M. was used only to the extent necessary for official duties.

In addition, it should be noted that the victim indicated that after the violent actions, the same officers told the victim to "go and wash off the blood", but he did not go to have proof of violence. Then G.M. came a second time and said, "go wash your face because we will put your head in the toilet and wash it ourselves", but he still did not wash off the blood.

In addition, the presented court cases show that not all prisons have call buttons for officers. There is no obligation to install call buttons in dormitory-type prison rooms (Regional Administrative Court administrative case Nr. I1-7778-473/202423, May 2024). Call buttons must be installed only in cells. However, even in cells, the call buttons sometimes do not work. Such a situation is noted in the Kaunas Regional Court Ruling No 1A-32-954/2024, 4 March 2024.

Conclusions

International and EU documents indicate that preventing violence and ill-treatment should be the primary consideration of all EU member states. Prohibition of torture is an *erga omnes* and *jus cogens* norm required to be ensured in all states. Lesser forms of cruel, inhuman or degrading treatment or punishment are prohibited under customary international law. Considering that, the prisons must ensure that inmates are protected from staff as well as from other fellow inmates' violence or ill-treatment. Prison rules defined in international policy documents specify conditions to be maintained to ensure the non-violent treatment of prisoners.

The analysis of the Lithuanian legal framework shows that legal regulation in Lithuania facilitates ensuring safe conditions for inmates in Lithuanian prisons.

Despite the international effort to encourage states to ensure a nonviolent environment for prisoners and even governments' willingness to establish a perfect legal framework to facilitate that, it does not work if implementation in practice and the monitoring and supervision system is ineffective. Lithuania's case has pretty good regulation; however, the practice needs improvement. Such practice, when the person who needs help is kept in solitary confinement for a long time in a similar way as those who are under punishment, should not be a common practice. Nor should there be such a norm when a person asking for help gets disciplinary sanctions for it and cannot even express dissatisfaction because he will be recognised as a violent person and even transferred to worse prison conditions, from the ordinary group to the disciplinary group. Prison guard's violent and ill-treating behaviour, without any doubt, should not be tolerated in Lithuanian prisons. More effective control measures are needed to ensure the use of video recordings by prison guards when contacting the inmates.

In addition, Lithuania needs a more effective monitoring and supervision mechanism. Courts should be more active in protecting prisoners' rights. When they award 70-200 EUR for moral damages, such court decisions do not push prisons to correct the situation.

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