



Victims of violence in detention

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SUMMARY

1. Introduction: overview of the project
2. The specific context of detention
3. Implications on the EU Victims Rights Directive
4. Discussion on solutions



1. Introduction



What is the problem?

- Violence is prolific in detention
- The World Health Organisation's 2014 "Health and Prisons" report highlighted that: "[a]bout 25% of prisoners are victimized by violence each year, while 4–5% experience sexual violence and 1–2% are raped"
- US Government statistics show that men in detention are 18 times more likely to be assaulted than men in the general population; for women in detention, the rates are more than 27 times higher
- Violent crime perpetrated against detained persons is in the vast majority of cases not reported, not investigated, let alone criminally prosecuted
- Victims, in detention, do not have access to support, protection or legal assistance in accessing justice



Risk of violence and overcrowding

- Overcrowding is a persisting issue
- In 2020 (SPACE I)
 - 8 EU Member States had serious overcrowding (more than 105 prisoners per 100 places): Slovenia, Greece, Romania, Hungary, France, Cyprus, Belgium and Italy
 - 3 had overcrowding (more than 100 prisoners per 100 places): Denmark, Austria, the Czech Republic
 - 8 had imminent prison overcrowding (90 prisoners per 100 places): Croatia, Malta, Slovakia, Ireland, the Netherlands, Finland, Sweden and Portugal
- Temporary reductions in prison population during the Covid pandemic: sustainable?
- Pilot/quasi-pilot judgments by the ECHR concerning prison overcrowding in Belgium, Bulgaria, France, Greece, Hungary, Italy, Poland, Romania, Slovenia, Portugal
- CPT: Overcrowding → increased tension and violence

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Overview of the project

- Partners and countries:
 - REDRESS (Netherlands)
 - Antigone (Italy)
 - Civil Rights Defenders (Sweden)
 - Center for Peace Studies (Croatia)
 - Hungarian Helsinki Committee (Hungary)
 - Fair Trials (Belgium)
- Access to justice for victims of violence in pre-trial and immigration detention
- Two year research (2017-2019):
<https://www.fairtrials.org/publication/rights-behind-bars>
- EU-funded (Justice Programme)



2. Context of detention



Conceptual dichotomy

- Conceptual dichotomy victim v. detained person
- Difficult for a detained person to identify themselves as a victim
- Lack of awareness of rights as victims
- Normalisation or banalisation of violence in detention (as just being part of detention)



Isolation creates vulnerability

- Difficult to communicate with the outside world
- Dependency on staff
- Risk of reprisal – fear
- Difficult to report violence in detention: lack of confidential communication channels
- Difficult to access evidence including medical assistance



Conflicts of interest

- Law of silence, “omerta”:
“[t]oo often the esprit de corps leads to a willingness to stick together and help each other when allegations of ill-treatment are made, to even cover up the illegal acts of colleagues” (CPT, 2004)
- Vicious circle:
 - Lack of accountability creates a climate of impunity
 - Recurrence of violence
 - Discourages reporting



3. Impact on rights as victims



Victims in detention are “under the radar”

- Barriers to filing criminal complaints
- Difficulties in accessing evidence of violent crimes in detention
- Challenges in proving that the use of force is illegitimate
- Limited access to legal advice and support
- Violence is dealt with through internal complaint mechanisms, rather than referred to law enforcement authorities or other external bodies
- Lack of political or institutional will to investigate



Victims rights not implemented in detention

- Right to information (Article 4) including in relation to the procedure for making a complaint
- Right to access victim support services (Article 8):
 - *Member States shall ensure that victims, in accordance with their needs, have access to confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings*
 - *Member States shall facilitate the referral of victims*
- Right to protection from further victimisation (Article 18)



4. Ways forward?



EU Strategy on victims' rights (2020-2025)

- Recent reports show that *“victims of crime still cannot fully rely on their rights in the EU. Victims’ difficulties in accessing justice are mainly due to lack of information, insufficient support and protection”*
- Addressing this problem starts by better applying EU rules on victims’ rights in practice
- Detainees are among the most vulnerable groups that require particular attention and scrutiny from Member States to promote access to justice, and provide support and protection to people in detention
- EU can lead shift in approach and move Member States out of inaction?



Solutions?

- Recognise and document the problem – bridge the conceptual gap
- Solutions need to be adapted to the specificities of detention
- Safe channels of reporting
- Coordination between different stakeholders
- Set up a “protocol” for reporting
- Change culture of recourse to detention



Restorative justice solutions?

- Article 12(2) of Victims Rights Directive:
“Member States shall facilitate the referral of cases, as appropriate to restorative justice services, including through the establishment of procedures or guidelines on the conditions for such referral”
- CoE Recommendation concerning restorative justice (2018):
 - Prisons should be referral bodies
 - Rule 60: conflicts between prisoners or between prisoners and prison officers





THANK YOU!

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