

RIGHTS BEHIND BARS

*Access to justice for victims of
violent crime suffered in pre-trial
or immigration detention*

Findings and recommendations

Fair

Trials

“My experience in detention in the Netherlands was really terrible. I didn’t think those things happened in a country like the Netherlands.”

– Gamal, Netherlands, p. 23

“So I tell them I want to speak to the officer in charge, and all of a sudden, unprovoked by me, I receive a punch to the face. I wasn’t being violent, I wasn’t threatening them with words in any way, but they punched me.”

– Anas, Sweden p. 10

“They push you so much until you say, ok I’ll go back to my country, even if I’ll be killed. I don’t care, it’s better than if I stay here like this in this life.”

– Shwan, Hungary, p. 6

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Introduction

Deprivation of liberty is amongst the harshest of measures that states can take against individuals and should only be used as a last resort. The impact of detention can be devastating in itself, meaning losing access to family and friends, or your job. But in addition to all of this, detention exposes a person to a heightened risk of violent crime: according to the World Health Organisation, a shocking 25% of prisoners are victimized by violence each year. This might not come as a surprise; however, it remains unacceptable that violence in places of detention is much more common than amongst the general public. And when we talk about violence, it can take different forms: it may occur between detainees or be inflicted by officials working in detention centres.

Putting a person in detention not only places them in a violent setting, it also makes them vulnerable. Imagine being detained: you are isolated, stigmatized, without access to information and often without means of communication with the outside world. Detention itself is also not transparent: it occurs behind closed doors, and there is a lack of accountability and oversight. Procedural safeguards are difficult enough outside of detention, but within it, people's rights are far from guaranteed. Places of detention can and often do operate as a kind of legal black hole.



Due to the vulnerability of detainees and the high risk of violence in detention, when states detain people, they have a legal and moral responsibility to ensure their safety. Over the past two years, Fair Trials has worked with five partners to examine the barriers to access to justice for detained people who suffer physical violence, whether by detention staff or co-detainees, in six EU Member States (Belgium, Croatia, Hungary, Italy, the Netherlands, and Sweden). We focused on immigration detention and pre-trial detention in the context of criminal proceedings.

Victims' Rights Directive:¹

“In order to encourage and facilitate reporting of crimes, and to allow victims to break the cycle of repeat victimisation, it is essential that reliable support services are available to victims and that competent authorities are prepared to respond to victims' reports in a respectful, sensitive, professional and non-discriminatory manner. This could increase victims' confidence in the criminal justice systems of Member States and reduce the number of unreported crimes.”

1 Recital 9 of the Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime.

Shwan

Case study



Shwan fled Iraq in fear of his safety. He reached Hungary and claimed asylum, at which point he was put in immigration detention. When exercising in the yard, a guard picked a fight with him. He was dragged to a room without a camera where he was beaten up.

Shwan got medical attention, but guards remained present the whole time. After the incident, he made an official complaint to the detention authorities, but was intimidated into dropping this.

“A chief police officer came and said to me ‘If you don’t stop your complaint, we’ll send you to the deportation centre.’ ”

Overview of findings

Where detainees suffer violent crime, they are victims with rights under EU law, even if they are also suspected perpetrators of crime or undocumented migrants. There is, however, a common failure to recognise that people can be both detainees and victims at the same time – that detainees' procedural rights and their rights as victims can co-exist. This conceptual dichotomy has serious implications for the ability of detained victims of violence to access and exercise their rights.

“Sadly detainees will never have the same rights as others.”

– Dimitri, Lawyer, Belgium

Acts of violence in detention are frequently normalised – seen as inevitable features of life in detention, whether that is harsh treatment by detention staff or by co-detainees. For this reason, violence tends to be under-reported and seen as something not to be addressed as seriously as it would be in the outside world

“[Detainees] know they shouldn't be the victim of any act of violence, but at the same time, they expect a certain amount of violence.”

– Alessio, Antigone, Italy

By isolating people, detention places them in a situation of vulnerability and dependency on detention staff and co-detainees. Their livelihood and safety depend on how they are treated by staff, making fear of reprisals a predominant barrier to reporting. This frustrates the ability of detained victims to report crimes and to seek to exercise their other rights as victims. This vulnerability is exacerbated for people who are non-nationals, do not speak the national language and/or lack local support networks.

Given the challenges that detainees face in reporting crimes, it is crucial that detention administrations play a pro-active role in identifying and addressing violent crime and protecting the rights of victims. At various levels there are, however, embedded conflicts of interest and self-protection reflexes by those working within places of detention that can foster a rule of silence. These cultures deter whistle-blowing, investigations and accountability, all of which make violent crime hard to expose and to address.

As well as these broader contextual challenges, we identified serious barriers to victims of violent crime in detention accessing key rights as victims:

- **Information on rights:** Without information about their rights, a victim cannot exercise them. In practice, detainees are not usually informed of their rights as victims at any stage of their detention, in part due to their inability to access information that exists in the outside world. Detention staff are not trained to identify victims or to inform them of their rights, and victim support services are rarely available in detention.
- **Access to justice:** Despite violence being known to occur in detention, adequate reporting systems rarely exist, and few reports ever reach the criminal justice system. Detained victims who seek access to justice face considerable barriers: limits on communication make it hard to report crimes to law enforcement; detained victims are often expected to produce evidence of violence but face difficulties in securing this; and it is particularly challenging for detainees to establish that the use of force is unjustified and amounts to a criminal offence (something which should not be but often is required). The role of lawyers in helping detainees access criminal complaint mechanisms and evidence is key, but in detention, access to legal advice and representation is difficult to secure.

- **Protection from further victimisation:** The risk of repeat victimisation, intimidation or reprisals is high in detention. The range of retaliation measures that staff may use against detainees is broad and may impact their physical or mental integrity. Similar risks of re-victimisation apply in the context of violent crimes committed by other detainees. In a closed setting, similar to a close relationship, it can be impossible for a victim to escape their aggressor. There is a lack of available protection measures in detention and detention staff do not generally conduct appropriate needs assessments.
- **Victim support services:** Victims who are not detained are usually referred to victim support services when they file a criminal complaint, but as detained victims rarely access these mechanisms, they rarely, if ever, get referred. The existing framework for support services is simply not adapted to victims in detention. Organisations that provide services (police services to file complaints, victim support services, NGOs who work with victims, and lawyers specialised in victims' rights) do not normally enter detention facilities.
- **Compensation:** The right to compensation is largely unavailable for victims of violent crime in detention. Many of the challenges are the same as those encountered by victims generally: length of legal proceedings, link between state compensation and criminal proceedings, quantum of compensation, and the difficulty in accessing remedies across borders. Victims in detention, however, face additional challenges as a result of their inability to access the justice system. Furthermore, complaint mechanisms available to detainees do not generally include the award of compensation.

The ineffective implementation of the rights of victims in detention results in a lack of adequate investigations into, and accountability for, violence. This contributes to a climate of impunity, leading to the recurrence of acts of violence, arbitrariness and, ultimately, threatens the rule of law itself in places of detention. It leaves detainees in an unbearable position of vulnerability, contributing to high levels of mental ill-health, self-harm and suicide.

Anas

Case study



Anas was put into pre-trial detention in Sweden. Rather than being put in a cell, he was shown to the temporary space usually used for intoxicated detainees to dry out. There wasn't even a bed in his cell. He asked to speak to the officer in charge, and all of a sudden, he was attacked, by as many as five guards.

**“I didn't do anything,
I was just calling for my rights.”**

Anas asked to see a doctor but was initially refused. When he was eventually allowed to see a medical professional, it was a dentist.

He made an official complaint, but it ultimately came to nothing.

“The hardest part was what I told you, when they told me that the case was closed because of no cameras. For me, because the police didn't even [interview] they didn't interview the whole team who was there, so I felt like they were backing each other up.”

Overview of recommendations

Through the course of this project, barriers to justice were found at almost every level. If we want to overcome these barriers, and help ensure justice for victims of violent crime suffered in detention, there are steps that need to be taken by every level. These are set out over the next few pages.

“It is very important to start to implement the Directive in order to help victims to get their rights in a criminal proceeding.”

– Sanja, Lawyer, Croatia



Public authorities

Because detainees will rarely, if ever, come into contact with law enforcement authorities (typically designated as the ‘competent authorities’ for supporting victims in exercising their rights under EU law), detention staff should also be treated as ‘competent authorities’ for these purposes. Detention staff are often the first and only contact that a victim of violent crime suffered in detention may have with authorities.

A clear framework should be adopted setting out the responsibilities of detention staff and detention administrations in securing the rights of victims of violent crime. This should, for example, include: the timely provision of accessible information on rights; preserving and sharing evidence of alleged crimes; reporting of possible offences to law enforcement; facilitating detainees’ communication with law enforcement, lawyers, medics and victim support services; and the obligation to protect detained victims against secondary victimisation, intimidation or retaliation.

Detainees should be recognised and highlighted as an “at risk” group for violent crime, repeat victimisation and intimidation, and awareness-raising campaigns and education programmes should be undertaken and aimed, in particular, at detention staff and victim support services.

“My gut feeling says that it’s more common than we would think.”

– *Crépine, Lawyer, Belgium*

Data should be collected and published to allow for oversight and research, including on: (i) the number of complaints, investigations, prosecutions and convictions of violent crime against detained victims; (ii) the use of force by detention staff, and associated disciplinary procedures against detention staff or against detainees; (iii) detainees supported by victim support services; (iv) protection measures implemented in detention; and (v) compensation awarded.

In violation of EU law, some Member States limit access to some victims' rights based on a victim's nationality or residence. These laws should be reformed to ensure that all victims' rights are protected.

Good practice

Austria

Prison authorities in Austria have an obligation to inform detainees of their rights as victims once they are notified of a victimisation situation. They are also obligated to inform victim support services by phone and in writing, after obtaining the victim's consent to do so (for data protection reasons).

Detention administration and staff

Because of the key role of detention staff in ensuring victims' rights are respected, training on victims' rights (including on how to identify victims) should be made a formal part of the education of detention staff, and workshops should be organised in cooperation with victim support services to strengthen cooperation.

Taking into account the prevalence of violence in detention, and the reluctance of detainees to report violent crime, information on victims' rights must be provided before situations of victimisation arise. Detention staff should, therefore, provide accessible information on victims' rights when people enter detention and as soon as there is any indication that a detainee may have been a victim. They should also ensure that information is provided in plain language and in a language the detainee understands.

A clear protocol should be adopted on the steps detention staff must take when there is an allegation of violence or when they become aware of such situations, including the systematic preservation evidence of crime (including audio-visual recordings); reporting of alleged violent crime to law enforcement; and undertaking of an individual needs assessment to implement protective measures.

The Netherlands

Good practice

The Inspectorate of Security and Justice in the Netherlands has designed a framework for the assessment of the treatment of detainees and the prevention of violence against or among them.

Detention administrations should work with victim support services, lawyers, law enforcement and other agencies and should actively facilitate their access to places of detention. This would increase the likelihood of detained victims being able to access the services that are available to victims of violence outside of detention. It would also increase transparency and oversight of places of detention.

Many detainees are afraid to report abuse by detention staff or co-detainees, so it is crucial to try to overcome these barriers. One mechanism would be to ensure detainees have secure, confidential and fast-track channels of communication to report crime to law enforcement, lawyers and victim support services. It is also crucial to ensure effective access to confidential and independent medical assistance and assessment.

Sweden

Good practice

Migrants may use the immigration detention centre's telephone free of charge and there is approximately one computer for two detainees in the detention centres. Detainees also have a right to have a mobile phone that doesn't have a camera.

Steps must be taken to increase oversight of detention staff in order to deter instances of abuse and address the culture of silence. This should, for example, include clear and detailed records of decisions to apply disciplinary measures (in particular, every use of force); an obligation to report allegations of ill-treatment and violence to law enforcement authorities; and oversight of compliance with laws and procedures to protect victims of violent crime, with appropriate sanctions where these are violated.

Victim support services

Because of the conceptual dichotomy between victims and detainees, victim support services are not set-up to recognise and support detainees as an “at-risk” group. To try to overcome this challenge, and increase recognition of the needs of this vulnerable group, victim support services should provide specialist training to their staff.

Victim support services should be adapted so that they more effectively support detained victims of violent crime in detention, including enabling them to access justice, obtain compensation and be protected against re-victimisation. Victim support services should also consider creating specialised teams for detained victims.

To increase their access to places of detention, victim support services should work with detention administrations (in coordination with lawyers, detention monitoring bodies and NGOs) to provide accessible information on victims’ rights to detainees and to organise “desks” in places of detention, regular visits and hotlines for detainees.

The Netherlands

Good practice

In the Netherlands, detention centres are visited by Stichting LOS, an NGO that is seeking to improve immigration detention conditions. Stichting LOS operate an “Immigration Detention Hotline” that detainees can call (using their right to make phone calls) free of charge for support on any complaint they may have about detention conditions.

Bar associations, lawyers and legal aid boards

Lawyers could play a key role in detecting victimisation situations, informing their clients of their rights as victims and helping them to gather evidence and file complaints. They should work with detention administrations and other agencies to facilitate access to legal advice in detention centres, for example by creating legal clinics or hotlines.

Most lawyers working with detainees are not specialists in victims' rights, focusing instead on defending the detainee in criminal or immigration proceedings. These lawyers should receive training on victims' rights, identifying victimisation, and supporting criminal complaints and compensation claims.

Belgium

Good practice

Some bar associations have established first line "legal aid desks" (permanences juridiques) in some immigration detention centres to facilitate migrants' access to free legal advice.

This is a holistic service whereby migrants are advised on their rights by independent lawyers, but may also report abuse or ill-treatment, including violence, and request the appointment of a legal aid lawyer to help them file a complaint and advise and represent them in legal proceedings.

Because most detainees do not have the means to pay for legal services, to enable them to exercise their victims' rights requires legal aid to be available, including (where necessary) to cover the costs of translation and interpretation.

Law enforcement and judicial authorities

To address the serious under-reporting of violent crimes in detention, law enforcement authorities should adapt their procedures and work with detention administrations and other agencies to make it as easy as possible for detainees to report crimes.

Given the reluctance of detainees to report crimes to law enforcement, and the lack of perceived and actual priority given to investigating crimes in detention, clear policies should be put in place requiring law enforcement authorities to investigate and prosecute allegations of violence (whether by detention staff or co-detainees) and to ensure that allegations do not negatively impact ongoing criminal or immigration proceedings relating to the detainee.

Specialist teams should be created in law enforcement authorities to deal with criminality in places of detention, including ill-treatment by detention staff. This would allow for specialist training to be provided as well as a serving as a focal point for detention staff and administration, lawyers and victim support services.

Good practice

Belgium

A police desk was established by a team of police officers inside a Brussels prison, allowing detainees to complain directly to them about criminality in detention, including ill-treatment and violence by detention staff. Their regular presence within the prison enabled the officers to investigate alleged violence from the inside. The police also installed a locked mailbox in the prison for detainees to directly address messages to them (rather than to have to go through staff). The prison director welcomed this initiative. This police presence facilitated the prosecution and conviction of over 20 detention staff for ill-treatment and violence against detainees in March 2019.

Specific protocols should be put in place to support effective investigations and prosecutions, including to: require the detention administration to explain and justify the use of force (rather than requiring the victim to prove that it was unjustified); ensure that evidence is secured from places of detention; and protect detained victims and witnesses in ongoing proceedings.

Prosecutorial authorities should be under a legal obligation to undertake an investigation whenever they receive credible information, from any source, that ill-treatment of persons deprived of their liberty may have occurred. In this connection, the legal framework for accountability will be strengthened if public officials (police officers, prison directors, etc.) are formally required to notify the relevant authorities immediately whenever they become aware of any information indicative of ill-treatment.



Detention monitoring bodies

As a mechanism for independent oversight of places of detention, detention monitoring bodies (such as National Preventive Mechanisms) should review and report on whether effective steps are being taken to ensure that victims of violent crime in detention are informed of, and able to exercise, their rights as victims.

Monitoring bodies should facilitate investigations of violent crime in detention, by referring systemic concerns and, where appropriate, individual allegations to law enforcement authorities and by assisting criminal investigations.

Good practice

CPT

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has developed standards and tools for monitoring bodies to document cases of ill-treatment in detention, including on combating impunity and documenting and reporting medical evidence of ill-treatment.

European Union

Legislation at a regional level could help to reduce the incidence of violent crime in detention. In particular:

- EU-wide legal standards to improve decision-making on pre-trial detention could reduce the unjustified use of detention, keeping more people out of detention and away from the heightened risk that they will become victims of violence.
- EU legislation setting out minimum standards on detention conditions could make prison conditions more humane. This would in turn reduce the likelihood of violence and improve the capacity of detention administrations to effectively address incidences of violence.

Recognising the high rates of violence in detention, the vulnerability of detainees and the barriers to access to justice, the EU should produce guidance on the implementation of EU law with respect to victims in detention. This should, in particular:

- Clarify that detainees who are victims of violence are vulnerable, within the meaning of EU law.
- Require that 'competent authorities' include detention staff, to address the fact that these are the only authorities that most detainees are able to access.
- Outline minimum requirements for national protocols setting out the responsibilities of detention staff and detention administrations in securing the rights of detained victims of violent crime, including: the timely provision of accessible information on rights; preserving and sharing evidence of alleged crimes; reporting of possible offences to law enforcement; facilitating detainees' communication with law enforcement, lawyers, medics and victim support services; and the obligation to protect against secondary victimisation.

The EU should offer technical and financial support to assist in the implementation of the recommendations outlined above. For example, specialist training should be funded for professionals working with detainees, such as detention staff and victim support services.

The European Commission should monitor the effective implementation of EU law on victims' rights by Member States with respect to this vulnerable group. This could, for example, include a requirement to provide copies of national protocols for the protection of victims of violent crime in detention; and a requirement to provide data on how victims in detention have accessed their rights under EU law, such as the number of complaints, investigations, prosecution and convictions of violent crime against detained victims.



Gamal

Case study



Gamal arrived in the Netherlands from Egypt and immediately claimed asylum. He was taken to detention, but not informed of his rights. Detention was a struggle from the start. Gamal constantly had to make requests to get even the most basic provisions and healthcare. One guard took exception to this.

“This man pushed me inside my room, where there is no camera, and he kept punching me in my chest.”

Gamal made a complaint, but it was his word against the guard's. They checked the cameras, and these showed that nothing had been recorded of the incident. Gamal believes this is because the people who work at the detention centre know where the cameras are positioned and how to avoid scrutiny. He ended up being punished by the director of detention for his complaint and was locked up in his room for 24 hours.

About Fair Trials

Fair Trials is a global criminal justice watchdog with offices in London, Brussels and Washington, D.C., focused on improving the right to a fair trial in accordance with international standards.

Fair Trials' work is premised on the belief that fair trials are one of the cornerstones of a just society: they prevent lives from being ruined by miscarriages of justice and make societies safer by contributing to transparent and reliable justice systems that maintain public trust. Although universally recognised in principle, in practice the basic human right to a fair trial is being routinely abused.

Its work combines: (a) helping suspects to understand and exercise their rights; (b) building an engaged and informed network of fair trial defenders (including NGOs, lawyers and academics); and (c) fighting the underlying causes of unfair trials through research, litigation, political advocacy and campaigns.

In Europe, we coordinate the Legal Experts Advisory Panel – the leading criminal justice network in Europe consisting of over 180 criminal defence law firms, academic institutions and civil society organizations. More information about this network and its work on the right to a fair trial in Europe can be found at: <https://www.fairtrials.org/legal-expertsadvisory-panel>



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Access to Justice for Victims of Violent Crime Suffered in Detention

This publication is produced as part of the project "Access to Justice for Victims of Violent Crime Suffered in Detention" co-financed by the EU Justice Programme and coordinated by Fair Trials, with partners REDRESS (The Netherlands), Centre for Peace Studies (Croatia), Antigone (Italy), Hungarian Helsinki Committee (Hungary) and Civil Rights Defenders (Sweden). We would like to thank our partners for their contributions to this publication.



Published in 2019



This document is possible thanks to the financial support of the Justice Programme of the European Union. The contents of this document are the sole responsibility of the author and can in no way be taken to reflect the views of the European Commission.

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