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Coláiste na Tríonóide, Baile Átha Cliath

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Prison inspection and monitoring bodies: a new role in the AFSJ?

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Overview



The *Aranyosi and Căldăraru* decision suggests a new role for prison inspection and monitoring bodies in EAW decision-making

- The need for ‘objective, reliable, specific, and properly updated’ and ‘specific and precise’ information on detention conditions may be fulfilled by using prison inspection and monitoring bodies
- What implications might this have for those bodies?
- The need for EU-wide standards on prison inspection and monitoring



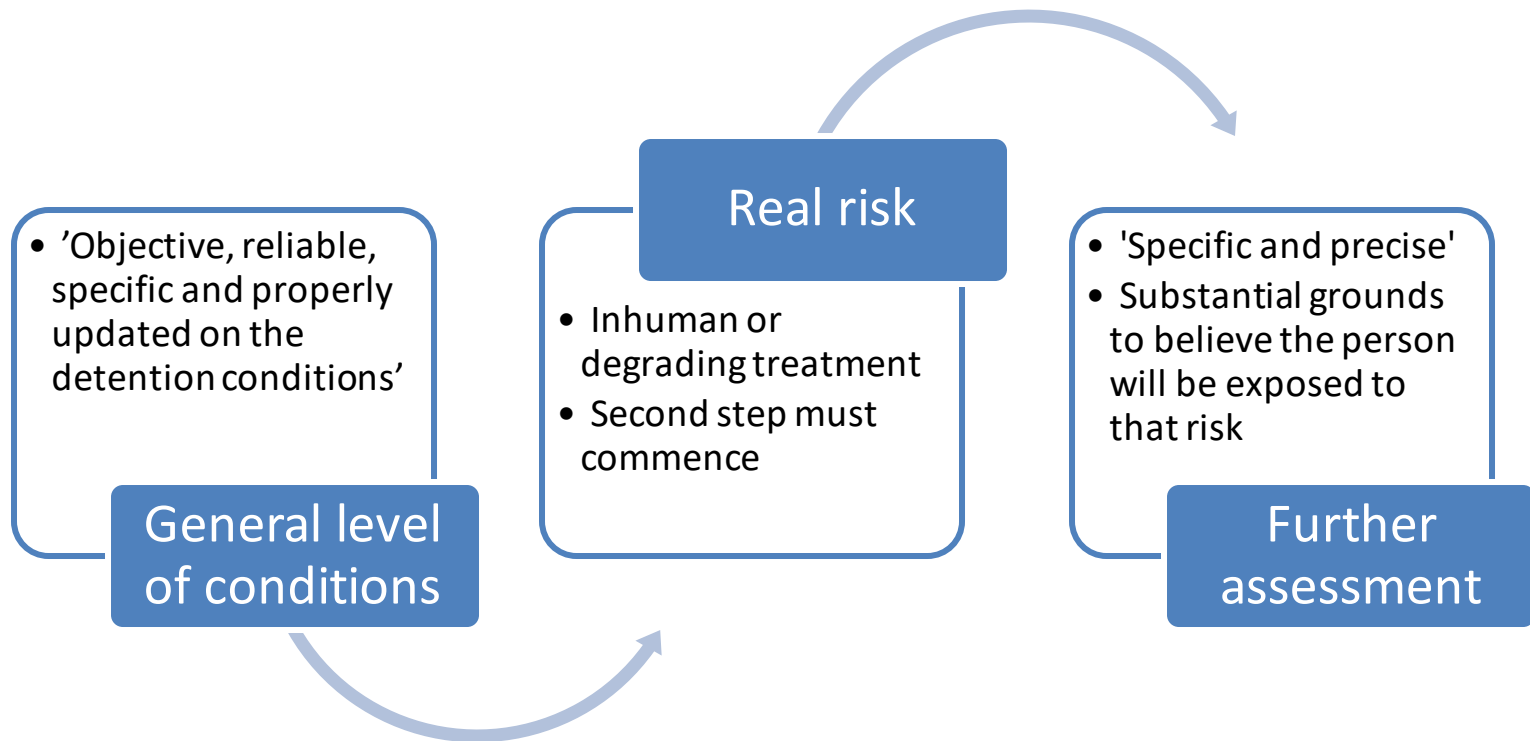
The European Arrest Warrant and prison conditions

- Concerns about prison conditions as a threat to mutual trust have been growing (EP 1996; 1999; 2011; 2014 ; 2017, Council, 2010)
- *Aranyosi and Căldăraru*: The execution of an EAW may be suspended if there is evidence that the conditions in which the person will be detained are so poor as to breach fundamental rights
- High stakes: what is the test?



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The test



What evidence should be used?



- General situation in the MS: ECtHR decisions, domestic court decisions, reports by COE and UN bodies (ECJ)
 - CPT reports, SPT reports, SPACE
- **Second stage of the test**
 - *ML*: must be an analysis of the precise situation it is actually intended the person will be detained in
 - Executing judicial authority must request all necessary supplementary information, which may also relate to the presence of national or international prison monitoring mechanisms

The role of prison inspection and monitoring bodies

- Inquiry should focus on human rights compliance in the prison(s)
- May be greater comfort from a report supplied by an independent body, rather than the prison authorities
- Prison inspection and monitoring bodies are suitable sources of evidence



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Prison inspection and monitoring bodies

- Required under the European Prison Rules
 - Internal and external forms
 - Also required under Mandela Rules
 - OPCAT and NPMs
- Preventive focus: make visits, write reports and issue recommendations
- No EU law requirement to have such bodies
 - EP has called on MS and accession countries to ratify OPCAT



Using reports from inspection and monitoring bodies

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Netherlands

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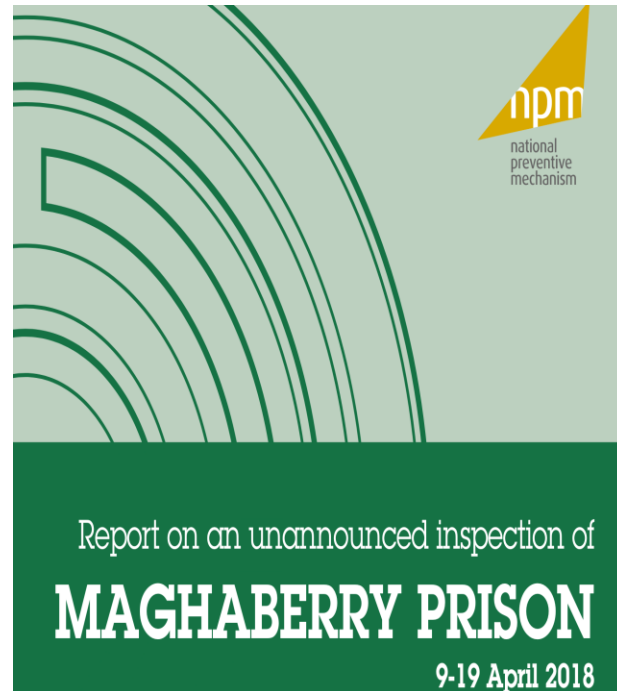
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▲ A broken window in a cell at HMP Liverpool in September 2017 when inspectors conducted a surprise inspection. Photograph: HM Inspectorate of Prisons/PA



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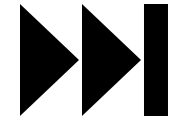
A role for prison inspection and monitoring bodies in the AFSJ?

✓ Sources of evidence about prison conditions

? Monitoring of assurances – mutual trust

? The presence of a prison inspection and monitoring system may itself be a factor suggesting that the person will be detained in conditions which comply with fundamental rights (*Henni, RO*)

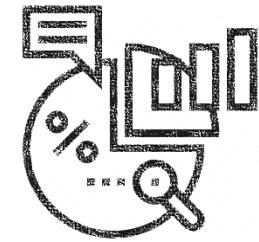
But, prison inspection and monitoring bodies have not been designed for these purposes.



Implications

1. What do we know about prison inspection and monitoring bodies in the EU?
2. Are they comparable?
3. What EU-wide standards might govern/support them?

European Survey on Prison Oversight

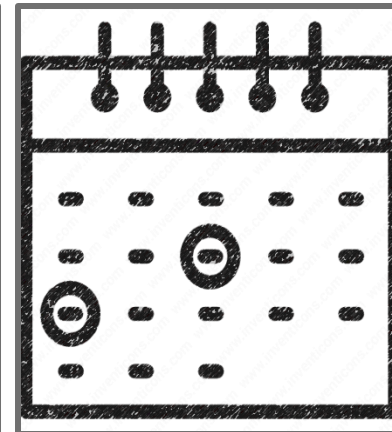


Instrument

- Questionnaire developed ad hoc
- Pretested using an expert panel
- Two path survey (NPMs – other oversight bodies)

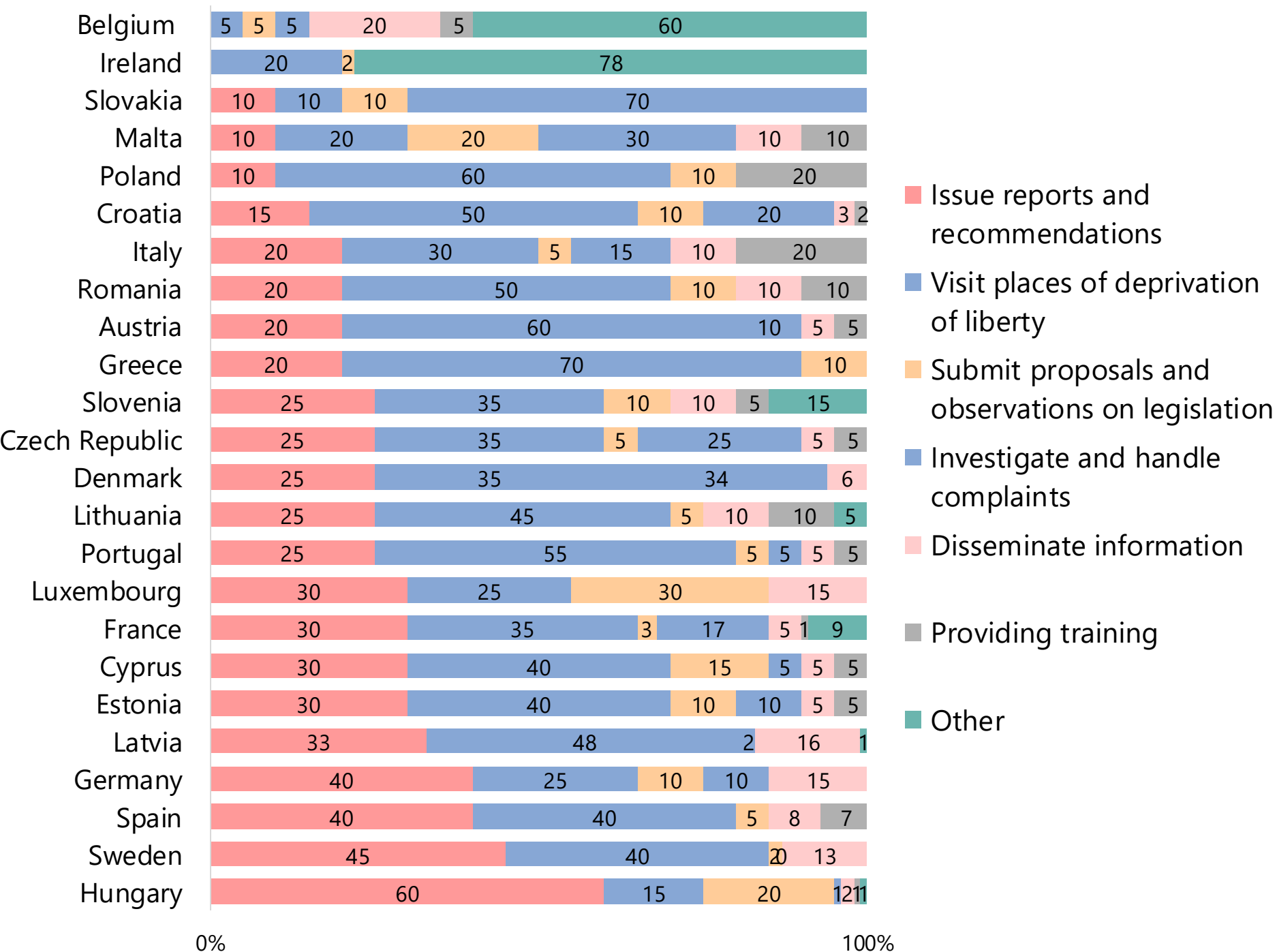
Procedure

- Administered online (Qualtrics), from January 29 and April 8, 2019
- Response rate → 100%
- Validation process (May 6 – June 14, 2019)



With Dr. Eva Aizpurua

State	Ratification OPCAT	NPM established	Designation/starting year	NPM Type
Austria	✓	✓	2012-2012	Single-body
Belgium	✓			
Bulgaria	✓	✓	2012-2012	Single-body
Croatia	✓	✓	2011-2012	Single-body
Cyprus	✓	✓	2009-2011	Single-body
Czech Republic	✓	✓	2006-2006	Single-body
Denmark	✓	✓	2006-2009	Single-body
Estonia	✓	✓	2007-2007	Single-body
Finland	✓	✓	2014-2014	Single-body
France	✓	✓	2007-2008	Single-body
Germany	✓	✓	2008-2009	Multi-body
Greece	✓	✓	2014-2014	Single-body
Hungary	✓	✓	2011-2015	Single-body
Ireland				
Italy	✓	✓	2014-2016	Single-body
Latvia		✓	2018-2018	Single-body
Lithuania	✓	✓	2013-2014	Single-body
Luxembourg	✓	✓	2010-2010	Single-body
Malta	✓	✓	2003-2007	Multi-body
Netherlands	✓	✓	2011-2011	Multi-body
Poland	✓	✓	2008-2008	Single-body
Portugal	✓	✓	2013-2014	Single-body
Romania	✓	✓	2014-2015	Single-body
Slovakia				
Slovenia	✓	✓	2007-2008	Single-body
Spain	✓	✓	2009-2010	Single-body
Sweden	✓	✓	2006-2011	Single-body
United Kingdom	✓	✓	2009-2010	Multi-body
N (%)	25 (89.3%)	25 (89.3%)	2010-2011	Single-body: 21 (84.0%)



State	RECOM: Public always	RECOM: Public in some cases	IMPLEMENTATION: Public
Austria	✓		✓
Belgium	✓		
Bulgaria	✓		✓
Croatia		✓	
Cyprus		✓	
Czech Republic		✓	
Denmark	✓		
Estonia		✓	
Finland	✓		✓
France	✓		
Germany		✓	✓
Greece		✓	✓
Hungary	✓		✓
Ireland		✓	
Italy	✓		
Latvia		✓	✓
Lithuania	✓		✓
Luxembourg	✓		✓
Malta		✓	
Netherlands	✓		
Poland	✓		
Portugal		✓	✓
Romania	✓		✓
Slovakia		✓	
Slovenia	✓		✓
Spain	✓		✓
Sweden	✓		Not available
United Kingdom	✓		✓
N (%)	17 (60.7%)	11 (39.3%)	15 (55.6%)

Publish status of implementation:
Recommendations always public: **68.8%**
Recommendations sometimes public: **36.4%**

Comparability?



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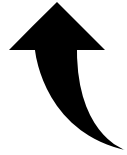
- All EU MS have prison inspection and monitoring bodies with the power to speak in confidence to prisoners and full access to prisons
- Ireland reported not having access to all documents and not having confidential access to staff
- Frequency of visiting prisons varies widely across states, going from once per week in the Netherlands and UK to less than annually for others
- Half of the MS conduct visits four times a year or less, with the other half visiting more often
- Most are producing annual and individual prison reports



Using reports

1. Executing judicial authorities need to know what kinds of prison inspection and monitoring bodies exist in the MS
2. May wish to know what their activities are like
3. Not all prison inspection and monitoring bodies are the same across the EU
4. How much will (and should) executing judicial authorities probe into the bodies producing reports?

The need for EU-wide standards on prison inspection and monitoring



These bodies are now likely to play a key role in EAW decision-making and in the application of mutual trust



Yet, there are no EU wide instruments on them (or on prison conditions!)



European Prison Rules are under revision with welcome improvements on the powers which prison inspection and monitoring bodies should have

European-wide standards

EPR

- 93.2 Such independent monitoring bodies shall be guaranteed:
- a. **access** to all prisons and parts of prisons, and to prison records, including requests and complaints, that they require to carry out their monitoring;
- b. **choice** of which prisons to visit, including by making unannounced visits and which prisoners to interview; and
- c. permission to conduct **private and fully confidential** interviews with prisoners and prison staff.
- Authority to make **recommendations** and obligation to respond (public)

A new EU-wide instrument

- Reprisals
- Need to consider how to encourage comparable reporting structures for prison inspection and monitoring bodies which can be used in EAW cases, without intruding on local practices
- More guidance on how inspectors/monitors should work – visibility, frequency, independence, awareness-raising
- Resourcing



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Conclusions and future directions



- Prison inspection and monitoring bodies will play an increasing role in the AFSJ
- A role they may not be prepared for – how do they feel about it?
- We need to know more about the operation of these bodies, especially when their reports can be so consequential
- There is variability across the EU in their operation
- EU-wide minimum standards are necessary
 - Must retain their focus on human rights promotion and the prevention of ill-treatment



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Further reading

Rogan, M. 'Prison Inspection and Monitoring: The Need to Reform European Law and Policy' Eur J Crim Policy Res (2019). <https://doi.org/10.1007/s10610-019-09420->

Rogan, M. (2019). What constitutes evidence of poor prison conditions after Aranyosi and Căldăraru? Examining the role of inspection and monitoring bodies in European Arrest Warrant decision-making. New Journal of European Criminal Law, 10(3), 209–226.
<https://doi.org/10.1177/2032284419858698>