COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

Round Table

Setting up of effective domestic remedies to challenge conditions of detention

Concept Paper

Strasbourg, 8 and 9 July 2014

Since the end of the 1990s the European Court of Human Rights has had to deal more and more frequently with problems linked to poor conditions of detention and has delivered a large number of judgments finding a violation of Article 3 of the European Convention on Human Rights ("the Convention") because of such conditions. These judgments found in particular that overcrowding in prisons was one of the prime causes of these violations and that this affected both remand prisoners and convicted criminals.

Generally the execution of these judgments is now the subject of enhanced supervision by the Committee of Ministers, both because of the scale of the violations found and because of the major risk of repetitive applications to the Court. Their execution has also often proved a long and complicated process. As a result, in a series of cases, the Court has considered it advisable to support the efforts to promote execution through pilot judgments or through judgments with indications of relevance for execution. Like the Committee of Ministers, the Court has emphasised how important it is to set up effective national remedies.

The Court has stated that remedies should give prisoners access to an independent body and a procedure respecting a minimum number of safeguards in order to secure:

- examination of their situation and a halt to any situation deemed to be in breach of the Convention (a "preventive" remedy); and

- compensation for periods of detention in conditions in breach of the Convention (a "compensatory" remedy).

It has also stated that in this area, preventive remedies are indispensable and that the two types of remedy should co-exist and complement one another.

The purpose of this round table discussion is to serve as a forum to exchange experience with regard to the implementation of such remedies. An exchange of this sort should make it possible to identify good practices in the setting-up of these remedies and in the organisation of measures to monitor the impact of decisions taken, as well as highlighting the problems which are most frequently encountered.

Discussion will focus on three main issues, namely the establishment of preventive remedies, the introduction of compensatory remedies and the measures needed to ensure that both types of remedy will be effective, particularly as regards the interaction between them.

- *What domestic remedies are available to rectify the situation and bring a rapid halt to the violation of the Convention?*

The aim of preventive remedies is to prevent the alleged violation from continuing and to ensure that prisoners are held in material conditions of detention which comply with the Convention. The key feature of this type of remedy is the capacity of the independent body to which the case is referred to give prompt binding decisions able to bring an end to the violation found.

The introduction of this kind of remedy often presents a challenge to states, particularly where there is widespread overcrowding in prisons. The challenge can only be met if substantive measures are taken at the same time to eliminate the deep-lying causes of violations of the Convention. This generally calls for co-operation between the legislature, the executive and the judicial authorities. The existence of such difficulties does not however exempt the authorities from setting up preventive remedies. The key may be the possibility of ordering the prison authorities to make emergency repairs or take other measures such as more educational or outdoor activities. Both the case-law of the Court and the standards of the CPT and state practices contain useful guidelines on such matters.

- *What compensation proceedings are available for periods of detention in conditions that are incompatible with Article 3 of the Convention? How do such remedies interact with preventive remedies?*

The purpose of compensatory remedies is to offer redress when preventive remedies have failed to improve conditions of detention sufficiently. For such remedies to be considered effective, they must afford the possibility of sufficient compensation, covering, in particular, the non-pecuniary damage suffered (depending on the suffering, distress and humiliation experienced by the victim), while taking account of the Court's strict requirement that awarding such compensation for non-pecuniary injury cannot be linked to the requirement of proof of fault on the part of the state authorities.

Discussion will focus on current compensation arrangements in this field and their interaction with preventive remedies. Exchanges should relate in particular to the experience of states with regard to the choice of competent courts (specialised courts or ordinary law courts), the amount and nature of compensation (for example, including the possibility of remission of sentences) and the procedural rules applied (time limits, burden of proof and interaction with any preventive remedies, etc.).

- *Once such remedies have been introduced, what measures are required to ensure that they are effective?*

Once preventive and compensatory remedies have been set up, it is important to provide for or carry out regular monitoring of their impact with a view to adopting "corrective measures" where necessary. Identifying the body responsible for this follow-up and its means of action are crucial.

Furthermore, the round table will discuss the role of the national prevention mechanisms set up in accordance with the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).