

CDDH comments on Parliamentary Assembly Recommendation 2081(2015) “Abuse of pretrial detention in States Parties to the European Convention on Human Rights”

CDDH: 84th meeting – 7/11 December 2015 CDDH(2015)R84

1. The Steering Committee for Human Rights (CDDH) takes note of Parliamentary Assembly Recommendation 2081(2015) on the “Abuse of pretrial detention in States Parties to the European Convention on Human Rights”, calling on the Committee of Ministers to consider ways of reducing recourse to and abuse of pretrial detention, and to enhance its cooperation with the European Union while pursuing this objective.
2. The CDDH draws attention to paragraph 1 of Article 5 of the European Convention on Human Rights, which guarantees the right to liberty and security of person.¹ It recalls that the purpose of this article is to prevent arbitrary or unjustified deprivations of liberty² and that the right to liberty and security is of the highest importance in a democratic society.³ Although there are limitations to this right set out in paragraph 1, the CDDH recalls Article 18 ECHR, which prohibits the restrictions permitted to the Convention’s rights and freedoms from being applied for any purpose other than those for which they have been prescribed.⁴
3. The CDDH also draws particular attention to paragraph 3 of Article 5 ECHR, which states that “*everyone arrested or detained ... shall be entitled to trial within a reasonable time or to release pending trial*”. Pretrial detention in States Parties to the European Convention on Human Rights must therefore meet this standard, interpreted in the light of the case-law of the European Court of Human Rights.⁵
4. Furthermore, everyone detained has the right, under paragraph 4 of Article 5, to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful. In particular, persons detained pending trial must be presumed innocent until such time as they are convicted and any pretrial detention must not exceed a reasonable time.

¹ See of particular relevance, *Svipsta v. Latvia*, App. no. 66820/01, judgment of 9 March 2006, (automatic renewal of pretrial detention) and *Laumont v. France*, App. no. 43626/98, judgment of 8 November 2001, (continued detention for further investigations).

² See *McKay v. United Kingdom* [GC], App. no. 543/03, judgment of 3 October 2006, §30.

³ See *Medvedyev and Others v. France* [GC], App. no. 3394/03, judgment of 29 March 2010, §76.

⁴ See, for example, regarding Article 5, *Lutsenko v. Ukraine*, App. no. 6492/11, judgment of 3 July 2012 and *Gusinskiy v Russia*, App. no. 70276/01, judgment of 19 May 2004, and in the particular context of pretrial detention, *Cebotari v Moldova*, App. no. 35615/06, judgment of 13 November 2007.

⁵ See, for example, regarding grounds for refusing bail, *Tiron v Romania*, App. no. 17689/03, judgment of 7 April 2009, §37, *Smirnova v Russia*, App. nos. 46133/99 et al., judgment of 24 July 2003, §59 and *Piruzyan v Armenia*, App. no. 33376/07, judgment of 26 June 2012, §94. More generally, see also *McKay v United Kingdom* [GC], App. no. 543/03, judgment of 3 October 2006, *Bykov v Russia* [GC], App. no. 4378/02, judgment of 10 March 2009 and *Idalov v Russia* [GC], App. no. 5826/03, judgment of 22 May 2012.

5. Based on well-established case law, numerous cases of the European Court of Human Rights have revealed violations of these requirements of the Convention. Following these cases, reforms are in progress in several countries under the supervision of the Committee of Ministers.

6. In addition to relevant case-law of the Court, notably concerning Articles 3 and 5 of the Convention, the CDDH recalls the previous work of the Committee of Ministers on pretrial detention, in particular Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, and Recommendation Rec(2006)2 on European Prison Rules, the appendix to the latter providing detailed information on the minimum standards for the treatment of all prisoners. Furthermore, the Council of Europe Annual Penal Statistics (SPACE Statistics) are also an important tool in the monitoring of pretrial detention, in particular regarding the representation of foreign nationals.

7. The CDDH welcomes the recent research report regarding pretrial detention in the European Union, co-authored by a member of the CPT.

8. Finally, the CDDH recalls that continued consideration of the conformity of national systems with the requirements of the Convention generally,⁶ and through the process of execution of judgments in particular, provides important opportunities to integrate European standards with national law and practice. The CDDH encourages such initiatives. The CDDH subscribes to the PACE recommendation encouraging the continued cooperation between the relevant bodies of the Council of Europe and the European Union on related issues.

Recommendation 2081(2015)

Abuse of pretrial detention in States Parties to the European Convention on Human Rights

Parliamentary Assembly

1. The Parliamentary Assembly refers to its [Resolution 2077 \(2015\)](#) on the abuse of pretrial detention in States Parties to the European Convention on Human Rights and to Committee of Ministers Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse.

2. Drawing the attention of the Committee of Ministers to the continuing shortcomings, including over-representation of foreign nationals in pretrial detention, which have been documented in recent research carried out on behalf of the European Union, and to the examples of abuses of pretrial detention in a number of States Parties to the European Convention on

⁶ See notably Recommendation (2004)5 of the Committee of Ministers to member States on the verification on the compatibility of draft laws, existing laws and administrative practice with standards laid down in the European Convention on Human Rights.

Human Rights (ETS No. 5) referred to in [Resolution 2077 \(2015\)](#), the Assembly calls on the Committee of Ministers to:

2.1. consider ways and means of reducing recourse to pretrial detention in general and its abuse for specific purposes such as the pursuit of political or corruption-related objectives, in particular in light of recent developments;

2.2. encourage relevant bodies of the Council of Europe to intensify their co-operation with their European Union counterparts in order to ensure that any action to tackle pretrial detention issues is taken in a co-ordinated way, on the basis of the standards laid down by the European Convention on Human Rights as interpreted by the European Court of Human Rights.