



Strasbourg, 29 October 2015
cdpc/docs 2015/cdpc (2015) 20 - e

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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Drafting Committee on prison overcrowding

3rd meeting

Paris, 26-27 October 2015
9.30 am - 5.00 pm
Council of Europe Office

EXECUTIVE SUMMARY

Document prepared by the Secretariat
Directorate General I - Human Rights and Rule of Law

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The Drafting Committee on prison overcrowding:

- Approved its meeting agenda and took note of the information provided by its Chair regarding the meeting held on 8 July 2015 between the Chair, the general rapporteur and the Secretariat in order to re-draft the White paper following the comments and proposals made at the 2nd meeting, as well as the time line for finalising the document, namely at the CDPC plenary meeting in June 2016;
- Welcomed Ms Laura Ielciu-Erel, Department for the Execution of Judgments of the ECtHR and Mr Givi Mikanadze, Criminal Law Co-operation Unit. It took note of the presentation made by the latter regarding a Regional Project “Promoting penitentiary reforms (from a punitive to a rehabilitative approach) in five former Soviet Union countries and the related questionnaire on prison overcrowding;
- Considered the report of the UN High Commissioner for Human Rights “Human rights implications of over-incarceration and overcrowding” (Doc. A/HRC/30/19) and agreed that a number of the comments, observations and recommendations contained in it are in the same line as the draft White paper and that reference to this document should be made in the latter;
- Considered the draft White Paper and made additional proposals regarding its structure and contents (see Appendix III);
- Decided to revise further the text, avoid repetitive paragraphs, shorten it and move to the footnotes all references to Committee of Ministers recommendations and add also references to some additional recommendations;
- Debated the issue of ensuring public security and safety which is the responsibility of the authorities and the public perception of security and safety which may lead to harsher sentences than necessary. Discussed the need in this respect to have crime policy which keeps a balance between the retributive and the rehabilitative aspects of the sanctions and measures applied;
- Agreed that there is a need to discuss also the role of the police, the ministry of finance and the local authorities in seeking solutions to overcrowding in places of detention;
- Agreed that there is a need to add a paragraph on the right to challenge detention and the role of lawyers in this respect;
- Agreed that there is a need to add a paragraph on the cost effectiveness of improving prison conditions as compared to paying costly compensations for inhuman and degrading detention conditions as well as on the need to have effective preventive remedies (like the judge to have the power to stop the execution of a detention measure or a prison sentence in case of risk of violation of Art. 3, ECHR);
- Agreed on the importance to underline the usefulness of providing regular and updated information to judges and prosecutors in the course of the criminal proceedings (in full respect of their judicial independence) regarding the actual situation with the prison occupancy rate as well as the usefulness of providing pre-sentencing reports;
- Discussed the issue of reforming penal legislation including revision of penal codes, as necessary, in order to review definitions of types of crimes, decriminalise certain types of crime, provide for partial or total replacement of prison sentences with community sanctions and measures, provide for more opportunities for early release and alternatives to pre-trial detention, and agreed to cite some recent examples in this respect which have led to the reduction of prison population in some countries;

- Debated the issue of execution of sentences and whether this power should remain in all cases with the judiciary or could be carried out by the executive under judicial control to allow for more flexibility in taking managerial decisions regarding initial and subsequent prison regime and was of the opinion that practices differ but there may be an added value to draw the attention to this question in more details;
- Discussed the issue of time-limitation of pre-trial detention and remedies to challenge excessive length of detention as well as the efficiency of and speediness of the criminal process;
- Discussed the issue of replacing penal with administrative sanctions (like heavy fines and confiscations) in case of economic crime due to their strong dissuasive effect;
- Agreed that high thresholds before being able to apply for or propose conditional release may lead to overcrowding and in any event such safeguards do not seem necessary in general as long as judges have the independence and power to take decisions in each individual case,
- Debated also whether legal aid should be available to prisoners for requesting early release and whether early release procedures can be initiated only by the prisoners themselves (which is the current situation in some countries) or the prison administration can also initiate such procedures and agreed once again that conditional release is very important for planning the sentence and provides conditions for structured release and successful reintegration;
- Agreed that conditional release should be available as a general rule for all types of crime. Only the personality of specific offenders may lead to them not being conditionally released and this is to be decided on a case-by-case basis.
- Agreed that passive monitoring of the penal system is not enough to lead to its improvement and that the monitoring needs to be proactive;
- Took note of the fact that about 18 Council of Europe member states have adopted draw-up or need to draw-up Action Plans to implement judgements of the ECtHR including judgements related to imprisonment overcrowding in prisons and remand detention centres and underlined in this respect that such Action Plans need to be comprehensive and not one-sided in order to achieve lasting results. Further agreed that sufficient financial and human investments need to be deployed to ensure reintegration of offenders as this in the long run is more cost-effective than imprisonment;
- Debated the issue of getting support and public consensus regarding penal reforms and the importance in this respect to work with the media and to take actions which are evidence based and are regularly evaluated;
- Decided that Mr Mauro Palma, Chair of the Committee, Mr Jesper Hjortenberg, General Rapporteur and the Secretariat will meet on 25 January 2016 in order to continue re-drafting the White paper and that the Committee itself will meet for the last time on 21-22 April 2016 to finalise the revised text for approval by the CDPC.
- Agreed that CCPE Bureau and CCJE Bureau will be requested to provide their comments on the text after the drafting meeting on 25 January 2016.

AGENDA / ORDRE DU JOUR

1. Opening of the meeting / Ouverture de la réunion

2. Adoption of the draft agenda / Adoption du projet d'ordre du jour

3. Information provided by the Secretariat / Informations fournies par le Secrétariat

4. Presentation of the project activities on prison overcrowding, Regional Project “Promoting penitentiary reforms (from a punitive to a rehabilitative approach)” / Présentation des activités du projet concernant le surpeuplement carcéral, Projet régional “Promouvoir les réformes pénales (d’une approche punitive vers une approche de réhabilitation)”

5. Consideration of the draft White Paper on prison overcrowding / Examen du Projet de Livre Blanc sur la surpopulation carcérale

6. Any other business / Questions diverses

7. Dates of the next meetings / Dates des prochaines réunions

***PC-CP (2015) 6 rev 2
English / Français***

UNHRC document

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REVISED STRUCTURE OF THE WHITE PAPER

- I. Introduction
- II. Prison overcrowding and prison population growth
- III. Prison overcrowding: the actual situation
- IV. The Council of Europe's position on the issue of prison overcrowding and prison population growth
 - a. In general
 - b. Recommendation No. R (99) 22 concerning prison overcrowding and prison population inflation
 - c. Other relevant recommendations
 - d. CPT standards
- V. Reasons for the overuse of deprivation of liberty and for prison overcrowding
 - a. Overuse of penal system
 - b. Lack of alternatives to detention on remand
 - c. Length of remand detention
 - d. Lack of community sanctions and measures
 - e. Other factors which prolong deprivation of liberty (inefficient criminal proceedings, public security and safety, recidivism, organised crime, terrorism)
- VI. How to address prison overcrowding
 - a. Deprivation of liberty as a measure of last resort
 - b. Revision of penal law, decriminalisation and alternatives to penal proceedings
 - c. Alternatives to pre-trial detention
 - d. Individualisation of the sentence, necessity and proportionality
 - e. Making more use of community sanctions and measures and no automatic recall
 - f. Early release schemes
 - g. Prevention and dealing with recidivism (judicial discretion, dealing with offenders to avoid further offending and avoiding to the extent possible detention) add also to p. b) and d)
 - h. Oversight of prison capacity and prison numbers
 - i. The need for coherence of the role the different actors play in the criminal process (ministry of finance to be also mentioned)
 - j. Relations with the local community for prevention and dealing with crime
- VII. Need for national strategies and action plans regarding crime policy. The role of monitoring mechanisms/consultative bodies (supervision, data collection and analysis)
- VIII. Work with the public opinion and the media to inform and get support for penal and penitentiary reform
- IX. Conclusions
- X. Annexes