

Prison Overcrowding – What Needs to be Changed

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1. Impact of prison overcrowding

Overcrowding in prison is clearly a human rights matter. As you all know and it has already been mentioned this morning, this question has been treated on many occasions by the European Court of Human Rights. I just would like to mention here the judgement “Torreggiani v. Italy” that deals mainly with the questions of an overcrowded prison in Italy. I wanted to mention this Italian case in order to highlight that this problem also has consequences in other related criminal law fields: allow me to make a good example in that respect. At the last session of the Council of Europe Committee of experts on criminal law (CDPC), the Chairperson of the Committee responsible for the implementation of the Council of Europe Conventions related to cooperation in criminal law matters expressed the experts’ concern that transfer of prisoners and extradition procedures based on the relevant Council of Europe Conventions, namely the Convention on Transfer of sentenced persons and the Convention on Extradition are increasingly obstructed by prison overcrowding and deterioration of conditions in some member states.

This situation is detrimental also to staff working conditions and professional ethics, causes everyday stress and tension between staff and prisoners and between colleagues who are often obliged to work extra hours. The European Prison Rules state in basic principle 4 that “Prison conditions that infringe prisoners’ human rights are not justified by lack of resources”.

Increased number of prisoners does not automatically lead to increasing staff dealing with them on an everyday basis. Therefore staff being in insufficient number can exercise only the minimum tasks it has, namely security tasks as there is no time, space and money to work meaningfully and in a structured way with prisoners.

Taking care of an increased number of prisoners in cramped conditions with the same amount of staff and funding causes significant managerial problems, problems related to clothing, bedding, feeding, ensuring minimum medical screening and treatment, etc.

Prison overcrowding undermines the overall aim of imprisonment: instead of preparing prisoners for release and crime-free life prison can only offer incapacitation for a limited period of time and proliferation of criminal behaviour. Overcrowded prisons can only send back to society persons unprepared to integrate it. What has society gained from all this? It is not evident to answer this question.

2. I will mention here some basic Council of Europe standards:

First, as it has been said this morning, *prison should be used as a measure of last resort* – this principle is still not sufficiently applied in some countries, and this can sometimes lead inevitably to overcrowding and overuse of prison as a sanction;

Secondly, *prison conditions should not infringe human rights* – it is true that prison by definition takes away the right to freedom but all basic human rights and freedoms should be guaranteed to all prisoners, such as the right to life, to human treatment and security, to respect for private and family life (to the extent possible in such conditions) freedom of thought, consciousness and religion, freedom of expression, etc.

Thirdly, *alternatives to pre-trial detention and to prison should be developed and used* – there are a lot of efforts still needed to put this principle in practice;

Fourthly, *prison and probation services to have high standing and recognition* – society needs to be better informed of the important task and role of prison and probation services which still remain outside the scope of the general public's attention and respect;

And finally last but not least, *juveniles should be dealt with differently from adults* – most Council of Europe member states fully apply this principle which acknowledges that children are not younger adults and need to be treated differently but there is still a lot to be done to avoid proliferation of crime among juveniles and motivate them to seek crime-free paths in life.

3. Some possible measures for reducing overcrowding

I will now try to mention here some possible measures that could be considered. Some of these measures are contained in Council of Europe standard-setting texts; others come from good national practice and examples. Whatever the source is, every measure would need to be implemented after careful examination of the reasons for prison overcrowding in a given country and they need to fit in the national legal system.

Legislation:

Some countries have reduced the use of prison by decriminalising some petty non-violent crimes and by reclassifying other to avoid deprivation of liberty.

Legislation may provide for a limited use of imprisonment for certain types of minor crimes, such as non serious drug-related offences, road traffic offences, etc. and by replacing them with fines or with alternative sanctions and measures.

Pre-trial detention may be reduced by shorten its length in some cases and the reasons for using it. In many countries overcrowding is mainly due to pre-trial detention reasons .

Legislation may provide for more possibilities for conditional release and thus help release prisoners earlier and with better chances of social reintegration

Some countries have successfully reduced imprisonment by deleting from their legislation the mandatory minimum thresholds for sentences which allow courts more flexibility in individualising sentences to fit the specific circumstances of a given case.

Pre-trial stage:

Some countries have successfully used discretionary prosecution for some types of crime and have allowed for diversion from formal court proceedings. Restorative justice and mediation can be very helpful in this respect.

Courts were invited in some countries to use more alternatives to pre-trial detention and this has significantly decreased the use of pre-trial detention.

Courts have made efforts in some countries to shorten the pre-trial stage by speeding up proceedings at the different instances. This has had a direct effect on the length of pre-trial detention.

Trial stage:

The Council of Europe standards contained in the European Convention for Human Rights, the ECtHR case-law and the CM recommendations require sentences to be proportionate to the crime committed, to be individualised so as to take into consideration the personal circumstances of the offender and to be non-discriminatory. It is recommended that special attention is placed on the need to use more often suspended sentences and to replace imprisonment with community sanctions and measures. Attention is also drawn to the need to avoid depriving juveniles from freedom and to treating them separately and differently while in detention and during execution of sanctions in the community.

Execution of the prison sentence stage:

Many countries have successfully introduced amendments to their legislation or practices allowing for replacing prison sentences entirely or partially by high intensity supervision (including electronic monitoring), by treatment orders for substance addicted or sex offenders or by community work.

A good practice is to set maximum capacity for each prison and to make every effort to respect it and to inform as early as possible the local courts of risks of possible overcrowding in specific prisons. Some countries have established waiting lists in case a given prison is overcrowded.

Even if prisons are overcrowding, conditions of detention may be improved by recruiting more staff, by training staff to cope with changed working conditions, by seeking support from the community to run activities like training, education and employment of prisoners.

Stress and tension in overcrowded prisons can be successfully reduced by increasing the number of family visits or by allowing more days of prison leaves.

The construction and running of open and semi-open prisons is also a good way of reducing prison overcrowding and of better preparation for release.

4. Possible steps to be taken

The Council of Europe is ready to help national authorities to establish a dialogue and co-operation between judges, prosecutors, prison and probation services and to involve them in taking informed decisions regarding penal policies and strategies

As the Director General, Mr Boillat, has already mentioned this morning a working group could be convened at the Council of Europe level to start such a dialogue and to base it on sound comparative research and professional knowledge and data in this area

It would be good if dialogues start in parallel at national level to fuel in ideas for good practices at the Council of Europe level.