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EUROPEAN COMMITTEE ON CRIME PROBLEMS
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WHITE PAPER ON PRISON OVERCROWDING

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

Preface

Prison overcrowding is a recurring problem for many prison administrations in Europe. Many of the 47 Council of Europe member states have overcrowded prisons and in many states where the total number of prisoners is lower than the available accommodation places still specific prisons may often suffer from overcrowding.

The Council of Europe has persistently recommended to the national authorities to remedy the problem considering that prison overcrowding and prison population growth represent a major challenge for prison administrations and the criminal justice system as a whole both in terms of ensuring human rights protection and in terms of efficient management of penal institutions. On 30 September 1999 the Committee of Ministers adopted Recommendation No. R (99) 22 concerning prison overcrowding and prison population inflation. This text contains a number of pertinent advices and suggestions for practical steps to be taken at all levels - legislative, judicial and executive.

More than 15 years after the adoption of the recommendation and despite the efforts made by the member states the problem is still considerable at European level as in many other parts of the world. In the inter-state relations the problem is felt sometimes acutely in cases of requests for extradition for prosecution or in cases of transfer of sentenced persons, where the requested measure may be problematic to carry out because of concerns regarding bad prison conditions, including in particular prison overcrowding, in the receiving state.

Several Conferences of Directors of Prison Administration have debated the issue of prison overcrowding and at the 17th Conference in Rome (November 2012) a special meeting was held with European judges and prosecutors in order to raise their awareness of the impact of pre-trial detention and of sentencing policies on prison overcrowding and of the usefulness and effectiveness of alternatives to imprisonment. At the 19th Conference of Directors of Prison and Probation Services (Helsinki, 2014) an initiative was launched to set up a Working Group, comprising judges, prosecutors, representatives of the ministries of justice, of prison and probation services in order to discuss these issues and to recommend steps to be taken to tackle prison overcrowding. The idea behind this is to assist national authorities in starting a dialogue between judges, prosecutors, legislators, decision-makers and prison and probation services with a view to agreeing on long-term national strategies and on specific actions to deal with prison overcrowding.

The present document is the result of the joint efforts of the Working Group mentioned above, comprising representatives of a number of Council of Europe bodies and intergovernmental committees which have the competence and vested interest in the field of crime prevention and penal policies and practices of the Council of Europe member states. The full list of members of the Drafting Committee on prison overcrowding, set up on the initiative of the European Committee on Crime Problems as well as the bodies and committees they represent may be found in Appendix I to the present document.

The present “White Paper” does not contain new specific recommendations in relation to prison overcrowding - those found in recommendation No. R (99) 22 concerning prison overcrowding and prison population inflation are still very valid -but highlights points that could be of interest for the dialogue mentioned above that should be initiated and maintained by the national authorities in order to agree on and implement efficiently long-term strategies and specific actions to deal with prison overcrowding as part of a general reform of their penal policies in line with contemporary academic research and realistic expectations of the role criminal law and crime policy should play in society. This White Paper is thus aimed at inciting member states to open a debate at national level regarding their penal system and to take decisions on clear needs and objectives which need to be met in shorter and longer time-spans. In doing so the national authorities should keep under review to what extent imprisonment is playing an appropriate role in tackling crime.

The work of the Drafting Committee was carried out between December 2014 and June 2016.

I. Prison overcrowding and prison population growth

There are no universally or internationally agreed precise definitions or standards as to what constitutes overcrowding. It occurs generally speaking when the demand for space in prisons exceeds the overall capacity of prison places in a given member state or in a particular prison of that state. However, contrary to Section 18.3 of the European Prison Rules[1] there remain a number of member states who have not a definition of "minimum space". As a result the capacity of the prison systems of these particular states cannot be properly assessed.

It should be noted that there are significant differences in the methods for calculating prison places used by different Council of Europe member states and therefore the data related to prison capacity should be evaluated against the real space/square meters available to each prisoner as well as against time spent daily in the cells. It should also be taken into account that space and square meters are not the only relevant factors when assessing overcrowding issues. Overcrowding problems are also part of and closely linked to the general issue of providing for appropriate over all prison conditions, including staffing and offering meaningful activities aimed at re-socialising prisoners, that meet international standards.

As stated in the preface, the principles expressed in Council of Europe Recommendation No. R (99) 22 concerning prison overcrowding and prison population inflation are still considered to be valid, but it has to be recognised that there have been developments in the Council of Europe member states since 1999 that may explain some of the difficulties in implementing the principles of the Recommendation.

The opening of the borders in Europe, the expansion and grater accessibility of international transport and the rapid development of new technologies worldwide has had many positive influences on our societies. At the same time a rise was observed in transnational organised crime and terrorism which has led since the turn of the 21st century in many member states to an increase in the severity of criminal law responses to such crimes. A more severe approach very often implies the use of longer prison sentences without parole and also without necessarily addressing at the same time the implications this could have for the prison systems. It also seems as if many states have experienced a change in the way in which the politicians and the media contribute to the change in the public opinion on crime. The strife to be "tougher on crime" or to apply "zero tolerance" policies or similar have led to an increased use of imprisonment.

It is anyhow very important to remember that the member states of the Council of Europe have their own specificities when it comes to national criminal law responses to crime Furthermore, the development in crime may differ largely from increase to decline in crime and from situations of severe prison overcrowding in some states to states where prison facilities are closed, at least temporarily because there are no prisoners to place there. Where prison overcrowding occurs there may also be different root causes and combinations of such causes in the different countries. For these the White Paper does not contain a set of very specific recommendations, but highlights issues to be considered in the light of national legal traditions, practices and cultures.

II. Prison overcrowding - the actual situation

Some figures from the recent past can be cited in order to give an idea of the trends in Europe. Between 2012 and 2013, the number of inmates held in penal institutions in the Council of Europe member states decreased by approximately 56,700 persons. In spite of the decrease of the raw number of inmates, the median* prison population rate in Europe increased between 2012 and 2013 by 5%. In 2012 it was 127 inmates per 100,000 inhabitants and in 2013 it was raised to 134 inmates per 100,000 inhabitants. In 2013, the problem of overcrowding remained acute for 21 European Prison Administrations. In 2012 there were also 21 prison administrations with overcrowded prisons and in 2011 - 23. In 2013, 19 of the prison administrations having overcrowded prisons were the same as in 2012[2].

[1] European Prison Rules, 18.3: Specific minimum requirements in respect of the matters referred to in paragraphs 1 and 2 shall be set in national law.

[2] Council of Europe Annual Penal Statisics (SPACE I, 2014)

As already mentioned previously in this report, the fact that the overall number of prisoners in a given country is less than the total number of prison places does not necessarily mean that this country is not facing overcrowding in some of its prisons. Therefore according to the CPT published reports on visits the number of countries suffering from prison overcrowding is estimated to be higher, namely according to the Committee currently 30 Council of Europe member states face this problem and have to deal on everyday basis with its negative consequences for prisoners and staff.

If a given prison is filled at more than 90% of its capacity this is an indicator of imminent prison overcrowding. This is a high risk situation and the authorities should feel concerned and should take measures to avoid further congestion. This is due to the fact that a prison has usually several different sections and even if the overall number of prisoners is less than the capacity of places some of its sections like disciplinary cells, medical unit cells or section for women or juveniles might be half empty while other sections might experience situations of overcrowding.

Some countries use waiting lists in case of severe overcrowding which may lead to violation of Art. 3 of the ECHR. While this may be a temporary solution it should not lead to situations when a prison sentence is executed long months, even years after the court judgement or execution order as then the preventive and rehabilitative aim of the prison sentence has lost much of its force on the offender.

To address the problem of overcrowding, some countries have taken the route of increasing the number of prison places either by constructing new prisons or by reconstructing and enlarging the existing prisons. The Council of Europe in its Committee of Minister recommendations and the CPT in its reports have persistently underlined that this solution alone cannot reduce the rates of imprisonment. The practice has shown that prison population numbers rise as a result of extensive prison construction. Old and worn out prison buildings should be replaced by new prisons offering humane conditions of detention but such programmes should not lead to ever rising prison places and as a result higher imprisonment rates.

In the pilot judgment Neshkov and Others v. Bulgaria[3], concerning the conditions of detention in several correctional facilities in Bulgaria, the applicants complained about severe overcrowding, poor hygiene and lack of access to toilets. The Court highlighted this as a systemic problem in Bulgaria. It also stated that changes to national law and practice were required to create effective preventative and compensatory remedies and suggested the construction of new prison facilities or major repair work on the existing ones. In the Court's opinion prison construction or reconstruction is a measure among many others which should be taken to deal away with prison overcrowding.

III. The Council of Europe´s position on the issue of prison overcrowding and prison population growth

a. In general

At the Council of Europe level prison overcrowding has been addressed both in the standard setting texts and in relation to more specific assessments of individual situations, including the interpretation of the ECHR itself provided by the Court which considers overcrowding as a factor which can lead to violation of **Article 3 of the ECHR** The **Committee of Ministers recommendations** state the basic principles to guide the European countries in maintaining prison conditions and treatment of prisoners in conformity with international standards. Apart from the already mentioned Recommendation No. R (99) 22 concerning prison overcrowding and prison population inflation (which will be mentioned more in detail below)such standards can be found in the **European Prison Rules R (2006) of the Committee of Ministers on the European Prison Rules)**, which contain inter alia the following provisions:

18.1 The accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation.

[3] Neshkov and Others v. Bulgaria, nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13, 27 January 2015

18.2 In all buildings where prisoners are required to live, work or congregate: a. the windows shall be large enough to enable the prisoners to read or work by natural light in normal conditions and shall allow the entrance of fresh air except where there is an adequate air conditioning system;

b. artificial light shall satisfy recognised technical standards; and

c. there shall be an alarm system that enables prisoners to contact the staff without delay.

18.3 Specific minimum requirements in respect of the matters referred to in paragraphs 1 and 2 shall be set in national law.

18.4 National law shall provide mechanisms for ensuring that these minimum requirements are not breached by the overcrowding of prisons.

In addition hereto the **European Committee for the Prevention of Torture and Inhuman or degrading Treatment or Punishment (CPT)** and **the European Court of Human Rights** have assessed particular situations where prison overcrowding has occurred**.** The Court makes assessments of the specific circumstances in the cases brought before it and has the final saying as to what constitutes a violation of the ECHR under such particular circumstances. The CPT issues general reports and country reports on specific visits to member states where it assessed concrete prison facilities and makes specific recommendations and also develops general standards regarding treatment of prisoners.

The Court has repeatedly found that accommodation involving sharing of cells not designed for that purpose and in particular in overcrowded and non-sanitary conditions constitutes inhuman or degrading treatment and thus violates Article 3 of ECHR.

The Court pointed out that overcrowding may in itself in certain situations be considered to be so severe as to justify a finding of a violation of Article 3. Moreover it has two approaches when dealing with overcrowding situations: (1) the Court does not look into a direct violation of Article 3 but rather examines the cumulative effects of detention and in particular the possibility of the freedom of movement (2) in a number of cases, the Court's finding that an applicant disposed of less than 3 m^2 of personal space in detention directly led it to the conclusion that there is a violation of Article 3.

Material conditions related to accommodation include apart from the size of the cell and its overall state also access to natural light and fresh air. The commentary to Rule 18, EPR explains further that the more time a prisoner spends in the cell the more acutely is felt the impact of overcrowded and unsanitary conditions of detention.

The Court adopted the same position, arguing that whether or not there is adequate personal space in detention must be viewed in the context of the wide notion of freedom of movement and the possibility of unobstructed access to natural light and air, ventilation and compliance with basic sanitary and hygienic requirements.

Even in cases where no direct violation of ECHR article 3 is found, prison overcrowding is to be considered highly problematic, because of its negative effects on prisoners, their state of health and their possibilities for following a programme aimed at their re-socialisation and because of its effects on overall prison management, good order and conditions in which staff working in prisons.

As CPT has underlined in a number of its reports, an overcrowded prison entails cramped and unhygienic accommodation; a constant lack of privacy (even when performing such basic tasks as using a sanitary facility); reduced out-of-cell activities, due to demand outstripping the staff and facilities available; overburdened health-care services; increased tension and hence more violence between prisoners and between prisoners and staff.

Such cramped conditions of detention are detrimental to the work of prison staff of all grades. It creates everyday tensions and acts of aggression among prisoners and among prisoners and staff; health problems for both prisoners and staff as infectious diseases spread much easier in closed cramped, unsanitary environments; psychological and psychiatric problems; staff burn-out and prolonged sickness leaves. In addition front line staff cannot carry out their tasks properly but can only ensure safety and security and have no time or resources to contribute to preparing prisoners for release and re-socialisation. In the long run society is thus not protected from crime.

It is also appropriate to underline that the CPT has, by commenting on conditions and standards available in prisons among member states, indicated some minimum standards for accommodation. These are considered to be from 7 to 9 m2 for an individual prison cell and additional 4 m2 for each prisoner in shared accommodation. This space does not include sanitary facilities. In it should not be included spaces in special units like disciplinary cells, medical cabinet beds, etc. However these indicators should not be taken separately but instead should be related to an overall assessment of the prison system and of the conditions of detention in a specific prison, the daily access to out-of-cell activities, access to shower and walk in the fresh air. Furthermore these are minimum standards below which no country should fall and should not be regarded as the norm. The number of hours spent in the cell/accommodation is also of importance when assessing if the available space is sufficient.

Prisons are places where people are feeling vulnerable, some of them in search of their identity and in need of protection which is a fertile ground for organized gangs and radicalised prisoners to find followers and influence minds. Management and staff are often armless in overcrowded prisons against such influences due to lack of resources to ensure space, time and attention to individual work with prisoners and proper preparation for release and reintegration.

Running overcrowded prisons is difficult also from a managerial point of view (thus posing problems at all levels of the prison service), from healthcare point of view and from the point of view of ensuring contacts with the family, with the legal representative and with outside agencies working towards the social reintegration of prisoners.

In some countries there are financial incentives for staff working in overcrowded prisons. The CPT has rightly underlined in this respect that a system whereby there are financial incentives to run a prison on the basis of constant overcrowding would not appear to be compatible with achieving the Prison Service's goal of holding all prisoners in a safe, decent and healthy environment (cf. § 32, visit to UK in 2008). The UK government has taken into account these comments and has since then rectified the situation.

The commentary to the European Prison Rules also underscores the fact that prison population is the product of the functioning of criminal the justice systems as it is not always directly correlated to the crime rates in a given country. Therefore when designing general criminal justice policies and strategies when adopting specific sanctions and measures due regard needs to be taken of their effect on the rates of imprisonment in order to respect the minimum standards as fixed by the European Prison Rules.

In **CPTs 11th General report** (CPT/inf (2001) 16) prison overcrowding was (again) highlighted as the serious problem it was and is. § 28 of the report shows the hopes attached to the then recently approved Rec No. R 99 (22) and reads:

"The phenomenon of prison overcrowding continues to blight penitentiary systems across Europe and seriously *undermines attempts to improve conditions of detention. The negative effects of prison overcrowding have already been highlighted in previous General Reports.[4] As the CPT's field of operations has extended throughout the European continent, the Committee has encountered huge incarceration rates and resultant severe prison overcrowding. The fact that a State locks up so many of its citizens cannot be convincingly explained away by a high crime rate; the general outlook of members of the law enforcement agencies and the judiciary must, in part, be responsible.*

[5] Nos. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13, 10 March 2015

In such circumstances, throwing increasing amounts of money at the prison estate will not offer a solution. Instead, current law and practice in relation to custody pending trial and sentencing as well as the range of non-custodial sentences available need to be reviewed. This is precisely the approach advocated in Committee of Ministers Recommendation N° R (99) 22 on prison overcrowding and prison population inflation. The CPT very much hopes that the principles set out in that important text will indeed be applied by member States; the implementation of this Recommendation deserves to be closely monitored by the Council of Europe."

b. Recommendation No. R (99) 22 concerning prison overcrowding and prison population inflation

The Recommendation addresses all relevant authorities at national level: legislators, ministries of justice and of the interior, judges, prosecutors, prison and probation services and local authorities.

Recommendation° R (99)22 should thus be carefully considered by all relevant institutions both when overall strategies for preventing and dealing with crime are adopted and when specific national rules to prevent overcrowding are developed.

The basic principles in Heading I of the Recommendation refer to principles which are still as relevant and valid today as when they were approved:

- *Depravation of liberty should be regarded as a sanction or measure of last resort*
- *Extension of prison estate/capacity should be seen an exceptional measure, as it is generally unlikely to offer lasting solutions*
- *Provision should be made for an appropriate array of community sanctions and measures*
- *Decriminalisation or reclassification of offences (so that the penalties no longer entail deprivation of liberty)*
- *The need for a detailed analysis of the main contributing factors in order to devise coherent strategies against prison overcrowding*

Furthermore the Recommendation in Heading II contains ideas how to cope with a shortage of prison places. Apart from recommending setting and strictly respecting maximum capacity for each penal institution - which is also in line with the European Prison Rules - it is dealing with the situation where the overcrowding actually occurs. It recommends to introduce more out-of-cell activities, provide for more family visits, improve food and hygiene, train staff to apply humane and positive treatment, use more home leaves and placement in semi-open or open institutions.

Heading III is dedicated to measures related to the pre-trial stage. It recommends inter alia discretionary prosecution, simplified procedures, out-of-court settlements like mediation, diversion, shortening the length of criminal proceedings as far as possible, different alternatives to pre-trial detention and ensuring adequate financial and human resources for the proper running of prison and probation services.

In Heading IV measures relating to the trial stage are addressed and it is recommended inter alia to make more use of different alternatives to deprivation of liberty and to reduce the length of sentences by combining deprivation of liberty with non-custodial measures. Probation, treatment orders, mediation and combined sanction are some of the examples. In respect to this the role of judges and prosecutors in designing and applying penal policies is specially highlighted. It is recommended that they should be constantly aware of the consequences of their sentencing practices on prison overcrowding and should have a clear view on the evolvement of prison populations before a judgement is pronounced. The sentences should be individualised so as to take into account not only the seriousness of the offence but also the personal circumstances of the offender, including aggravating and mitigating factors.

The CPT (footnote) has stated in relation to this:

"Appropriate action should also be taken vis-à-vis the prosecutorial and judicial authorities with a view to ensuring their full understanding of the policies being pursued, thereby avoiding unnecessary pre-trial custody and sentencing practices.

Further, efforts should be made to step up the training provided to judges and prosecutors, with a view to promoting the use of alternatives to imprisonment.

The Prison Service should not be left alone in coping with the phenomenon of overcrowding. A more concerted approach should be developed, including through wide-ranging discussions involving all relevant parties, including parliamentarians, prosecutors, judges and representatives of monitoring bodies. The Government position should be based on a holistic and proactive approach rather than a reactive one."

Finally Recommendation Rec(99)22 under Heading V contains measures related to the post trial stage. The effective implementation of community sanctions and measures is recommended and the need to create the necessary infrastructures to effectively implement and monitor such sanctions and measures and to develop risk (and needs) assessment tools is also underlined. Stress is put on resettlement and it is underscored that treatment measures should begin in detention in order to effectively prepare for release and social reintegration.

Recommendation Rec(2003)22 on conditional release (parole) promotes its use in order to avoid de-socialisation of prisoners, improve resettlement and improve community safety. In order to be effective conditional release needs to be carefully planned; minimum periods of detention should be fixed by law (and should not be too long so as not to hinder the positive impact of early release); victim compensation schemes should be defined by law; treatment for substance abuse; entering education, training or occupational activities; restriction of movement or settlement should be among the requirements set for releasing a person.

IV. Reasons for prison overcrowding

The question why prison overcrowding occurs is not an easy one to answer in a general manner as different legal systems and sentencing practices exist in Europe. Legislation and sentencing practices are in any case among the root causes for increased rates of imprisonment. As a result in some countries overcrowding exists in pre-trial detention institutions, in others the rising numbers of foreigners in prison lead to prison inflation or overcrowding may occur due to increased length of sentences and the ensuing congested numbers of long-term prisoners and lifers. In some countries the increased number of short-term prisoners can also cause overcrowding. It should be noted that in most countries the reasons for prison overcrowding are a combination of several or of all these factors.

It is important therefore to understand prison overcrowding outside a narrow context of criminal law jurisdictions. The problem of prison overcrowding is closely linked to the functioning of the individual criminal justice systems and the values, ideas and traditions behind these particular systems. These values, ideas and traditions are the result of very long processes and they are sometimes difficult to change, because they reflect history as well as cultural and social realities and are also partly based on political choices. Furthermore criminal law systems are often a "patchwork" of rules that have come to existence on a case-by-case basis over a considerable span of years or even centuries, meaning that the general lines and principles may never or at least not very often have been analysed as a whole. Imbalances in the system like prison overcrowding are reflections of these realities and therefore difficult to deal with. Evolution and societal changes may also not be very well reflected in criminal law in a coherent and timely manner.

It would thus be recommendable if states /national jurisdictions, including those that do not face acute overcrowding, would regularly asses their criminal justice system or substantial parts of it and consider which are the objectives of crime policy, the available resources and what is really achieved by the different sanctions and measures provided by law and practice. This may of course be wishful thinking. It may also be added that many professionals like judges or prosecutors are not, or not very often at least, invited to reflect more

profoundly over the system, and are basically left with the tasks of implementing laws and thereby indirectly political choices and priorities.

Since the end of the 18th century and still today prison is considered to be the main form of reaction or punishment to serious violations of social norms and rules. The question is when a violation can be considered serious enough to merit the use of prison. This is in democratic societies subject to political decisions by parliaments and governments as it is also the case when the basic question of which behaviour should be criminalized is to be answered.

The responsibility and the possibilities for solving the problem of prison overcrowding and prison population inflation are thus to a considerable degree to be placed upon political decision makers and law makers. The same decision makers also decide wholly or partly on those resources, but economical and human, that should be at the disposal of prison and probation services. This being said there is of course also a responsibility for the actors of the criminal justice system - police, prosecutors, judges and prison and probation services - to deal with the issue of prison overcrowding.

It should at the same time not be forgotten that the views and values adhered to by decision makers and law makers are often related to similar views and values of their constituents. Such views and values related to crime and punishment may be of a nature that is not facilitating a reduction in the prison population and not leading to solutions to the problem of prison overcrowding. Such views, of course within the limits of respect for human rights, must as a starting point be respected as part of democratic pluralism. A sometimes overlooked issue in this context is the respect for rights of victims or potential victims among the general public, where the criminal justice systems and the use of punishment have a crucial function. There is a need to tackle social unrest caused by serious crimes, which should not be disregarded when discussing different types of punishment. Supporting the feeling that justice is being done and that impunity does not prevail is of importance for states when taking decisions on punishment and crime.

Having taken these points on board, it should anyhow be remembered that democratic pluralism also includes that open debates are held on crime policy and the criminal justice system with a view to hear different arguments and to be informed and guided by research results and experiences based on facts about the true functioning of criminal justice.

V. Penal policy

1. Deprivation of liberty as a sanction of last resort and considerations on how this can be brought from theory to practice- changes in penal policy?

The Council of Europe and its European Court of Human Rights have persistently upheld the principle that deprivation of liberty should be a sanction of last resort due to the fact that the right to freedom is one of the most fundamental human rights and that deprivation of this right has harsh and serious consequences on the individuals affected by it.

As an example, in the Varga and Others v. Hungary case[5], the Court urged the Hungarian authorities to reduce the number of prisoners and to put in place preventative and compensatory remedies and also by minimizing recourse to pre-trial detention and by encouraging the use of alternatives to detention.

As mentioned earlier, this principle is to be found in the relevant Committee of Ministers recommendations, for example, Recommendation No. R (99) 22 concerning prison overcrowding and prison population inflation, Recommendation Rec (2006) 2 on the European Prison Rules, Recommendation Rec (2006)13 on the use of remand in custody, Recommendation Rec (208)11 on the European Rules for juvenile offenders subject to sanctions or measures, Recommendation Rec(20012) 5 on the European Code of Ethics for Prison Staff, Recommendation CM/Rec (2012) 12 concerning foreign prisoners, and Recommendation CM/Rec (2014) 4 on electronic monitoring. These texts invite the member states to use deprivation of liberty only when the

[5] Nos. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13, 10 March 2015

seriousness of the offence combined with consideration of the individual circumstances of the case would make any other sanction or measure clearly inadequate. If in theory this view is largely accepted in reality its interpretation may be different which may lead to divergent transpositions into concrete action and rules in the different criminal justice systems.

To the serious negative effect which deprivation of liberty can have on individuals should also be added the impact it causes on their families, especially on their children which is rarely taken into consideration or evaluated. Apart from material losses for the family because of loss of income and often of shelter, imprisonment causes often loss of social status, feeling of shame and stress for the partner and the children, loss of parental care and assistance. It is roughly estimated that at any given point in time about 2 000 000 children in Europe have a parent in prison. Stigmatisation and personal and educational problems arise in most cases and these should be born in mind by the authorities when seeking the best ways of fighting crime.

In addition it should be noted that prison is a very costly sanction. Despite the big differences between the expenses incurred for each prisoner in the Council of Europe member states the average amount spent per prisoner per day in 2012 was 97 euros (the highest being 317 euros). [6]

Before final judgement is delivered the magistrates should systematically weigh the pros and cons of sentencing someone to imprisonment including the possible effect this could have on the individual and his/her family and also the general consequences and costs for society.

Why should imprisonment be used more than is strictly necessary?

The problem is that this is a matter of each national penal policy. Different reasons and motivations, not always related to crime rates, may lead to overuse of this sanction at given political periods. National policies may lead to putting stress on fighting crime by all means without at the same time investing sufficiently in alternatives to criminal justice and alternatives to deprivation of liberty. Punishment and retribution should never be the only valid reasons for imprisonment, nor should social revenge be the motivation behind decisions to be harsh on crime. General and specific prevention as well as rehabilitation of offenders should be instead taken into consideration. In addition there will always be valid reasons related to safety and security to keep certain offenders in prison despite the highly possible negative impact on their personal life and social prospects. Nevertheless the principle that prison should be used as a measure of last resort should be respected and should not be a matter of little or no reflection for law makers, for the magistrates and for all other players of the criminal justice system when applying the laws.

Reality shows that in the course of the last decades new types of offences have been introduced in the national criminal codes and some of these have been defined by international binding legal instruments obliging the signatories to use the same definitions in their national legislation. The offences defined in international treaties relate to serious crimes like terrorist acts, trafficking in human beings, sexual exploitation, money maundering, cybercrime, etc. for which the signatories were required to introduce prison sentences of a certain length. At the same time - as already mentioned earlier - rigorous revisions of the criminal codes in order to re-organise definitions, re-define sanctions and measures and decriminalise certain petty crimes have not been required and carried out in most of the countries. This has contributed to increased use of imprisonment as a sanction and to increased length of imprisonment as well, two important factors leading to overcrowding.

This trend is not the same everywhere in Europe. There are big disparities in this respect. Nevertheless it can be underscored that prison numbers are strongly influenced by the overall number of entries in the penal system, the duration of the sanctions imposed and the early release schemes like conditional release, probation periods and partial or total alternative execution of prison sentences. The average length of imprisonment has increased in quite a few countries in the course of the last decade (SPACE I data presented at the 18th Council of Europe Conference of Directors of Prison Administration: www.coe.int/prison) by 1% on average and in some countries the increase is between 3 to 5%.

[6] SPACE I 2013 data

In the Northern Europe usually the turnover of detained persons is much higher and they stay for shorter periods of time in detention (which does not mean that in some of them prison overcrowding is experienced nevertheless). In South-Eastern Europe the turnover is slower even at the pre-trial stage and prison sentences are longer.

Therefore in order to obtain long-lasting reduction of prison numbers it is important to consider decriminalising some offences (like drunken driving and substance abuse and replacing these with administrative sanctions and treatment orders), replacing prison sentences for other offences by sanctions and measures enforced in the community (community work, victim-compensation schemes, electronic monitoring, etc.) and providing more possibilities for early release schemes.

Some argue that punishing substance abusers by penal sanctions is a paternalistic method intended to protect persons from self-harm. In these case criminalization and even worse the use of prison may not be the solution to a serious problem for society and the individual. One could also easily think that such a behaviour can be treated like many other acts of self-harm, which are (evidently) not punished, but are dealt with for instance via health care initiatives or other forms of treatment or supervision.

Particular care should be exercised when considering whether certain acts should be criminalised to examine whether it poses issues mostly of moral and ethical nature. A given behaviour may be ethically highly questionable at a certain period of life of a given society but it may not necessarily need to carry a criminal sanction and even less so prison sentence. Further, it has to be remembered that in all legal systems not all illegal acts are criminalised but other measures or interventions may be provided instead to rectify the situation. This is especially true in the case of juveniles as many of the acts committed by them in their teenage years are directly related to their stage of psychological development and if dealt with properly they grow out of crime with age.

It can be argued that only acts and behaviour that are seriously harmful or causing a risk of harm or real danger to other persons should be criminalized and should entail prison sentences. The need for some proportionality between the real harmfulness of the offence committed and the real risk posed by the offender and the degree of punishment is also a very important point to be considered.

It is important in this context to mention in this respect that on the one hand mandatory prison sentences and mandatory minimum prison sentences which exist in some penal systems for certain crimes, apart from hampering significantly the discretionary powers of courts to pronounce proportionate sentences, also contribute to prison overcrowding.

On the other hand it should be fully recognized that crimes committed by dangerous offenders merit special attention and often bring about the use of prolonged deprivation of liberty to protect society and potential victims, which must be seen as fully justified. The definition of dangerousness may vary, but the definition from the Committee of Ministers Recommendation CM/Rec 2014 (3) on dangerous offenders is useful in this respect. “**A dangerous offender** is a person who has been convicted of a very serious sexual or very serious violent crime against persons and who presents a high likelihood of re-offending with further very serious sexual or very serious violent crimes against persons.” **Violence** may be defined as the intentional use of physical force.

It is important to consider in this respect the case-law of the ECtHR which might be found by some legal experts and human rights defendants to have regressed from the case of Vinter and others v. UK (nos. 66069/09, 130/10 and 3896/10, judgement of the Grand Chamber, 9 July 2013), where the Court found that a “whole life” tariff, which forces murderers to die in jail, was “inhuman and degrading” to the case of Hutchinson v. UK (no. 57592/08, judgement from 3 February 2015) where the Court was "satisfied that the Justice Secretary’s power to release a whole life prisoner was sufficient to comply with Article 3" of the European Convention on Human Rights, which bars "inhuman and degrading" treatment.

So in total, general revisions of the criminal justice systems or at least revision of the types of crimes, of their dangerousness for society and of the sanctions contained in the criminal codes would be welcomed as this

could offer an opportunity to study the coherence and ideas and values behind the penal policy of a given country and while this simultaneously would offer a chance to address prison overcrowding. This is a demanding but not impossible task and it can pave the way to more lasting reforms of criminal law bringing it up to date. An example in this respect is the Norwegian reform of the whole Criminal Code which started some ten years ago and which will come into force soon.

2. Different actors in the criminal justice system and the need for coherence and a managerial view related to their actions - What can be achieved apart from or as a supplement to more general changes in penal policy?

A first reaction of the authorities when being confronted with the problem of prison overcrowding could very well be to advocate for more prison capacity and not for changes in penal policy. Recommendation No. R (99) 22 states, as mentioned earlier that extension of the prison estate should rather be an exceptional measure, as it is generally unlikely to offer a lasting solution to the problem of overcrowding. The CPT is of the same opinion as stated earlier in this document. Countries whose prison capacity may be sufficient in overall terms but face overcrowding problems in some prisons locally should try to achieve a more rational distribution of prison places throughout their territory, while at the same time considering early release schemes and replacing remainder of prison sentences with alternative sanctions and measures.

The situation may be similar in many countries, but may demand different solutions depending on the existing legal traditions and practices. Much depends on the situation in the particular countries affected by overcrowding. There is little doubt that better management of the prison system and the criminal justice system as a whole may alleviate or end overcrowding without the need to take legislative measures. In some countries a basic balance is sought to be preserved between the use of imprisonment by the criminal justice and the existing prison capacity. Constant dialogue between the different actors is more than evidently needed in this respect. In some countries discretionary prosecution exists which allows to balance legality versus utility of prosecuting a given case. Diversion from the formal justice system is a very efficient way of sanctioning offending behaviour and protecting the rights and interests of the victims. While crime policy and sentencing practices should not depend solely on balancing utility against legality of prosecution, prison capacity should play a role in taking long-term practical measures in conformity with the existing legislation. Political choices need to be made but the authorities also need to have clear ideas why certain trends in penal policy are followed and whether they need to be changed.

Another issue related to capacity in prisons has to do with timing and foreseeability. Every case in the criminal justice system goes through different stages, but the case and the situation of the offender should be perceived as a whole and the different stages and needs should ideally be adjusted to each other in terms of resources This may not always be possible, but the different actors in the criminal justice system can at least try jointly to do more planning based on statistics and experience, also when it comes to capacity and budget issues. An example: If large police actions take place or a new strategy in fighting crime is introduced there may be, at least locally, a need for a considerable remand capacity in detention centres and if the persons are later charged, indicted and convicted the problem will be moving up through the system. Planning among the actors may at least partly remedy such a situation that risks leading to overcrowding.

Prison overcrowding may thus at times be the result of commonly used but often inefficient division of tasks and responsibilities in the criminal justice system (different actors, different responsible ministries, separate budgets) leading to systems that can have serious problems with coherence in implementing penal policies and facing management difficulties.

Coherence of actions of the different actors will help decrease the growing gaps sometimes observed between the points of view on crime policy which professionals, politicians, the media and the general public may have. And will thus increase public trust in the authorities and eventually also lead to more efficient processing and shorter processing times which would in itself be of benefit. The words sometimes heard that justice systems cannot be measured in accordance with clearly set objectives and managed like other public institutions is simply not true. All depends largely on the political will.

Part of this public trust relates also to improving access to justice, including fixing and respecting time limits in criminal proceedings. As said earlier in this document pre-trial detention can in some countries last many months, sometimes years and can lead to overcrowding in remand detention centres because in some countries a person may be considered to be a pre-trial detainee until the last instance court has delivered its judgement. It seems therefore advisable to consider the possibility to detain such defendants together with sentenced prisoners after the judgement of the first instance court is delivered in order to avoid situations of overcrowding and to start preparing the person for rehabilitation in view of his future release.

Another way of avoiding situations of overcrowding at the pre-trail stage which can be used in parallel or independently with the suggested transfer to institutions for sentenced prisoners is the abolition of lists of crimes for which is provided mandatory pre-trial detention. This is in line also with the principle of the independence and discretionary power of the judiciary in delivering proportionate decisions which was referred to above.

In addition over time the risk of flight, tampering with evidence and witnesses decreases significantly and therefore the need to prolong or not the pre-trial detention should be considered on a regular basis.

Sometimes some countries have the tendency to arrest and then prolong the detention of a person too early, before the full evidence is collected. This policy violates basic human rights and the recognised principles of rule of law and contributes in addition to prison overcrowding and bad prison conditions.

In other words, better cooperation among actors and better management of criminal justice systems as a whole are also key issues in relation to prison overcrowding.

3. Decriminalisation and related issues

Although this element has already partly been addressed under V 1, it seems appropriate to elaborate a little further on these possibilities.

Recommendation No. R (99) 22 concerning prison overcrowding and prison population states thus in its rule 4:

“Member states should consider the possibility of decriminalizing certain types of offences or reclassifying them so that they do not attract penalties entailing deprivation of liberty.”

As already indicated, revisions of the criminal justice systems, criminal law and in particular criminal codes could be desirable in order to provide more lasting solutions to possible criminological and penological inconsistencies of criminal law and sentencing practices and to the problem of prison overcrowding.

An option, which can also be taken more on a step-by-step basis, so to say on a crime-by-crime basis, is the decriminalisation of certain offences or a lest replacing deprivation of liberty by other sanctions. A good example in this respect is Portugal which decriminalised in October 2000 the personal use of drugs and the substance abusers have to undergo treatment programmes instead of being imprisoned. This led to a noticeable decrease in drug consumption among 15-19 years old and also less drug addicted prisoners were held in penitentiary institutions not adapted for that purpose.

Another example is the decriminalisation by Italy in 2014 of the irregular presence on its territory of immigrants. Nowadays this is considered to be an administrative offence. The Council of Europe Human Rights Commissioner has repeatedly underlined in this respect that irregular entry and stay in a given country should never be considered a crime, nor should be a criminal offence any act of solidarity and assistance provided to such persons.

The Council of Europe has since many years advocated not to send to prison fine defaulters but to find alternative sanctions allowing them to reimburse their debts, like for example community work.

Another example is drunken driving without causing personal injuries where mandatory alcohol addiction treatment programmes, withdrawal of driving licence and even confiscation of the vehicle in some cases, serve better the purpose of general and specific prevention than imprisonment.

It is important to note that decriminalisation does not necessarily mean to declare certain behaviour legal or moral but to propose responses which lay fully or partly outside the (traditional) criminal justice system. A given act may still be considered illegal and immoral but other measures and sanctions may be more suitable to address it. In certain areas today "a helping hand" in the form of social, administrative, civil or healthcare measures may be far more beneficial for all. Basically the purpose should be to get as many petty offenders as possible away from the penal system and at least from the prison system. The authorities and the general public should be ready to accept that criminal law measures should not be used automatically from the outset of a given problem as they are often costly and do not necessarily deal with the grass-root causes of the problems faced.

Other ways like removing the actual possibilities to commit crime have also proven efficient in reducing crime rates and by doing so this would also in some case reduce imprisonment rates. This is seen by some researchers as a kind of "false" decriminalisation, but nevertheless one that may be quite efficient although depending on many other social factors. As the saying goes "Opportunity makes (sometimes) the thief". For example fraud and other types of economic crime, where the actual opportunities (for instance lack of effective control and security measures and certain technical/practical issues related to IT-systems) may drive a lot of often quite serious criminality. A possible way of dealing with this problem would be to introduce changes in the tax system, so specific taxes, where fraud is common and regarded as an offence or a crime, are replaced by other taxes or other means for collecting taxes with far less possibilities for fraud. The tax area is an area where administrative sanctions in less serious cases could replace some of the criminal law sanctions.

Another useful way to follow in the field of decriminalisation could be to lower the duration of the sanctions foreseen in the law by lowering the maxima of the prison sentences. This can be done for specific crimes, but due to coherence issues which are crucial to most criminal justice systems this should generally be done with due respect for the context - e.g. compared to the sanctions foreseen for other (similar) crimes.

One important issue to consider is how to deal with offenders with mental health disorders, as in some countries there is a tendency to keep such persons in prisons and not in institutions adapted for their treatment thus apart from possible human rights issues involved they may also contribute to the overcrowding problems. The European Prison Rules are quite explicit in this respect by stating in Rule 12.1.

"Persons who are suffering from mental illness and whose state of mental health is incompatible with detention in a prison should be detained in an establishment specially designed for the purpose".

In Rule 47 is stated further that there shall exist specialised prisons or sections in a given prison which are under medical control where prisoners with mental health disorders who do not fall under Rule 12.1 are observed and treated and that psychiatric treatment shall be available to all prisoners who need it and special attention shall be paid to those who have suicidal tendencies.

Obviously any decision should take into account the individual circumstances of a given person and should attempt to give prevalence to healthcare reasons regarding detention in special institutions or sections.

4. Individualisation of the sentence

Individualisation of the sentence goes hand in hand with the proportionality of the punishment and should remain within the discretionary power of the judiciary. As stated earlier, mandatory prison sentences and mandatory minimum prison sentences hamper the individualisation of the sentence and the proportionality of the punishment and should therefore be avoided in order to allow the courts, apart from applying the existing legislation to the type and seriousness of the offence committed also to examine the personal circumstances of each case and all its mitigating or aggravating factors.

The pre-sentencing reports can provide valuable information to the courts in this respect and can allow them to base their judgements on reliable information regarding the social, family and other situation of each offender. This is particularly important in case of young offenders. It is therefore advisable to consider introducing such reports in the legislation in the countries where such possibilities do not exist and to broaden their use in the countries where they already exist but are not obligatory in all court cases.

It is also advisable to consider inclusion in the induction practical training courses for junior judges and prosecutors and visits and to penitentiary institutions and to provide more profound knowledge of the way the penitentiary systems function and of the everyday management of life in specific prisons in order to make these professionals fully aware of the way judgments and decisions are executed in practice.

In societies ruled by law and based on the separation of powers the legislator defines the legal framework within which the different bodies function and furthermore clarifies their specific obligations and tasks. The interpretation and implementation of such legislation is carried out by the judiciary and the executive, under judicial control.

The execution of judicial decisions should be carried out by the executive, again under judicial control, if necessary. Therefore the specific manner of execution of the individual penal sanctions and measures should be under the primary responsibility of the prison and probation services and not of the judiciary. This allows more flexibility and better individualisation of these sanctions and measures in order to adapt them to the specific offenders and thus to contribute to their rehabilitation. In some countries not only the initial but all subsequent re-classifications of prisoners in the course of the execution of prison sentences is decided by the judiciary. This system could be rather rigid as it does not allow the prison administration to take decisions in this respect, including action in case of severe overcrowding by transferring prisoners from closed to open or semi-open institutions or to take decisions regarding their early release or replacing part of their prison sentences with community sanctions or measures.

5. Alternatives to pre-trial detention

As mentioned earlier in some countries overcrowding persists at the pre-trial stage which may last quite long and can be rather detrimental to a person's social ties, employment and housing opportunities, occupational activities inside the institution and preparation for release.

An important step to take in this respect would be to review the legislation so as to re-consider the cases for which pre-trial detention should be mandatory. With the rapid development of modern surveillance technologies it becomes more and more easy to monitor a suspect or a defendant in the society without the necessity to keep the same in pre-trial detention for long periods of time, if at all necessary.

Another step would be to re-evaluate on a regular basis the real risk of absconding and tempering with witnesses and evidence or the risk of committing new crimes as they tend to decrease significantly over time.

Measures like reporting obligations, bail, seizure of travel documents, electronic monitoring and home arrest have proven to be efficient if well implemented by the respective agencies. At the same time such measures allow the person to keep his/her employment and housing, care for his/her family and preserve the social relations and opportunities until guilt is proven and the final court judgment enters into force.

The same logic, namely preserving family and social relations at the pre-trial and trial stages lies also behind the Council FD 2009/829/JHA on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention

These possibilities in form of alternative measures to pre-trial detention were already mentioned clearly in Rec (99) 22:

"12. The widest possible use should be made of alternatives to pre-trial detention, such as the requirement of the suspected offender to reside at a specified address, a restriction on leaving or entering a specified place without authorisation, the provision of bail or supervision and assistance by an agency specified by the judicial authority. In this connection, attention should be paid to the possibilities for supervising a requirement to remain in a specified place through electronic surveillance devices."

6. Alternatives to prison in form of other types of sanctions and measures

The need for alternatives to imprisonment is already highlighted in several Council of Europe recommendations and their potential in avoiding prison overcrowding must be taken into consideration.

Such alternatives can fully or partially replace prison sentences and may include for example treatment orders, fines, confiscation of assets, suspended sentences linked to the fulfilment of certain conditions by the offender, community service/sanctions and many other sanctions and measures, often specially adapted to the particular offender and the circumstances of the crime What they all have in common are that they mean that the crime committed will indeed be met with an adapted and therefore efficient sanction/reaction which can also help prevent future offences.

Recommendation No. R (92) 16 on the European rules on community sanctions and measures thus states in its preamble that "it cannot be too strongly emphasised that community sanctions and measures applied within the framework of the present rules are of value for the offender as well as the community since the offender is in a position to continue to exercise choice and assume his social responsibilities. And the implementation of penal sanctions within the community itself rather than through a process of isolation from it may well offer in the long term better protection for society including, of course, the safeguarding of the interests of the victim or victims."

This is supplemented by Recommendation No. R (2000) 22 on improving the implementation of the European rules on community sanctions and measures, which emphasises in its Rule 1 the following list of different alternatives:

"Provision should be made for a sufficient number of suitably varied community sanctions and measures of which the following are examples:

- *Alternatives to pre-trial detention such as requiring a suspected offender to reside at a specified address, to be supervised and assisted by an agency specified by a judicial authority;*
- *Probation as an independent sanction imposed without pronouncement of a sentence to imprisonment;*
- *Suspension of the enforcement of a sentence to imprisonment with imposed conditions;*
- *Community services (i.e. unpaid work on behalf of the community);*
- *Victim compensation/reparation/victim-offender mediation;*
- *Treatment orders for drug or alcohol misusing offenders and those suffering from a mental disturbance that is related to their criminal behaviour;*
- *Intensive supervision for appropriate categories of offenders;*
- *Restriction on the freedom of movement by means of, for example, curfew orders or electronic monitoring imposed with observance of Rules 23 and 55 of the European Rules;*
- *Conditional release from prison followed by post-release supervision."*

Most recently the Recommendation CM/Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules addresses again the issue providing a definition of community sanctions:

"Community sanctions and measures: means sanctions and measures which maintain offenders in the community and involve some restrictions on their liberty through the imposition of conditions and/or obligations. The term designates any sanction imposed by a judicial or administrative authority, and any measure taken before or instead of a decision on a sanction, as well as ways of enforcing a sentence of imprisonment outside a prison establishment."

(…)
47. Community service is a community sanction or measure which involves organising and supervising by the probation agencies of unpaid labour for the benefit of the community as real or symbolic reparation for the harm caused by an offender. Community service shall not be of a stigmatising nature and probation agencies shall seek to identify and use working tasks which support the development of skills and the social inclusion of offenders. "

Different economic sanctions seem to be quite efficient and have often more restrictive and redistributive effects on offenders than the mere use of prison.

Short term prison sentences are considered in some countries inefficient from a preventive point of view and are replaced by alternative sanctions and measures that help the offender preserve his/her social ties (employment, family, housing) while at the same time dealing with the reasons which caused the offence and helping the offender in repairing the consequences of the criminal act. This approach has helped countries to reduce the total number of prisoners successfully.

At last, a small word of caution: The alternative measures and sanctions risk to be considered so appealing that they may be used not only instead of prison sentences but as a possibility to achieve a higher or harsher sanctioning level in general thus putting more people than before under law enforcement/judicial control. This is of course something that must be avoided.

7. Post-trial measures. Early conditional release. Tackling recidivism

Recommendation Rec(2003)22 of the Committee of Ministers to member states on conditional release (parole) provides valuable guidance to the Council of Europe member states regarding early conditional release and its principles remain valid a decade later. It states in its preamble the following:

"Recognising that conditional release is one of the most effective and constructive means of preventing reoffending and promoting resettlement, providing the prisoner with planned, assisted and supervised reintegration into the community".

In addition it also contributes to reducing prison overcrowding without simply setting free prisoners without any preparation for release as this entails in many cases a high risk of reoffending. The Recommendation explicitly excludes in Rule I.1. collective amnesties and pardons (as they are not considered to be an effective way of .preparation for release and social reintegration).

In Rule 4a it states the following:

"In order to reduce the harmful effects of imprisonment and to promote the resettlement of prisoners under conditions that seek to guarantee safety of the outside community, the law should make conditional release available to all sentenced prisoners, including life-sentence prisoners."

The case-law of the Court also expressly confirms this principle.[7]

It is important to note that prisoners should know as early as at the outset of execution of their prison sentence at what moment of their prison sentence and under what criteria they can request or be granted conditional release. The Recommendation acknowledges that there are basically two distinct systems of conditional release in Europe – discretionary (a minimum fixed or proportionate to the length of the sentence period of prison sentence to be served and clear and realistic criteria to be fulfilled before a decision is taken by the responsible body) and mandatory (the prisoner has an automatic right to be granted conditional release after a certain minimum period of the prison sentence is served, unless exceptionally the behaviour of a particular prisoner bars him from this right for a certain period of time). The Recommendation specifically indicates the preference towards using the mandatory system as one which requires less resources (rule 7).

[7] Vinter and others v. UK (nos. 66069/09, 130/10 and 3896/10, judgement of the Grand Chamber, 9 July 2013),

It is important to note that Recommendation Rec (2003)22 deals also with the issue of preventing recidivism and recommends in Rule 8 measures in this respect like imposing individualised conditions (not on all released prisoners but on those who are considered at risk of committing new crimes) such as the payment of compensation or the making of reparation to victims; entering into treatment for drug or alcohol misuse or any other treatable condition manifestly associated with the commission of crime; working or following some other approved occupational activity, for instance, education or vocational training; participation in personal development programmes; a prohibition on residing in, or visiting, certain places. It insists that not only supervision but assistance needs to be provided to such prisoners in order to achieve successful rehabilitation.

Rule 28 states that the "implementation of conditional release and supervision measures should be the responsibility of an implementing authority". This is in support of the idea previously mentioned that the execution of penal sanctions and measures should be the discretion of the executive and not of the judiciary (this does not exclude judicial control, if needed). This idea is further developed under Chapter VII. Procedural guarantees (rules 32 to 36 of the Recommendation). It is important also to note that the Recommendation appeals to inform and consult the decision makers, legislators, local authorities, the media and the academic world regarding the implementation of conditional release, by providing and analysing data and the amending legislation and practices as necessary.

It should be noted that the Recommendation does not deal with a specific issue related to the so-called temporary release schemes used in some countries whereby a prisoner can be released conditionally but continues to be considered a prisoner and in case of committing a new crime can be recalled back to prison without a new judicial decision. In most European countries a person who is conditionally released is no longer considered a prisoner. If during this period he/she commits a new crime new criminal proceedings are initiated against him/her.

For the purpose of reducing prison overcrowding should also be mentioned such methods like substitution in part or in total of prison sentences with community sanctions and measures or administrative sanctions as well as reducing the length of imprisonment or releasing certain offenders or groups of offenders by way of individual pardons or collective amnesties. The latter method bears the risk of not ensuring proper preparation for release and social reintegration.

In relation to the effective and broader use of alternatives to pre-trial detention and of community sanctions and measures efforts should be made to step up the training provided to judges and prosecutors as well as to the members of the parole boards and other relevant decision-making bodies.

VII. Need for national strategies and action plans regarding crime policy. The role of monitoring mechanisms/consultative bodies (supervision, data collection and analysis)

A recent example of measures taken to deal with prison overcrowding is the Plan submitted by the Italian Government, following the pilot judgement in the case of Torreggiani and others v/ Italy[8]. It comprises five lines of action:

1. Legislative actions taken to reduce prison entry flows included adoption of alternative measures;

2. Managing and organization actions through the implementation of more open prison regimes, in particular for prisoners requiring "medium or low security measures", firstly focused on restoring the idea of prison cells as a place solely for rest ;

3. Building actions, planned according to the present needs of our prison estate, mainly focused on refurbishing the existing prisons or rebuilding (part of) them rather than to expand the prison estate;

[8] Torreggiani and Others v. Italy, nos. 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10 and 37818/10, § 77, 8 January 2013

4. Provision of modalities and procedures for the “preventive remedy by : a) introducing of a judicial authority in charge preventing possible violation of Article 3 of the Convention and compensating possible victims of such violations; b) implementing such judicial decisions c) the provision of an internal independent control of the places of deprivation of liberty;

5. Provision of a “compensative remedy” for those who suffered a violation of their rights (the cases that reached the ECtHR).

Almost all the Acts adopted were passed by the Government and the Parliament following an expedite procedure. The measures are intended to permanently amend the system of execution of sentences and, more in general, to set the limits and the quality of the deprivation of liberty in the context of the penal system. No pardon, amnesty or other special laws were adopted.

The measures adopted in the course of the last years have proven their effectiveness, namely when Italy was sentenced in the case Torreggiani and Others v. Italy, the number of prisoners was 66,028.
Two years later the number of prisoners was reduced to 52,243 (August 2015), including 803 detainees who are serving their sentence in day release, i.e. returning to the institution only at night.

In parallel, a significant increase of resorting to the measures alternative to detention compared to the past was observed: while on 31 December 2009 the number of individuals that served their penalty through an alternative measure was 18,435 on 31 August 2015 it was 32,724.

VIII. Media questions – work with public opinion, using the media to explain and get support for policy decisions and penal reform

IX. Conclusions

X. Annexes

I. Summary of the relevant case-law on the question of prison overcrowding

1. In the *Ananyev* case (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, 10 January 2012), concerning the conditions of detention of the remand prisoners, the Court summarised its case-law on the question of prison overcrowding noting that whereas the provision of four square metres remained the desirable standard of multi-occupancy accommodation, a violation had been found where the applicants had at their disposal less than three square metres of floor surface, which suggested that the overcrowding was so severe as to justify of itself a finding of a violation of Article 3 (Ibid., § 145). The Court also observed its case-law on the problem of lack of sleeping places and further reduction of the floor space by fixtures leaving hardly sufficient space even to pace out the cell (Ibid., §§ 146-147).

2. Against this analysis the Court set out the following test for overcrowding: (a) each detainee must have an individual sleeping place in the cell; (b) each must dispose of at least 3 square metres of floor space; and (c) the overall surface area of the cell must be such as to allow detainees to move freely between items of furniture. It stressed that the absence of any of the above elements creates in itself a strong presumption that the conditions of detention amounted to degrading treatment and were in breach of Article 3 (Ibid., § 148).

3. On the facts, the Court found that the applicants were afforded less than three square metres of personal space, that they remained inside the cell all the time, except for a one-hour period of outside exercise; they had to have their meals and answer the calls of nature in those cramped conditions and that one of them spent in those conditions more than three years. The Court therefore found a violation of Article 3 of the Convention (Ibid., § 166).

4. Almost parallel with the *Ananyev* case, the Court adopted the *Fetisov* judgment where it found no violation of Article 3 in the case of a remand prisoner who spent nineteen-days disposing with approximately two square metres of floor surface. This was based on the assessment of the cumulative effect of the conditions of detention, and in particular the brevity of the stay in such conditions and the fact that the applicant disposed of his own personal sleeping place (see *Fetisov and Others v. Russia*, nos. 43710/07, 6023/08, 11248/08, 27668/08, 31242/08 and 52133/08, §§ 134-138, 17 January 2012).

5. In a post-*Ananyev* case concerning in particular the conditions of detention of the serving prisoners, the Court found no violation of Article 3 in the case of an applicant who spent twelve days in a cell where he disposed of below two square metres of personal space and where he had to stay for at least 22 hours per day. However, when finding no violation of Article 3, the Court took into account the cumulative effect of those conditions and, in particular, the brevity of the stay in the cell at issue (see *Dmitriy Rozhin v. Russia*, no. 4265/06, § 53, 23 October 2012).

6. The *Ananyev* test for overcrowding was further reiterated in the case of *Vladimir Belyayev* where the Court stressed that the absence of any of the elements enumerated in paragraph 148 of the *Ananyev* judgment (see above) creates in itself a strong presumption that the conditions of detention amounted to degrading treatment and were in breach of Article 3 (see *Vladimir Belyayev v. Russia*, no. 9967/06, § 30, 17 October 2013).

7. The *Vladimir Belyayev* case is of a particular importance since it concerns the complaints of a serving prisoner who in several non-consecutive periods disposed of less than 3 sq. m of personal space. In particular, from 30 April to 10 May 2005 (10 days) the personal space available to the applicant constituted 2.95 square metres, from 3 to 5 August 2005 (2 days) it amounted to 2.65 square metres and from 17 August to 12 September 2005 (26 days) the applicant was afforded 2.97 square metres. For the rest of the time the applicant was held in the cells where from 3.35 to 8.9 square metres of personal space were available to him (Ibid., § 33).

8. In these circumstances the Court also observed that the applicant was provided with an individual bed and practically always had an opportunity for outdoor exercise which lasted at least one hour per day. Furthermore, he did not allege that he had been unable to move freely within the cell and his complaints about other aspects of his confinement (allegedly poor hygiene conditions in the cells and shower facilities) were unsubstantiated (Ibid., § 34).

9. The Court therefore found no violation of Article 3 on the grounds that, although not always adequate, the conditions of the applicant's detention did not reach the threshold of severity required to characterise the treatment as inhuman or degrading within the meaning of Article 3 of the Convention (Ibid., § 36).

10. In the further post-*Ananyev* case-law on the conditions of detention of the serving prisoners in correctional facilities, the Court stressed in the *Sergey Babushkin* case that it could not decide, once and for all, how much personal space should be allocated to a detainee in terms of the Convention. That depends on many relevant factors, such as the duration of detention in particular conditions, the possibilities for outdoor exercise, the physical and mental condition of the detainee, and so on. This is why, whereas the Court may take into account general standards in this area developed by other international institutions, such as the CPT, these cannot constitute a decisive argument (see *Sergey Babushkin v. Russia*, no. 5993/08, § 50, 28 November 2013).

11. However, the Court also reiterated that it did not intend to question its case-law according to which factors other than overcrowding or the personal space available to a detainee may be taken into account in examining compliance with the requirements of Article 3 in the matter. The possibility of circulating outside the cell or dormitory is certainly one such factor. However, that factor alone, if established, cannot be considered so decisive that it would suffice, in itself, to tip the scales in favour of a finding of no violation of Article 3. The Court must also examine the conditions and duration of the freedom of movement in relation to the overall duration of the detention and the general conditions prevailing in the prison. It considers that factors that helped alleviate the harshness of the conditions of detention could be taken into account in determining the amount of any just satisfaction to be awarded to the applicants in the event of a finding of a violation (see *Sergey Babushkin*, cited above, § 51; see further *Samaras and Others v. Greece*, no. 11463/09, § 63, 28 February 2012).

12. On the facts in *Sergey Babushkin*, and concerning in particular the conditions of prisoners in the Russian correctional colonies, the Court observed that the applicant had at his disposal in the dormitory no more than 1.55 square metres of personal space. In these circumstances, in finding a violation of Article 3, the Court placed a special emphasis on the fact that the applicant was serving a long term of imprisonment, that he was placed in a cramped dormitory with approximately a hundred inmates, that such conditions were not of a temporary character and that the applicant was held in such conditions, lacking any privacy, for thirteen years (see *Sergey Babushkin*, cited above, §§ 52 and 54).

13. The Court's approach in *Sergey Babushkin* is consistent with its preceding case-law applying the *Ananyev* standards on the conditions of detention of the serving prisoners in the correctional facilities where the applicants enjoyed less than 3 sq. m of personal space. In such cases the Court held that the personal space afforded to the detainees must be viewed in the context of the wide freedom of movement and the possibility of their unobstructed access to natural light and air (see, for example, *Kulikov v. Russia*, no. 48562/06, § 37, 27 November 2012; and *Yepishin v. Russia*, no. 591/07, § 65, 27 June 2013).

14. In the subsequent case-law, developed both in respect of the conditions of detention of the remand prisoners (see *Suldin v. Russia*, no. 20077/04, § 43, 16 October 2014) and the serving prisoners (see *Semikhvostov v. Russia*, no. 2689/12, § 79, 6 February 2014; and *Logothetis and Others v. Greece*, no. 740/13, § 40, 25 September 2014) the Court reiterated that it has always refused to determine, once and for all, how many square metres should be allocated to a detainee in terms of the Convention as it depended on a number of relevant factors.

15. In particular, in *Semikhvostov* (cited above, § 79) the Court stressed:

"The Court reiterates that in a number of cases the lack of personal space afforded to detainees in Russian remand centres was so extreme as to justify in itself a finding of a violation of Article 3 of the Convention. In those cases, applicants were usually afforded less than 3.5 sq. m of personal space (see, among others, *Lind v. Russia*, no. 25664/05, § 59, 6 December 2007). At the same time, the Court has always refused to determine, once and for all, how many square metres should be allocated to a detainee in terms of the Convention, having considered that a number of other relevant factors, such as the duration of detention, the possibilities for outdoor exercise, the physical and mental condition of the detainee and so forth, play an important part in deciding whether the detention conditions complied with the guarantees of Article 3 of the

Convention (see *Trepashkin v. Russia*, no. 36898/03, § 92, 19 July 2007). When assessing post-trial detention facilities such as correctional colonies in Russia, the Court has considered that personal space should be viewed in the context of the applicable regime, providing for detainees in correctional facilities to benefit from a wider freedom of movement during the daytime than those subject to other types of detention regime and their resulting unobstructed access to natural light and air. In a number of cases, the Court has found that the freedom of movement allowed to inmates in a facility and unobstructed access to natural light and air have served as sufficient compensation for the scarce allocation of space per convict (see, among others, *Valašinas v. Lithuania*, no. 44558/98, §§ 103 and 107, 24 July 2001; *Nurmagomedov v. Russia* (dec.), no. 30138/02, 16 September 2004; and *Shkurenko v. Russia* (dec.), no. 15010/04, 10 September 2009)."

16. This approach is also in harmony with the Court's assessment in various other factual contexts in which it, when examining the conditions of detention, considered that account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant (see, for example, *Idalov v. Russia* [GC], no. 5826/03, § 94, 22 May 2012; and *Mikalauskas v. Malta*, no. 4458/10, § 64, 23 July 2013). In particular, whereas the lack of adequate personal space in the detention area weighs heavily as a factor to be taken into account for the purpose of establishing whether or not the impugned detention conditions were "degrading" from the point of view of Article 3, there are other aspects of physical conditions of detention that are relevant for the assessment of compliance with Article 3 include the availability of outdoor exercise, access to natural light or air, ventilation, and compliance with basic sanitary and hygiene requirements (see, for example, *Yarashonen v. Turkey*, no. 72710/11, § 78, 24 June 2014; and *Musaev v. Turkey*, no. 72754/11, § 59, 21 October 2014 – removal centre).

17. Nevertheless, in the *Olszewski* case, the Court stressed that all situations in which a detainee was deprived of the minimum of 3 sq. m of living space inside his or her cell would be regarded as creating a strong indication that Article 3 of the Convention had been violated (see *Olszewski v. Poland*, no. 21880/03, § 98, 2 April 2013). On the facts in *Olszewski*, the Court had regard to the cumulative effects of the applicant's detention and, in the circumstances, found a violation of Article 3 (Ibid., § 106; see further *Orchowski v. Poland*, no. 17885/04, §§ 123 and 135, 22 October 2009).

18. Similarly, in the case of *Tunis v. Estonia*, the Court stated that the lack of personal space in a cell below 3 sq. m creates in itself a strong presumption of a degrading treatment contrary to Article 3. On the facts, the Court found that the applicant was confined in the cell round the clock with the exception of one hour of daily outdoor exercise time in a yard of about 15 square metres to be shared with five other persons, which led to a violation of Article 3 (see *Tunis v. Estonia*, no. 429/12, § 46, 19 December 2013).

19. Further, in *Iacov Stanciu* the Court held that where a prisoner consistently had less than three square metres of personal space it in itself raises an issue under Article 3 of the Convention. Against such finding, and having regard to all the circumstances of the case, the Court found a violation of Article 3 (see *Iacov Stanciu v. Romania*, no. 35972/05, §§ 173-179 and 187, 24 July 2012).

20. In the *Mitorfan* case the Court held, referring to the *Ananyev* test, that severe overcrowding in prison cell may lead to a violation of Article 3 of the Convention. Such severe overcrowding was considered to exist in the circumstances in which the applicant disposed of between 1.85 and 2.36 square metres of living space in a cell where he spent up to twenty-three hours a day and was not allowed additional daily exercise time or to use the library's reading room, since the prison did not have one. Such conditions, accompanied by some other aspects of confinement related to hygiene conditions and inadequate nutrition, led to a violation of Article 3 (see *Mitrofan v. the Republic of Moldova*, no. 50054/07, §§ 38-41, 15 January 2013).

21. In view of the above principles it should be noted that in a number of post-*Ananyev* cases concerning various factual circumstances the Court consistently examined the cumulative effects of the conditions of detention before making a final conclusion as to the alleged violation of Article 3 of the Convention on account of prison overcrowding (see, for example, *Asyanov v. Russia*, no. 25462/09, § 43, 9 October 2012; *Kolunov v. Russia*, no. 26436/05, §§ 36-38, 9 October 2012; *Zentsov and Others v. Russia*, no. 35297/05, § 44, 23 October 2012; *Yefimenko v. Russia*, no. 152/04, §§ 80-84, 12 February 2013; *Vasiliy Vasilyev v. Russia*, no. 16264/05, §§ 56-62, 19 February 2013; *Insanov v. Azerbaijan*, no. 16133/08, §§ 114-117, 14 March 2013; *Manulin v. Russia*, no. 26676/06, §§ 47-48, 11 April 2013; *Yepishin v. Russia*, no. 591/07, §§ 65-69, 27 June 2013; *Gorovoy v. Russia*, no. 54655/07, §§ 48-50, 27 June 2013; *Yemelin v. Russia*, no. 41038/07, §§ 60-64, 10 October 2013; *Shcherbakov v. Russia (no. 2),* no. 34959/07, §§ 70-71, 24 October 2013; *Shishkov v. Russia*, no. 26746/05, §§ 90-94, 20 February 2014; and *Mela v. Russia*, no. 34044/08, § 71, 23 October 2014).

22. The Court has also held in a number of post-*Ananyev* cases, involving a variety of factual circumstances, that where the applicants have at their disposal less than three square metres of floor surface, the overcrowding must be considered to be so severe as to justify of itself a finding of a violation of Article 3. There are two approaches which can be observed in the application of this principle:

23. Firstly, there is a number of cases where in its analysis the Court did not tend to find a direct violation of Article 3 but rather examined the cumulative effects of detention, and in particular the possibility of the freedom of movement, before making a final conclusion in that regard (see, for example, *Bygylashvili v. Greece*, no. 58164/10, §§ 58-62, 25 September 2012; *Nieciecki v. Greece*, no. 11677/11, §§ 49-51, 4 December 2012; *Tsokas and Others v. Greece*, no. 41513/12, §§ 97-99, 28 May 2014; *Tereshchenko v. Russia*, no. 33761/05, §§ 83-84, 5 June 2014; *Kim v. Russia*, no. 44260/13, § 32, 17 July 2014; and *Bulatović v. Montenegro*, no. 67320/10, §§ 123-127, 22 July 2014).

24. However, there are also cases where the Court held that the overcrowding justified of itself a finding of a violation of Article 3 and then examined the other conditions of detention only as further aggravating circumstances (see, for example, *Torreggiani and Others v. Italy*, nos. 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10 and 37818/10, § 77, 8 January 2013; and *Vasilescu v. Belgium*, no. 64682/12, §§ 100-104, 25 November 2014).

25. Secondly, in a number of cases the Court's finding that an applicant disposed of less than 3 sq. m of personal space in detention directly led to a violation of Article 3 (see, for example, *Dmitriy Sazonov v. Russia*, no. 30268/03, §§ 31-32, 1 March 2012; *Lin v. Greece*, no. 58158/10, §§ 53-54, 6 November 2012; *Blejuşcă v. Romania*, no. 7910/10, §§ 43-45, 19 March 2013; *Ivakhnenko v. Russia*, no. 12622/04, § 35, 4 April 2013; *Vyatkin v. Russia*, no. 18813/06, § 42, 11 April 2013; *A.F. v. Greece*, no. 53709/11, §§ 77-78, 13 June 2013; *Klyukin v. Russia*, no. 54996/07, § 62, 17 October 2013; *Kanakis v. Greece (no. 2),* no. 40146/11, §§ 106-107, 12 December 2013; *Khuroshvili v. Greece*, no. 58165/10, § 87, 12 December 2013; *Gorbulya v. Russia*, no. 31535/09, §§ 64-65, 6 March 2014; *Tatishvili v. Greece*, no. 26452/11, § 43, 31 July 2014; and *T. and A. v. Turkey*, no. 47146/11, § 96, 21 October 2014).

26. With regard to the latter category of cases, it should be noted that they principally concern:
(i) serious questions of prison overcrowding suggesting flagrant lack of personal space (see *Logothetis and Others v. Greece*, no. 740/13, § 41, 25 September 2014, and *Nikolaos Athanasiou and Others v. Greece*, no. 36546/10, § 77, 23 October 2014; see in this context, for example, *Dmitriy Sazonov*, cited above, § 32 – less than 1 sq. m; and *Kanakis*, § 107 – less than 3 sq. m in the period of one year and eight months);
(ii) confinement in an altogether inappropriate detention facility (see, for example, *A.F.*, §§ 71-80; *Horshill v. Greece*, no. 70427/11, §§ 47-52, 1 August 2013 – detention in the police stations; *Tatishvili*, cited above, § 43 – retention centre for immigrants; and *T. and A.*, cited above, § 96 – remand in an airport detention facility);
(iii) the existence of structural problems (see, for example, *Khuroshvili*, cited above, §§ 84-89; and *Gorbulya*, cited above, §§ 64-65).

27. Lastly, it is to be noted that in some cases the Court has considered that already lack of personal space below 4 sq. m is a factor sufficient to justify finding of a violation of Article 3 (see *Valerian Dragomir v. Romania*, no. 51012/11, §§ 46-48, 16 September 2014; *Cozianu v. Romania*, no. 29101/13, § 25, 2 December 2014).

28. Notwithstanding the above cases, in the *Ananyev* case the Court has held that where a larger prison cell was at issue – measuring in the range of three to four square metres per inmate – a violation of Article 3 will be found only if the space factor would be coupled with other aspects of inappropriate physical conditions of detention such as lack of ventilation and lighting (see *Ananyev and Others*, cited above, § 149). This approach appears to be followed for the most part of the Court's case-law (see, for example, *Jirsák v. the Czech Republic*, no. 8968/08, §§ 64-73, 5 April 2012; *Culev v. Moldova*, no. 60179/09, §§ 35-39, 17 April 2012; *Longin v. Croatia*, no. 49268/10, §§ 59-61, 6 November 2012; *Torreggiani and Others*, cited above, § 69; *Barilo v. Ukraine,* no. 9607/06, §§ 80-83, 16 May 2013; and *Vasilescu*, cited above, § 88).

II. Short summary of recent important judgments on the question of prison overcrowding

A) *Vasilescu v. Belgium*, no. 64682/12, 25 November 2014

29. The applicant complained that the conditions of his detention between 10 October and 23 November 2011 in Antwerp and Merksplas prisons in Belgium had been inhuman and degrading. In Antwerp Prison, the applicant had to sleep on a mattress on the floor in a cell measuring 8 sq. m, which he shared with two other

inmates who smoked heavily and took drugs in the cell. He was then transferred to Merksplas Prison, where he was detained for 9 weeks in a cell with no water and no toilets and a fellow inmate who smoked.

30. The Court held primarily that the respondent Government had failed to demonstrate that the Belgian law offered sufficient redress for the applicant's grievances. It then found a violation of Article 3, considering that the physical conditions of the applicant's detention had reached the minimum threshold of seriousness required by Article 3 of the Convention and amounted to inhuman and degrading treatment.

31. Under Article 46, the Court emphasized that overcrowding and the unhygienic and dilapidated state of prisons were structural problems in Belgium, which had not improved despite relevant observations in various reports of the European Committee for the Prevention of Torture. The Court also noted that the potential remedies in national law could not be considered effective. It was therefore recommended that Belgium consider adopting general measures in order to bring conditions of detention in line with Article 3 and to provide prisoners with a remedy capable of stopping an alleged violation.

B) *Neshkov and Others v. Bulgaria*, nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13, 27 January 2015

32. This is a pilot judgment which concerns the conditions of detention in several correctional facilities in Bulgaria, where the applicants had been detained for varying periods of time since 2002. The applicants complained about severe overcrowding, poor hygiene and lack of access to toilets, meaning the applicants had to go to the toilet in a bucket in the presence of other inmates, in all of the facilities concerned. The applicants alleged that these conditions had been inhuman and degrading, and that there were no effective remedies in Bulgarian law for such complaints.

33. The Court held that there had been violations of Article 3, as the practices complained of had been sufficiently serious to undermine human dignity, noting that the same practices had been criticized previously by both the Court and the CPT. Article 13 had also been violated, as although Bulgarian law offered a compensatory remedy, this was not sufficiently certain and effective because courts tended not to take into account the general prohibition against inhuman and degrading treatment under the Convention, relying only on the relevant statutory or regulatory provisions in domestic law.

34. There was also no effective preventative remedy available, as requesting to be transferred to another prison would not be effective given that all the prisons were overcrowded.

35. Under Article 46 of the Convention, the Court further held that the cases highlighted a systemic problem in Bulgaria and that the case was therefore considered under the pilot judgment procedure. The Court stated that changes to national law and practice were required to create effective preventative and compensatory remedies, suggesting also the construction of new prison facilities or major repair work on the existing ones.

C. *Varga and Others v. Hungary*, nos. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13, 10 March 2015

36. This is a pilot judgment delivered by the Second Section. The applicants, six Hungarian nationals detained in different Hungarian prisons, complained about inhuman and degrading prison conditions, combined with the lack of an effective remedy in Hungarian law enabling them to complain about the conditions of detention. The personal living space that was available to the applicants during their detention varied between 1.5 to 3.3 sq. m. One of the applicants had been detained for three years in Márianosztra Prison, where living space per inmate was maximum 2.86 sq. m. The applicants also complained about other aspects of their detention, including sleeping arrangements, inadequate ventilation, cells infected with insects, lavatories separated from the rest of the cell by a curtain and limited opportunity for showering and spending time outside their cells.

37. The Court held that there was a violation of Article 3, as the limited personal space available to all six detainees, aggravated by the cumulative effects of their other conditions of detention, had not satisfied the standards established by the Court's case law. The distress and hardship suffered by the applicants had therefore exceeded the unavoidable level of suffering inherent in detention. The Court also found a violation of Article 13, as the domestic remedies in Hungarian law were ineffective in practice, despite being accessible.

38. It was noted under Article 46 that the problems faced by the applicants were of a recurrent and persistent nature, justifying the adoption of the pilot judgment procedure. The Court therefore urged Hungarian

authorities to put in place preventative and compensatory remedies and to reduce the number of prisoners by minimizing recourse to pre-trial detention and encouraging the use of alternatives to detention.

39. It is worth noting that following the delivery of this pilot judgment the number of incoming applications against Hungary concerning prison overcrowding has drastically increased; i.e. from 250 to 700 applications.

D) *Muršić v. Croatia*, no. 7334/13, 12 March 2015

40. This is an interesting judgment where the main issue considered by the First Section was whether the personal space of 2.87 sq. m. would lead to an automatic violation under Article 3.

41. The applicant complained about the inadequate detention conditions at Bjelovar prison, where he had spent 17 months during the years 2010-2011. He had been moved between four cells in the prison and the personal space available to him had varied between 3 and 7.39 sq. m. On several occasions, his personal space was reduced to 2.87 sq. m, including one period of 27 days. Relying on the prohibition of inhuman and degrading treatment, Mr Mursic complained about the lack of personal space, as well as the sanitary and hygiene conditions, the quality of the food, a lack of work opportunities, and insufficient access to recreational and educational activities. During his detention, Mr Mursic lodged complaints with the prison authorities, Bjelovar County Court, the Ombudsman, and the Constitutional Court, however he alleged that these had not been examined properly.

42. The Court held that there had been no violation of Article 3 as, although there were some elements for concern regarding Mr Mursic's lack of personal space during certain short non-consecutive periods of his detention, his overall conditions of detention, including three hours a day outside of his cell and the appropriateness of the facility, had not met the threshold of severity required to qualify as inhuman and degrading. The Court also reaffirmed its general principles on prison overcrowding, explaining that whilst there is a strong presumption of inhuman and degrading treatment when a detainee has less than 3 sq. m. of personal space, this can sometimes be rebutted by the cumulative effects of the conditions of detention, such as freedom of movement and the appropriateness of the detention facility.