CONCEPT PAPER

The CPT has observed situations of overcrowding in the prisons it has visited ever since its very first visits to member states of the Council of Europe in the 1990s. These problems, although occasionally isolated, more often had deeper causes. In its latest annual report,[1] the CPT points out that the number of incarcerated persons in Europe has been steadily increasing since the Covid-19 pandemic, with the result that many prison systems are now overcrowded. In particular, the number of persons in pre-trial detention has risen sharply in certain countries.

The structural nature of the problem of prison overcrowding and the need to address it was recognised by the European Court of Human Rights in judgments concerning Poland in 2009,[2] followed by similar judgments concerning notably Russian,[3] Italian,[4] Belgian,[5] Bulgarian,[6] Hungarian,[7] Romanian[8] and, more recently, Portuguese[9] and French[10] prisons. To date, twelve States have judgments on this subject under enhanced supervision by the Committee of Ministers and four States under standard supervision.

For both the Court and the CPT, Article 3 of the European Convention on Human Rights requires that persons are deprived of their liberty in conditions compatible with respect for their human dignity and that they are not subjected to distress or hardship in excess of the inevitable level of suffering inherent in detention. Poor material conditions of detention cannot be justified by a lack of resources, while all detention must be managed in order to facilitate the reintegration of detained persons.[11]

Overcrowding, which is particularly present in pre-trial detention, is aggravated by the fact that detained persons are often locked up for 23 hours a day in a state of forced idleness, aggravating tensions between them and with prison staff. The lack of space and privacy puts the most vulnerable persons particularly at risk, including those with mental health issues. Overcrowding also generates significant costs for society, notably in financial and security terms (compromised reintegration work and increased risk of recidivism), all while forcing staff to work in degraded conditions.

The causes of overcrowding are multifactorial. They may have their origins in structural deficiencies, an increase or transformation in criminality, as well as in budgetary choices or the adoption of stricter criminal justice policies (increase in criminalisation, in recourse to pre-trial detention and in its duration and in that of sentences). The Covid-19 pandemic has shown the ability of many states to quickly adopt effective measures

1. 35th General Report, Activities 2025, CPT.
2. *Orchowski* and *Norbert Sikorski v. Poland*, judgments of 22 October 2009 (Final Resolution CM/ResDH(2016)254).
3. Pilot judgment *Ananyev and Others v. Russia* of 10 January 2012, § 239, Execution pending.
4. Pilot judgment *Torreggianni and Others v. Italy* of 8 January 2013 (Final Resolution CM/ResDH(2016)28).
5. *Vasilescu v. Belgium*, judgment of 25 November 2014, Execution pending.
6. Pilot judgment *Neshkov and Others v. Bulgaria* of 27 January 2015 (Final Resolution CM/ResDH(2024)118; Follow-up of the remaining issues in the case of *Kehayov* (2005), under the standard supervision procedure).
7. Pilot judgment *Varga and Others v. Hungary* of 10 March 2015, Execution pending.
8. Pilot judgment *Rezmives and Others v. Romania* of 25 April 2017, Execution pending (Final resolution adopted in the case of *Bragadireanu* (2008), given the progress made: CM/ResDH(2025)393).
9. *Petrescu v. Portugal*, judgment of 3 December 2019, Execution pending.
10. *J.M.B. and Others v. France*, judgment of 30 January 2020, Execution pending.
11. See in particular the Recommendation Rec(2006)2-rev of the Committee of Ministers to member States on the European Prison Rules, revised and amended on 1 July 2020.

to reduce prison pressure. However, the decreases observed at that time did not have a lasting effect, in the absence of long-term strategy to combat sustainably overcrowding, as long recommended by the CPT.

Alternative measures to detention exist in all European states but do not always have sufficient human, budgetary and normative resources to achieve their full objective, in particular with regard to pre-trial detention, while probation measures do not systematically lead to a permanent reduction in the prison population. In addition, the development of alternatives to detention sometimes leads to an increase in the number of persons covered by criminal justice measures, without however reducing the number of persons detained. This phenomenon of "net widening" has been observed in several states. Significant budgets are devoted to increasing prison capacity without providing a sustainable solution to overcrowding,[12] sometimes even generating a "vacuum effect" (increase in the number of prisoners). The capacity of alternatives to detention to satisfy the duty to protect society appears sometimes to be underestimated, as well as the enforcement of sentences in the community or rehabilitation programmes.

Finally, according to the CPT, an absolute upper limit for the number of persons detained (*"numerus clausus"*) should be set for each prison, obliging the authorities, in the event of exceeding, to adopt appropriate measures to ensure that all incarcerated persons have acceptable conditions of detention.[13]

[12]. In this sense already, Recommendation (99)22 of the Committee of Ministers.
[13]. CPT/Inf(2022)05 – part "Combating prison overcrowding", extract from the CPT's 31st General Report.