



Combating prison overcrowding

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Introduction

84. As one prisoner interviewed during a CPT visit put it: “*We are treated like sardines, crammed into a tiny cell, doing nothing.*”

85. In some of the most overcrowded prison cells visited by the Committee in recent years there was less than 2 m² of living space per person. The situation was further exacerbated by the fact that prisoners were often locked up for some 23 hours a day in a state of forced idleness. Overcrowding to such an extent is a breeding ground for tensions and violence between staff and prisoners and among prisoners themselves. As the CPT pointed out in its 26th General Report in 2017,¹ overcrowding appears to be particularly problematic in remand detention facilities.

86. Overcrowding can turn a prison into a human warehouse and undermine any efforts to give practical meaning to the prohibition of torture and other forms of ill-treatment. The resultant lack of personal space and privacy puts all prisoners at risk, especially the most vulnerable.

87. The CPT has decided to revisit the issue of prison overcrowding, since, although it has eased somewhat over the past few years,² it is still the bane of many prison systems in Council of Europe member States. Already in its second General Report thirty years ago,³ the CPT stressed that overcrowding was an issue of direct relevance to its mandate and one that had led it more than once to conclude that the adverse effects of overcrowding had resulted in conditions which could be considered to be inhuman and degrading.

88. In the course of its many prison visits over the past 30 years, the CPT has indeed noted that some Council of Europe member States had made tangible progress in tackling overcrowding, in line with the Committee’s recommendations. Changes in remand and sentencing policy, including the implementation of a range of alternatives to imprisonment, have often made it possible to reverse the general upwards trend in the prison population. In these countries, the Committee has often found a reduction in staff-prisoner and inter-prisoner violence, improved safety and care for

¹ <https://rm.coe.int/168070d0c8>

² See SPACE 1, 2020. Table 16 Prison capacity and prison density on 31 January 2020, page 73.

³ Cf. CPT/Inf (92) 3, § 46.

vulnerable prisoners, more in-cell privacy, improved access to out-of-cell activities and, also of importance, prison staff having better working conditions.

89. However, it has to be recognised that, notwithstanding the Committee's reiterated recommendations and despite judgments (including pilot judgments)⁴ of the European Court of Human Rights, the phenomenon of overcrowding, far from being eliminated, remains an everyday reality in many prison systems, especially in establishments accommodating remand prisoners.

90. The Committee's visits demonstrate that the phenomenon of overcrowding should be examined discerningly: a country may not have an overcrowding problem in the entire prison system, but it is not unusual for the Committee to find that particular prisons, parts of a prison or even an individual cell or dormitory are overcrowded.

91. Prison overcrowding is to prison services what smoking is to public health services. We know that prison overcrowding may seriously harm prisoners and those around them. Prison overcrowding is not primarily a reflection of rising crime levels. By contrast, it is mainly the result of stricter penal policies with increased criminalisation, more frequent and longer use of remand detention, lengthier prison sentences and limited recourse to non-custodial alternatives to deprivation of liberty.

Impact of the Covid-19 pandemic on prison populations

92. The Covid-19 pandemic has created extraordinary challenges for the authorities of all member States of the Council of Europe. It has generated a public health crisis, which has added a new dimension to the issue of prison conditions and, in particular, the issue of overcrowding. Across the Council of Europe region, the pandemic has exposed and accelerated the detrimental effects of prison overcrowding in a number of member States.

93. In order to provide guidance to member States on how best to address the sanitary crisis while ensuring humane treatment of persons deprived of their liberty, the CPT adopted a "Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (Covid-19) pandemic" (issued in March 2020). Therein, the CPT outlines the basic principles that States should respect in any effort to prevent or combat Covid-19. While acknowledging the clear imperative to take firm action to combat Covid-19, the CPT reminds all actors of the absolute nature of the prohibition of torture and inhuman or degrading treatment. The Statement also addresses the fact that prison overcrowding may exacerbate the harmful effects of Covid-19 and, as a result, encourages member States to make increased use of non-custodial measures: "As close personal contact encourages the spread of the virus, concerted efforts should be made by all relevant authorities to resort to alternatives to deprivation of liberty. Such an approach is imperative, in particular, in situations of overcrowding. Further, authorities should make greater use of alternatives to pre-trial detention, commutation of sentences, early release and probation [...]."⁵

94. Several member States have only taken action to reduce chronic prison overcrowding in crisis mode, despite the CPT's long-standing recommendations to take effective measures to tackle this phenomenon. In the early months of the pandemic, the number of persons held in prison in a range of Council of Europe member States diminished significantly as a result of policy decisions to increase the use of early conditional release, temporary release and other non-custodial measures to reduce the prison population. As prisons are known to be epicentres of infectious diseases, the rationale was that prison overcrowding constituted a significant risk factor in spreading the disease

⁴ *Torreggiani and Others v. Italy* (no. 43517/09, 8 January 2013); *Varga and Others v. Hungary* (nos. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13, 10 March 2015); *J.M.B. and Others v. France* (no. 96711/15, 30 January 2020).

⁵ <https://rm.coe.int/16809cfa4b>

because overcrowded custodial settings generally offer limited space with poorer conditions for physical distancing, often with unsanitary facilities and poorer access to health care.

95. The CPT welcomes the steps taken in many member States to conditionally or temporarily release low-risk prisoners and reduce the use of pre-trial detention. It has also become apparent that some of the arguments previously put forward by authorities that they were unable to decongest prisons were not always fully sincere. The Committee wishes to stress that – in the interests of preventing ill-treatment – the above-mentioned policies should be an integral part of any sound criminal justice system.

96. However, as the pandemic progressed, and over recent months, there has been a resurgence in prisoner numbers in some member States which can only mean having shortly to contend with endemic overcrowding once again. Indeed, the CPT's findings contained in recently-published visit reports indicate a return to a growth trajectory with the end of widespread Covid-19 lockdown measures.

Consequences for prisoner health and wellbeing

97. Overcrowding in particular increases the risk of transmission of a number of airborne infections such as tuberculosis and other respiratory diseases.

98. The impact of overcrowding on public health, mental health and wellbeing, and the number of instances of self-harm cannot be underestimated.

99. If a prison is overcrowded it acts as an incubator of diseases that released prisoners take with them outside, adversely impacting the health of the population as a whole.

Establishing thresholds

100. The way forward must start with a detailed overview of the situation of occupancy levels. To this end, it is crucial to use a common measuring rod when it comes to the minimum amount of living space that should be offered to each prisoner and to determine with precision the actual level of overcrowding in each prison cell, in each prison and in the prison system as a whole. The CPT has been instrumental in drawing the line between the “acceptable” or “desirable” standards on the one hand and the “unacceptable” or “undesirable” standards on the other hand. Since the 1990s, the Committee has considered that every person should be offered at least 4 m² of living space in multiple-occupancy cells and at least 6 m² in single cells (excluding the sanitary annexes).⁶

101. The minimum amount of living space per prisoner should be monitored in the light of the CPT standards and the Court's case-law⁷ and, and the official capacities of all prison establishments revised accordingly.

102. The Committee considers that, for every prison, there should be an absolute **upper limit for the number of prisoners (“*numerus clausus*”)**, in order to guarantee the minimum standard in terms of living space, namely 6m² per person in single cells and 4m² per person in multiple-occupancy cells (excluding the sanitary annexe). Thus, whenever a prison has reached that limit,

⁶ See document “Living space per prisoner in prison establishments: CPT standards” (CPT/Inf(2015)44) in which the CPT also indicated a desirable standard for multiple occupancy cells, in particular in the context of the construction of new prisons, namely of designing such cells to be used by up to four inmates maximum by adding 4 m² per additional inmate to the minimum living space of 6m² of living space for a single-occupancy cell, excluding the sanitary annexe.

⁷ In its Grand Chamber judgment in the case of *Muršić v. Croatia* (no.7334/13, 20 October 2016), the European Court of Human Rights has taken the CPT's standards into account and considered that the non-observance of the 4 m² yardstick may raise an issue under Article 3 of the European Convention on Human Rights, with a strong presumption of violation where there is less than 3 m² of living space per person

appropriate steps must be taken by the relevant authorities to ensure that a person, who has been newly remanded in custody or sentenced to imprisonment, is offered acceptable conditions of detention (including in terms of living space).

Putting an end to overcrowding

103. It is necessary to question once again the reasons for the persistence of overcrowding. Alternatives to imprisonment exist in most Council of Europe member States, but they are far from being effective as there is often a modest recourse to non-custodial measures, particularly at the pre-trial stage. Although there is an increasing development of probation measures,⁸ they do not bring about a lasting reduction in the number of persons in prison.

104. The CPT further notes that in certain European countries substantial sums are being spent on **building new prisons and/or adopting policies to expand the capacity of the prison estate**. The CPT is firmly of the view that constructing new prisons and/or permitting prison population inflation will not provide a lasting solution to the problem of overcrowding.

105. Responses such as **pardons or amnesties** can help to deal with a critical situation, but they cannot constitute a sustainable response.

106. The ability of **non-custodial measures** to satisfy the duty of protection to be provided by a criminal justice system seems vastly underrated. Encouragement of creative solutions for execution of sentences in the community is an important and necessary step. However, the development of community service, for example, or the use of effective electronic monitoring systems,⁹ coupled with supervisors (probation officers) and rehabilitation programmes remain insufficient.

107. The CPT wishes to recall that prison overcrowding is neither just a problem for prison governors and prison administrations to solve, nor one that Governments can tackle alone. Instead, the CPT's experience has shown that combating prison overcrowding requires a **systemic approach** and concerted action by all relevant stakeholders. As stated in the Council of Europe's White Paper on prison overcrowding: "There should be constant dialogue and common understanding and action involving policy makers, legislators, judges, prosecutors and prison and probation managers in each member State". It is also important to effectively implement the precepts set out in Committee of Ministers Recommendation No. R (99) 22 on prison overcrowding and prison population inflation.

⁸ Source: SPACE II.

⁹ Recommendation CM/Rec(2014)4, of the Committee of Ministers to member States on electronic monitoring.