

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

2nd Meeting of the CDPC sub-group on prison overcrowding
7 June 2017 (9.30 - 16.30)
Eurojust, The Hague, The Netherlands

EXECUTIVE SUMMARY

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

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The CDPC Sub-group, chaired by Ms Marjorie Bonn (The Netherlands):

- Approved its meeting agenda and took note of the information provided by its Chair regarding the Debate at the Committee of Ministers level held on 1 June in Strasbourg and related to the 10th Annual Report on the Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights. Took note of the information that roughly about 18% of the rising caseload of the Court in the recent years is due to bad prison conditions and to prison overcrowding. The Chair underlined that despite this negative trend, there are also a number of good practices which the national authorities are putting into place in order to reduce the use of imprisonment and to improve prison conditions;
- Took note of the information provided by the Secretariat regarding an internal meeting with the CPT Secretariat and the Division for the execution of judgements of the ECtHR in preparation for the present meeting and more specifically the proposals to hold a Conference involving all criminal law actors like judges, prosecutors, prison and probation services and the ministries of justice in order to discuss good practices aiming at reducing prison populations. Took note also of the proposal to set up an unit observing the situation in Europe, providing up-to-date information of prisons facing overcrowding, collecting good practices, including those related to the

implementation of relevant pilot and other important judgements of the ECtHR and maintaining a dedicated web site to host this information;

- Considered Prof Aebi's presentation prepared for the December 2016 CDPC plenary meeting and discussed in greater details the table presenting the different front-door and back-door alternatives to custody and their use at the different stages of the criminal justice process as well as the risk of net-widening of the system in the different European justice systems. Took a decision to revise and use the table in its future work;
- Discussed in more details the use of bail and the diversion from prosecution and the fact that foreign non-residents are overrepresented in pre-trial detention as well as that one of the main causes for prison overcrowding are the mandatory minimum prison sentences. It was also stated that there should not be an automatic conversion of a community sanction or measure into a prison sentence in case of non-compliance but that decisions should be taken in each case depending on the circumstances and risk and needs assessments;
- Confirmed also that the majority of prisoners are there because of being drug users, fine defaulters or for having committed traffic offences and that countries where alternatives have replaced imprisonment for such acts have had a significant reduction of their prison populations;
- Took note of the information provided by the CPT representative that in the CPT view overcrowding is one of the biggest problems not only in prisons but also in police stations, psychiatric hospitals, social homes and in detention centres for irregular immigrants and that within the penal justice system the most serious cases of overcrowding leading to inhuman treatment may be found in pre-trial detention centres and in centres for irregular immigrants;
- Further agreed that it is difficult to come up with a consensual definition of what is prison overcrowding as countries often use different criteria for measurement and also because a lot depends on whether a prisoner is locked up for 23 hours a day in a cell or is most of the time having out-of-cell activities. A number of other factors need also to be taken into consideration (light, heating, ventilation, bedding, hygiene) in order to define whether there is a problem with prison overcrowding which may lead to inhuman treatment;
- Took note of the CPT opinion on this issue, namely that an individual cell should have at least 2m distance between the walls and 2m height and that the minimum space should be 6m² (excluding the sanitary space), that a cell of 9m² should not be used to hold 2 prisoners together (6m²+4m² is the minimum with separated sanitary space, excluded from this calculation). It also took note that there are no criteria regarding the size of police cells and that in some countries detainees may stay there for long months, even years in very cramped unsanitary conditions;
- Took also note of the CPT opinion (in line with the White paper on prison overcrowding and with CM Recommendation (99)19) that the construction of new prisons is not a solution to prison overcrowding, nor are temporary measures like collective pardons or amnesties. If overcrowding is a structural problem, then long-term solutions need to be found and implemented;
- Took note of the information provided by the Italian representatives regarding the recent developments, namely that the Italian Supreme Court has taken recently two decisions regarding cell space, stating that in an old prison the minimum space available in a shared accommodation should be 3m² (excluding the beds and the sanitary space) and in newly constructed prisons it should be 9 m² in an individual cell to which will be added 5 m² in case of shared occupancy (excluding the sanitary space). Also noted that following the Torregiani judgement the prison population in Italian prisons was reduced but in the course of the last 6 months it again increased by 2000 prisoners, remaining however still far below the maximum threshold reached before the Torregiani judgement";
- Took note of the information provided by the Bulgarian representative that the remand centres are being moved to the prisons for sentenced prisoners which will allow remand prisoners to benefit from regime activities, medical and psychiatric care. Took also note that despite the fact that SPACE data show no overcrowding in the Bulgarian prisons, if the space in the 6 newly established open prison hostels is measured according to the newly published CPT standards regarding minimum cell space they will be considered in a situation of overcrowding. Therefore other factors like the low security levels, the number of out-of-cell activities, etc. should also be taken into consideration;
- Took note that since 2017 in Bulgaria the application procedure for a transfer to an open hostel has changed allowing prisoners to file requests directly to the court and not to a specially appointed commission which filtered the requests in the past. Took also note of the information that a prisoner has an automatic right to request early release after a certain period spent in

prison;

- Took note of the information provided by the Hungarian representative following the judgement of the ECtHR on the case of Varga and others v. Hungary, namely the introduction in August 2016 of a new compensation procedure in case of serious overcrowding, following which 2500 prisoners filed applications and already 720 decisions were taken as a result of which 23 compensations have already been paid. In 2015/2016 about 1000 new prison places were opened and other prisons were renovated. The prison density is still high but has decreased from 143 to 130 prisoners per 100 000 population;
- Took note of the information provided by the Greek representative that the prosecutors decide where to allocate a prisoner and not the prison administration and this creates problems. The Transfer Board at the Ministry of Justice can afterwards transfer the person to another prison by taking a decision in their own right or following the prisoner's request but this takes additional time;
- Took also note that in Greece early release is also an automatic right but that the court may decide not to release a prisoner earlier and if such decisions are a common practice this can contribute to increasing prison overcrowding. Since the reform in 2015/2016 new early release schemes were introduced and a new department in the Ministry of Justice is coordinating the work of prison governors;
- Took note that in the Netherlands until recently (before the significant reduction of prison numbers) there were waiting lists and before a prisoner was allocated his personal situation was carefully examined in order to find the best solution (distance, family contacts, needs, risks, preparation for release). A body at the Ministry of Justice takes a decision regarding allocation and also helps a future prisoner organise his personal issues before admission to prison;
- Took note of the comments made by the PC-CP Chair that before the start of a penitentiary reform or a penal reform in general the situation in a given country needs mapping and that any reform should go hand in hand with capacity building; any legal reform should be preceded by a public consultation;
- Concluded that a successful reform needs to engage all actors in the penal justice chain and consequently decided to suggest to the CDPC to hold in 2019 a high level Conference on overcrowding in prisons, remand centres and police stations and to invite prison and probation services, the police, representatives of the ministries of justice and judges and prosecutors;
- Decided that at the Conference should be discussed and defined what prison overcrowding means (criteria for its measurement and evaluation) as the methods used to define it influence the whole penal justice system in a given country;
- Decided further that the use of community sanctions and measures should also be discussed at the Conference in order to insist on their use as real alternatives to custody and not as additional sanctions (the risk of net widening);
- Decided that CEPEJ and the PC-OC should also be associated to these discussions and to the follow-up to be given to the Conference. In this respect noted that the length of sentences for the same types of crimes differs from one country to another and there are sometimes even big differences (for the same crime in one country a person may have 100 hours of community service and in another 2 years of imprisonment). Noted also that the ordinary criminals, most of them imprisoned for repetitive offences of low gravity, are clogging the system and that solutions are needed to deal with them differently;
- Decided to hold its third meeting in the autumn of 2017 in order to discuss the possible agenda, speakers and invitees to the Conference.

AGENDA / ORDRE DU JOUR

Meeting of the CDPC sub-group on prison overcrowding / Réunion du sous-groupe du CDPC sur le surpeuplement carcéral

**7 June / 7 juin 2017 (9.30 - 17.30)
Eurojust, The Hague, The Netherlands**

1. Opening of the meeting / Ouverture de la réunion

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

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

Case Rezmives and others v Romania

4. Discussions related to the SPACE data on prison overcrowding / Discussions concernant les données SPACE sur le surpeuplement carcéral

***CM(2016)121-add3
English / Français***

***Rec (99) 22
English / Français***

***CDPC (2016) 22
English / Français***

5. Position of the CPT regarding prison overcrowding / Position du CPT concernant le surpeuplement carcéral

6. Summary of the replies sent by the members / Synthèse des réponses envoyées par les membres

CDPC (2017) 9

7. Summing up and Conclusions / Résumé et conclusions

7. Any other business / Questions diverses

LIST OF MEMBERS / LISTE DES MEMBRES

BULGARIA / BULGARIE

Nadya RADKOVSKA
General Directorate "Execution of Sentences", Ministry of Justice, PC-CP member

DENMARK / DANEMARK

Jesper HJORTENBERG
Member of Eurojust, CDPC Bureau member

GREECE / GRECE

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Scientific Advisor, Office of the Secretary General For Crime Policy, Ministry of Justice, Transparency and Human Rights, Athens, Greece

HUNGARY / HONGRIE

Rita Emese TÖRÖK (Dr.)
Legal expert, Ministry of Justice, Department of International Criminal Law and Human Rights

ITALY / ITALIE

Carlo VILLANI
Magistrate, Director of the Office dealing with High Security Prisoners

Alessandra VIVIANO
International Relations Unit of the Department of Penitentiary Administration

LITHUANIA / LITUANIE

Tauras RUTKŪNAS (*Apologised / Excusé*)
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SWITZERLAND / SUISSE

Christine BURKHARDT (*Apologised / Excusée*)
Doctorante FNS en criminologie, Collaboratrice de recherche, Ecole des Sciences Criminelles, Université de Lausanne, Lausanne

THE NETHERLANDS / PAYS-BAS

Marjorie BONN
Chair of the meeting, Senior legal adviser, Ministry of Security and Justice, Department for legislation and legal affairs, Section criminal law

EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT) / COMITÉ EUROPÉEN POUR LA PRÉVENTION DE LA TORTURE ET DES PEINES OU TRAITEMENTS INHUMAINS OU DÉGRADANTS (CPT)

Antonius Van KALMTHOUT
CPT Member, University of Tilburg

COUNCIL FOR PENOLOGICAL CO-OPERATION / CONSEIL DE COOPERATION PENOLOGIQUE (PC-CP)

Vivian GEIRAN

PC-CP Chair, Head of the Irish Probation Service, Chair of the Council for Penological Co-operation (PC-CP)

DIRECTORATE GENERAL I / DIRECTION GÉNÉRALE I

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