

KEY MESSAGES FROM THE WORKING SESSIONS AND CONCLUSIONS OF THE GENERAL RAPPOREUR

Session I: PRE-TRIAL PHASE: REDUCING THE INFLUX - SHARED RESPONSIBILITY (± 80 participants)

The participants extensively discussed the issue of relationships among the pre-trial phase (in particular pre-trial detention) and the problem of prison overcrowding.

A preliminary point of definition was raised concerning the possible divergences among the concept itself of pre-trial detention. It should be clarified whether pre-trial detention refers to untried detainees only or includes the detainees already sentenced by a first instance court or even at the appeal level but still waiting for a final verdict.¹ Where a broad definition is used the number of pre-trial detainees the number of appeal levels available in a given country and, at the very end, effective access to justice at the appeal level should be taken into account when assessing the causes of influx through pre-trial detention.

The main outcomes from the answers offered to the questions and the debate can be summarized as follows:

- Quite unanimously the participants consider reducing overcrowding in prisons as a shared responsibility of prosecutors, judges, prison and probation services and the members of government responsible for the prison service. Two thirds of the participants think that in their daily work as prosecutor or civil servant they can help to reduce the prison overcrowding in their country. However a large majority of the participants do not consider information on available places in pre-trial detention facilities relevant for their decision to apply pre-trial detention.
- In the opinion of the majority of participants the seriousness of the offence is more important than the personal circumstances of the suspected person, and furthermore whether the suspected person is a national or a foreigner without legal residence when deciding on pre-trial detention.
- Two thirds of the participants agree that the foreseeable sentence that could be imposed should have an influence on the decision to request or order pre-trial detention, whereas the majority of participants do not consider the way sentences are executed as influencing decisions to request or order pre-trial detention.
- Two thirds of the participants are of the opinion that in their country sufficient alternatives to pre-trial detention exist and three quarters of the participants consider in practice the use of possible alternative measures before requesting or ordering pre-trial detention.
- Among the different tools to reduce overcrowding, a restriction by law of the use of pre-trial detention to a limited number of serious offences was rejected by two third of the participants.

Other findings were:

Other important factors were mentioned during the discussion such as the impact of police reports regarding the suspects on the final decisions of prosecutors and judges, which can be explained partially by the fact that the police has more resources than those of the judiciary and the judiciary trusts more the police reports.

Italy recalled that the development of a user friendly digital network which enables the prison authorities to establish a daily insight on how many prisoners are detained in every prison facility of the country has played a positive role in decreasing the overcrowding in the prisons.

¹ The annual reports of SPACE I contain data on prison population related to legal status in which a distinction is made between untried detainees, detainees found guilty but not yet sentenced, sentenced detainees who have appealed or who are within the statutory limits to do so. For details see table 8 of annual report 2018.

Session II: CRIME RATES AND RATES OF IMPRISONMENT IN EUROPE (± 50 participants)

The main outcomes from the answers offered to the questions and the debate can be summarized as follows:

- One third of the participants consider the crime rates in their country high.
- More importantly for the theme of the conference is that two thirds of the participants do not see a correlation between crime rates and prison population rates. In the discussion divergent experiences were shared. In some member States this correlation has not been proven in a reliable way, where as in some other jurisdictions crime and prison population rates go hand in hand. These various experiences justify further elaboration, in particular due to significant role played by different actors in the criminal justice system such as the police involved in detecting crime, as well as prosecutors managing pending criminal cases. This requires more insight in the methods for collection used by the police, prosecutors, judges, prison and probation staff, and the sharing of such data.
- Quite remarkably the annual statistics in reports of SPACE I on prisons and SPACE II on community sanctions and measures of the Council of Europe are known to only half of the participants and the European Sourcebook on Crime and Criminal Justice Statistics to only a few participants.
- The term "prison overcrowding" itself was subject of the discussion in relation to research. It was argued that the aim of research is not only to examine the root causes and data on prison overcrowding but also to be able to assess the future needs in prison capacity based on the evaluated and expected crime rate data in the country.

Session III: OPTIONS WHEN SENTENCING (± 70 participants)

The main outcomes from the answers offered to the questions and the debate can be summarized as follows:

- Two thirds of the participants have visited detention facilities or prisons in their country.
- Although a substantial majority of the participants confirms that the probation or social services provide information on the person found guilty before sentencing, two thirds of the participants would like to receive more information relating to the personal circumstances of the offender and/or on the impact of the offence on the victim. The qualitative improvement should guarantee reliable, exhaustive and up-to-date information.
- Three quarters of the participants report an increase in the application of alternative sanctions in the last five years and are of the opinion that the replacement of (short-term) imprisonment by alternative sanctions will help to reduce the prison overcrowding in their country. The legislation does not prohibit the use of alternative sanctions for the sole reason of recidivism. However, the seriousness of the offence excludes effectively the application of alternative sanctions in the opinion of three quarters of the participants.
- Two thirds of the participants agreed that prison overcrowding does play a role when suspending a sentence.

Other findings are:

The diversity and the efficiency of the alternative sanctions and measures should be guaranteed in order to replace (short-term) prison sentences as necessary and prison numbers should be better managed by developing possibilities for adjusting the execution of the prison sentences by using early release schemes and conditional release accompanied by treatment interventions and including with the help of electronic monitoring. See also session IV.

Judges (and, in countries where they exist, also lay justices), as part of their professional training, should be made more aware of the consequences of their judicial decisions and judgements² and the exchange of information among them should be facilitated.

² In this regard the experiences in Canada with training programs for judges "*Judges and Jails: The Realities of Incarceration*" as highlighted by the Chairperson of the Parole board of Canada, Ms. Jennifer Oades, in her presentation "Raising Public Awareness of the Need to Address Prison Overcrowding" on the second day of the conference could be an inspiring example.

Session IV: MANAGING AND REDUCING THE PRISON POPULATION - THE NORDIC AND LATVIAN EXPERIENCES
(± 40 participants)

The main outcomes from the answers offered to the questions and the debate can be summarized as follows:

- To manage and reduce prison populations is possible and has many advantages (e.g. lower costs) and societal benefits (better prospects for rehabilitation and integration). It requires long-term work, political will, careful law planning and drafting (including impact assessment on costs and benefits), effective implementation among practitioners (while taking measures to avoid the net-widening of the use of penal sanctions and measures) and effective follow-up mechanisms.
- Reducing prison populations requires effective alternatives to imprisonment at pre-trial and post-trial phase (like community sanctions and measures, electronic monitoring, community work, conditional imprisonment and fines). Effective mechanisms and instructions to practitioners to use the imprisonment as a last resort are needed.
- Reducing prison populations requires effective measures to prevent recidivism and facilitate reintegration (interventions based on the 'normality principle', like treatment programmes for addictions, education and vocational training).
- The need for broad-scoped multi-agency and multidisciplinary cooperation was also highlighted (including co-operation between prison administration and other authorities, especially authorities responsible for the social and health care).

Session V: ENFORCEMENT PHASE: TRANSPARENT EXECUTION OF SENTENCES (± 70 participants)

The main outcomes from the answers offered to the questions and the debate can be summarized as follows:

- Three quarters of the participants considered it useful if judges and prosecutors would have more knowledge about how and when sentences to imprisonment or alternative sanctions are executed.
- Nearly all participants considered modalities in the execution of sentences such as semi-open prisons, prison leave and open prisons acceptable and three quarters of the participants considered conditional and early release schemes acceptable means to reduce overcrowding in prisons.
- Only a minority of the participants supported waiting lists for the execution of prison sentences in order to avoid overcrowding or the fixation of the capacity of each prison by law.
- Two thirds of the participants consider it important that the execution of prison sentences is monitored by prosecutors or judges.
- Although half of the participants indicated that schemes to make the public aware on how prisons work exist in their country, nearly all participants would welcome more awareness-raising among the media and the public on the execution of penal sentences.

Findings in specific countries are:

The Irish experience of not wasting a 'good' economic crisis to take action showed that instead of constructing a big prison, good community return programmes for early release were developed and introduced to deal with prison overcrowding. Various possibilities were introduced for offenders to replace prison sentences or to obtain an early conditional release.

The Finnish experience with the use of early release and open prisons showed that when reforming prisons the execution of prison sentences can be used in a different more efficient and cost-effective way by helping prisoners take back their own responsibility for their resocialisation and rehabilitation. In Finland nearly half the prisons are open prisons.

Key messages and conclusions of the High Level Conference "Responses to Prison Overcrowding" (24-25.04.19)

In France the high rate of pre-trial detention will be reduced by using alternatives like electronic monitoring which will require a joint action of the different stakeholders (including the suspect's defence lawyer). Furthermore through recent legislative changes prison sanctions of up to six months will be replaced in all cases with alternative sanctions and measures.

Session VI: PREVENTION, MONITORING AND COMPENSATION MEASURES (± 35 participants)

The main outcomes from the answers offered to the questions and the debate can be summarized as follows:

- Two thirds of the participants are familiar with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and with the case-law of the European Court of Human Rights in the prison field, however only half of the participants are aware of the follow-up that is given in their country to such reports or judgements.
- Nearly all participants considered it useful to have regular contacts between the prosecution service, judges and the prison and probation services.
- A small number of participants are involved in handling complaints of prisoners.
- Decisions on complaints of prisoners are only rarely publicly available.
- Half of the participants considered the financial compensation not sufficient for justified complaints and two thirds would like to have other compensatory possibilities such as reducing the length of the prison sentence.

Other findings are:

Regarding prevention and monitoring the shared responsibility, including the role of members of the Parliament was again stressed. It was underlined that Parliaments are involved and should remain involved in different monitoring procedures related to detention.

Transparency regarding all data and information related to prisons is needed in order to facilitate monitoring and prevention.

The National Prevention Mechanisms (NPMs) and their important role in monitoring (together with the work of the CPT) should be more highlighted before the national stakeholders in the penitentiary field.

OVERALL CONCLUSIONS

- The dialogue and networking initiated at the Conference between judges, prosecutors, Ministries of justice of the Member States and prison and probation services' representatives extends the understanding and awareness of each other's role and needs to continue both at national and international level in order to overcome the problem of overcrowding of prisons.
- The Conference showed that the cooperation between the Council of Europe and the European Union in this area is valuable and merits continuing in the future in order to assist the national authorities of their member States in line with their competence and each with their own expertise in successfully reducing the overcrowding of prisons.

FOLLOW-UP OF THE CONFERENCE

- The outcome of the Conference will be reported by the general rapporteur to the participants in the forthcoming 24th Council of Europe Conference of Directors of Prison and Probation Services (21-22 May 2019, Cyprus). She will subsequently inform the European Committee in Crime Problems (CDPC) and will make proposals to the Bureau of the CDPC on the follow-up.

Key messages and conclusions of the High Level Conference "Responses to Prison Overcrowding" (24-25.04.19)

- The CDPC will inform the Committee of Ministers of the Council of Europe of the conclusions and the outcome of the Conference and will propose, in consultation with the general rapporteur, the follow-up to be given to it.
- The outcome of the Conference will be reported to the appropriate fora in the European Union, including the Council of Justice and Home Affairs Ministers.