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Summary and conclusions of Panel 1 (pre-trial detention)

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Key issues

Pre-trial detention is not a marginal issue in the fight against prison overcrowding. As at 31 January 2025, one in four prisoners in Europe had not yet been finally sentenced. In several countries, it is precisely in the facilities housing remand prisoners that overcrowding is most acute, and the conditions of detention for remand prisoners are often harsher than those for convicted prisoners, due to a lack of access to work and activities. In light of the principle that pre-trial detention must remain an exceptional measure, the panel considered three questions: is it used too frequently, does it last too long, and what alternatives are available?

Four national initiatives

Three national experiences were presented, supplemented by insights from Belgium:

- **Portugal (Catarina Oliveira):** a strict legal framework, which in principle reserves pre-trial detention for offences punishable by more than five years' imprisonment (since 2007) and imposes maximum time limits. The 2007 reform reduced the proportion of remanded prisoners by 8.5 per cent in one year, before a partial reversal in 2010.
- **Poland (Maria Ejchart):** a low proportion of remand prisoners (just under 12 per cent) and no overcrowding (at least based on official capacity, as most prisons do not yet comply with the CPT's 4m² standard), but several cases of detention deemed excessively long by the European Court of Human Rights. A reform is currently underway which aims to raise the thresholds, limit detention based solely on the severity of the potential sentence, and introduce 'electronic arrest', which a judge must reject, giving reasons, before ordering detention.
- **Germany (Simon Pschorr):** there is no minimum prison sentence threshold for the use of pre-trial detention, nor are there maximum durations, but there is an automatic review after six months, focusing on the speed of the proceedings. However, duration remains an issue: in 2024, more than 8 per cent of pre-trial detentions exceeded one year.
- **Belgium:** a wide range of alternatives, used extensively (pre-trial detention under electronic monitoring has almost tripled since 2019), without any reduction in the number of defendants in custody, which stands at around 4,000 and has doubled since 1990.

Five possible solutions

The discussion with the audience identified five possible solutions.

1. Cross-referencing indicators

The percentage of remand prisoners within the prison population is an indicator often cited, but one which, on its own, is not sufficient to measure the use of pre-trial detention. It also depends on trends in the number of convicted prisoners, which says nothing about pre-trial detention itself: in Belgium, the proportion of pre-trial detainees in the prison population fell from 36 per cent to 28.5 per cent between 2023 and 2026, whilst the number of pre-trial detainees remained stable. To obtain a more comprehensive and reliable picture, this indicator must therefore be cross-referenced with the number of remand prisoners per 100,000 inhabitants, the number of new admissions to remand, and the duration of remand detention.

2. Introducing binding rules

More stringent rules help to limit the discretion of magistrates and effectively reduce the number of people in pre-trial detention or the length of their detention. Two measures have been identified:

- **Higher sentencing thresholds.** Some states apply very low thresholds: offences punishable by imprisonment in Belgium and Germany; offences punishable by more than one year's imprisonment in Poland (a threshold that the reform proposes to raise to two years). Portugal, by contrast, has since 2007, in principle, restricted pre-trial detention to offences punishable by more than five years' imprisonment.
- **Maximum time limits.** These rarely take the form of a single ceiling applicable to the entire proceedings. More often than not, the maximum duration is linked to a specific stage of the proceedings, which must be completed within a given timeframe; otherwise, the person must be released. In Portugal, unless there are exceptional provisions for certain serious offences, detention ends if charges are not brought within four months, if no decision has been made on whether to commit the case for trial within eight months, if no conviction has been handed down at first instance within fourteen months, and if the conviction has not become final within eighteen months. Other systems set time limits depending on the grounds for detention: Germany, for example, limits detention based solely on the risk of reoffending to one year.

The presentations showed that these measures are having a tangible impact, but also that they remain vulnerable to setbacks.

3. Making alternatives credible substitutes

Alternatives to pre-trial detention only achieve their objective if they genuinely replace detention. This requires:

- sufficient human and financial resources to enable effective and rapid implementation;
- awareness-raising and training initiatives for the judiciary, with a view to building confidence in the effectiveness of these alternatives and preventing the criminal justice system from being overburdened;
- statistical monitoring to verify that they benefit individuals who would otherwise have been detained. In this regard, the Council of Europe offers a valuable tool: the Pre-trial Detention Assessment Tool[1] .

4. Paying attention to specific groups

Foreign nationals, particularly those without a residence permit, often lack access to alternatives due to not having a registered address. For those legally resident in another EU Member State, the European Supervision Order allows for a supervision measure to be enforced in their country of residence[2] , but it remains virtually unused. Training for judges in this regard should be strengthened.

For people suffering from mental health issues or substance abuse, resources outside the criminal justice system are needed: care places and accommodation solutions.

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[1]Council of Europe, Division for the National Implementation of Human Rights, Pre-trial Detention Assessment Tool, 2017: https://rm.coe.int/pre-trial-detention-assessment-tool/168075ae06.

[2]Council Framework Decision 2009/829/JHA of 23 October 2009. The supervision decision is forwarded to the Member State where the person lawfully and habitually resides, provided they consent to returning there (Article 9(1)); in exceptional cases and at the person's request, it may be forwarded to another Member State which consents to this (Article 9(2)). The instrument does not apply to persons residing outside the Union.

5. A numerus clausus?

A final option was discussed: refusing admission to detention (even on a provisional basis) when a critical threshold is reached in prisons. Practices of this kind were cited in England and Wales and in Germany. According to the participants, the fear of reaching such a threshold encourages all those involved in the criminal justice system to do everything in their power to avoid it.

Conclusion

The panel's message is twofold. Solutions do exist, but none is sufficient on its own: increasing the number of alternatives without binding rules widens the scope of the criminal justice system; imposing binding rules without credible alternatives, sufficient resources or adequate training renders them ineffective. It is the combination of all these measures, accompanied by data monitoring, that should enable a sustainable reduction in the use of pre-trial detention.