

Responses to Prison Overcrowding (24-25 April 2019)

Session IV Comments by Rob Allen

1. Coming from England and Wales which is towards the top of the league table of prison population rates in Western Europe, those of us interested in prison reform have always been fascinated by the Nordic experience of low imprisonment rates, short sentences and generally humane and positive prison regimes. Indeed, a 2016 Norwegian study found that five years after conviction, there is a 27 per cent lower risk that convicts who have been in prison have committed new crimes, compared to those who were given more lenient penalties, like probation and community service.¹ This is something of a problem when we try to argue that prison does not work although it is partly explained by the amount spent on prisons in the Nordic Countries – up to 300 euros per day – which is very high.²
2. The Nordic prisons have not been without problems however. When the CPT visited Finland five years ago they found all but one of the prisons they visited were either operating at their full capacity or were slightly overcrowded; and the CPT was very critical of the thousands of remand prisoners kept in police stations thereby reducing the pressure on prison places.³ In 2014, the CPT were told that Denmark aimed to operate their prisons at 94% capacity within three years, but the CPT noted that six closed prisons were operating at 99% occupancy level (888 inmates for a capacity of 895) and the Copenhagen Prisons at 102% (568 prisoners for a capacity of 557).
3. The CPT made the point that even with an occupancy level of 95% of the total design capacity of a prison estate, “it becomes nigh impossible for a prison service to deliver what is required of it and, more particularly, to ensure respect for inmates’ human

¹ <https://www.uib.no/en/news/100126/norwegian-prisons-rehabilitate-criminal-offenders>

² http://wp.unil.ch/space/files/2019/04/FinalReportSPACEI2018_190402.pdf

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<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680695f70>

dignity”.⁴ They gave as examples the difficulty of maintaining safety through possessing sufficient bed capacity to accommodate prisoners according to different categories or to separate inmates in case of conflict. This points us to the fact that overcrowding is often concentrated in particular parts of the prison estate- most often the prisons taking detainees and short sentenced convicts directly from the courts. This is certainly the case in England and Wales.

4. Norway has avoided overcrowding by renting prison space in the Netherlands and by retaining the queue or waiting list - over 200 convicted prisoners have been waiting at home for more than two months to start serving their sentence. And probably many more wait a shorter period before commencing their prison term- a system which is unknown in the UK.
5. So the question of managing overcrowding – of coping with the problems that arise when the demand for prison places is greater than their availability -is not entirely absent in the region. Of course, *increasing supply* of prison places is one way of tackling overcrowding but because of the financial, social and moral costs of imprisonment this approach is seldom favoured.
6. Tapio has very well explained some of the ways *that demand* has been reduced or controlled and there are many lessons that can be applied in other countries. I wanted briefly to put alongside what he has told us the findings I made when I looked a few years ago at how some other European countries- particularly Germany and the Netherlands had kept their prison numbers relatively low. There is a good deal of overlap with what Tapio documents.
7. Some of what I found are what we might call structural factors about the justice system. These include having a) a high age of criminal responsibility and specialist approach to young adults; b) options to divert even relatively serious cases from

prosecution; c) mild sentencing tariffs d) extensive treatment options for addicts and the mentally ill and e) tight restrictions on custodial remands.

8. In addition to these structural factors, four other issues were identified as potentially important in explaining downward trends in custody. The first is the way community sentences are used as alternatives to prison; the second factor is the height of the thresholds which apply to breaches of suspended sentences and recalls to prison and the way in which courts approach questions of revocation of orders; the third issue is the question of the climate of public and political opinion and its impact on decision-making. Finally, there is the role that is played by academic and other nongovernmental expert organisations in the formulation of criminal justice and penal policy.
9. I have not time to go into these issues in any detail but want simply to say that from both Tapio and my findings there appear to be three main types of policies which can reduce imprisonment.
10. There are some direct methods which I call Route 1. This includes taking certain types of behaviour outside the ambit of the criminal law – such as drug possession- and reducing the numbers coming before the criminal courts – this has happened with juveniles in England and Wales over the last ten years. It includes restricting remands; reducing sentence lengths and greater use of early or conditional release from prison sentences, as is happening in some of the Eastern European countries where electronic monitoring and half way houses are being added to strengthen the appeal of such releases. Do these things and prison numbers will almost certainly fall. The experience of sentencing guidelines for courts in England and Wales has not been altogether successful, however.
11. The second type of methods – Route 2- includes the introduction or development of alternative community- based measures designed to replace short prison sentences. This might be probation or community work or mediation. The reason that these are not Route 1 is because there is a greater degree of uncertainty about

whether these will bring about reductions in custody. At the sentencing stage, they may replace other alternative sentences or even add to the prison population if offenders are then punished for failing to comply with their requirements, although this can be avoided if judges and prosecutors are trained and the sentences carefully targeted.

12. Commuting the last segment of a prison sentence into community- based measures is more likely to produce dividends. Our experience of Home Detention Curfew in England and Wales illustrates this.

13. The third type of methods- route 3- involves working to reduce the rate of re-offending or recidivism among ex-prisoners. Improving drug treatment is one way to do this but I have always considered this a rather indirect way of reducing prison numbers. It may work but there are many variables involved. Better prison conditions, with more in the way of education and rehabilitation are much needed. They can help to reduce levels of recidivism, particularly if combined with post penal support. But on their own they will not lead to falls in the use of prison. Our experience in England and Wales of trying to strengthen post release supervision has had mixed results. Other measures are usually needed.

14. I remember visiting Latvia a few years ago to evaluate some projects that the Norway grants programme was planning to fund. I was told that Latvia aimed to reduce the number of prisoners over the next twenty years to about 5,000, with the reduction of recidivism playing a part in achieving this. I see that this has already been achieved and look forward to hearing how!

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