

**HIGH LEVEL CONFERENCE
“RESPONSES TO PRISON OVERCROWDING”
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**SESSION VI - PREVENTION, MONITORING AND COMPENSATION
MECHANISMS**

**Speaking points – Mr Mykola Gnatovskyy, President of the European
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PREVENTION

- 1. A legal framework enabling judges to decide on the basis of a variety of options other than deprivation of liberty**
 - In several member states, the CPT observed and supported large-scale reforms of the criminal legislation, involving a decriminalisation of a series of offences punishable by short periods of imprisonment or changes to the Code of Criminal Procedure enabling judges to decide on further alternatives to pre-trial detention or alternative sanctions to imprisonment.
 - Some member states also adopted new laws on probation services and on the execution of sentences in order to provide for a growth in probation cases and an extension of possibilities of conditional release.
 - In order to increase their chances of success, a number of governments requested Council of Europe support, notably through legislative expertise or training activities. This is clearly good practice and this should be encouraged.
 - It is essential to move away from a reactive position and to follow a proactive approach by developing a suitable legal framework and by making the appropriate resources available for its implementation in order to enable courts and the relevant services to apply the individualisation principle in practice when proposing, deciding or executing criminal and other sanctions and measures.
- 2. The need for greater discretion for prison services in their management of the prison population**
 - On many occasions, the CPT noted that, whenever a prison system is affected by overcrowding, it is not necessarily spread evenly. There may be prisons affected by severe overcrowding whilst others are not or hardly operating beyond their official capacities. There are a number of objective and less objective reasons for this, arising from their location around big cities or their main functions in the prison system to failure to respond to local needs. Programmes for the (re-)construction of prison buildings should therefore be based on an accurate mapping of the prison population and of the actual needs of prison establishments. With this in mind, the CPT urged some governments to include certain regions or establishments visited in their plans regarding the prison estate.

- The idea of introducing a *numerus clausus* has regularly been put forward as a preventive means to avoid overcrowding. This solution nevertheless led to some controversies. In a few countries, for instance, it appeared to be effective in respect of establishments dedicated to the execution of prison sentences, but this had negative consequences in remand prisons which could not refuse new arrivals on the one hand and had to hold an excessive number of sentenced prisoners awaiting transfer on the other hand.
- The Committee also observed localised overcrowding in a number of prison establishments visited, although these prisons were not considered to be overcrowded in official statistics.
 - *Example: at the beginning of a visit to a remand prison, the prison governor was proud to tell the CPT's delegation that there had been no overcrowding for years and that prisoners enjoyed more than the standard of 4 m² of living space at the time of the visit. However, the delegation came to realise later during the visit that a number of prison cells offered less than 3 m² of living space per inmate.*

In some cases, this was clearly due to mismanagement in the allocation of prisoners to cells. However, in some other cases, the excessively complex rules on the separation of different categories of inmate, which ended up in situations where prisoners had a large amount of living space in some cells whilst others were held in grossly overcrowded conditions.

- In this connection, another burden that can be placed on prison services in their efforts to prevent overcrowding is the possibility for a judge to impose a segregation measure for a certain amount of time as part of a prison sentence. The CPT has repeatedly stressed that the decision whether or not to impose such a measure should lie with the prison authorities, and should not be part of the catalogue of criminal sanctions. The same applies to life-sentenced prisoners, who are systematically segregated in yet too many countries. This can clearly undermine efforts to mitigate the risks of overcrowding.
- In short, the prison authorities should benefit from the necessary margin of manoeuvre in their management of each prisoner, on the basis of a risks and needs assessment, of each prison, taking into account the characteristics of the local prison population and the main functions of the establishment, and of the country's general prison population.

3. The introduction of a shared responsibility for preventing prison overcrowding

- Over the last decades, there has been an increased awareness that the burden of prison overcrowding should not be placed on prison services alone. Other key actors, judges and prosecutors in the first place, should be involved in the management of the prison population. Regular consultations, alert systems or regulation/modulation mechanisms between the judiciary,

prosecutorial services and prison and probation services have been put in place in order to avoid that prisons work beyond their operational capacities. More recently, the French General Controller of Deprivation of Liberty, Ms Adeline Hazan, advocated for the establishment of such a “regulation mechanism” by law.

- There should also be mechanisms involving national parliaments. Members of parliament also need to look further into prison overcrowding. They should be encouraged to carry out visits to prisons regularly in order to get a good grasp of the actual situation on the ground and take sound initiatives or decisions at parliamentary level, including on budgetary matters. Parliamentary hearings on the situation in prisons should also be regularly organised by the relevant committees.

MONITORING

- Naturally, independent torture prevention bodies such as the CPT and national preventive mechanisms play their share in alerting governments about the serious consequences of prison overcrowding on the ground. All too often the CPT observed that prison governors and staff were fighting losing battles against overcrowding and it played a role in raising greater awareness amongst government officials.
- Effective monitoring of prison overcrowding should also be based, as I mentioned earlier, on a common yardstick in Council of Europe member states as to what is acceptable or what is unacceptable in terms of living space per person in prisoner accommodation areas. The development of relevant CPT standards over the last three decades has been crucial in this respect. I refer to the CPT’s 2015 standards on living space in prisons and the CPT’s 25th General Report. Moreover, it should not limit itself to living space per prisoner. The adequacy of prisoners’ access to out-of-cell activities and of staffing resources should also be taken into account.
- It is then of great importance for prison services to collect reliable and detailed data at frequent intervals as regards the level of prison overcrowding in the country and recourse to alternatives to imprisonment. This enables the competent authorities to react as rapidly as possible to emerging or actual prison overcrowding, study the root causes and effects of prison overcrowding and assess the effectiveness of the measures taken or being taken.
- Such information should not only be provided to the judicial authorities, but it should also be made available to the public. This information can be instrumental for government officials, members of parliament and civil society actors to raise awareness about the problem, its human and financial costs and its implications for the community at large. In some countries, the CPT gained the impression that the general public had little information about the situation in prisons and mainly received data about prison overcrowding when new Council of Europe Annual Penal Statistics (better known as SPACE) or CPT reports were published.

- Effective monitoring should involve all relevant actors, including members of parliament and civil society actors.

COMPENSATION

- The CPT has paid increasing attention to the establishment of complaints mechanisms for prisoners seeking redress or appropriate compensation. In its 27th General Report, the CPT presented its views on the basic principles surrounding the establishment of such mechanisms (such as their availability, accessibility and effectiveness).
- Beyond the purpose of compensating for pecuniary and non-pecuniary damage as a result of prison overcrowding, effective compensation mechanisms may deter those tempted by ever stricter penal policies or by inaction.
- Regrettably, the costs generated by claims for compensation (or which may be generated by such claims) led a few governments to consider keeping low national standards of living space for certain categories of prisoner (e.g. sentenced prisoners), lowering existing minimum national standards or suspending the application of relevant legal provisions on living space. In the long run, this can be highly counter-productive. It would not prevent the states concerned from being found in breach of Article 3 of the European Convention on Human Rights and could even expose these states to an increasing number of violations.

CONCLUSION

- Preventing prison overcrowding, monitoring it effectively, taking any remedial action whenever necessary and compensating for any detention in overcrowded conditions which could be considered as inhuman or degrading are components of the same approach, which aims at breaking the vicious circle of prison overcrowding. If left unaddressed, prison overcrowding can undermine action to prevent repeat offending and eventually lead to ever more prison overcrowding. Common solutions should first be identified at national level. The CPT has strongly supported the organisation of national conferences involving all relevant partners. The aim was to draw up strategies, action plans and reforms based on a comprehensive, integrated and proactive approach, fuelled by an idea that would combine the short, medium and long term. Such a step is certainly not an end in itself, but it is a first step in the right direction.