PARALLEL SESSION 2

ON THE DETERMINATION OF SENTENCES AND THEIR LENGTH AND ALTERNATIVES TO IMPRISONMENT: WHICH CHALLENGE(S)? WHICH EFFECTIVE SOLUTION(S)?

PANEL SUMMARY AND CONCLUSIONS

- *Discussion led by **Sofia Ciuffoletti**, Academic researcher ADIR Interuniversity Centre-University of Florence, President of the Altro Diritto and Secretary General of the European Prison Litigation Network*
- *Case study from France | **Céline Filliol**, Magistrate, Directorate of Criminal Affairs and Pardons, Ministry of Justice*
- *Case study from Norway | **Gisle Johnson**, Magistrate of the Agder Court of Appeal*
- *Case study from Estonia | **Rait Kuuse**, Deputy Secretary-General for Prisons, Ministry of Justice*

Introduction by Sofia Ciuffoletti

Identifying the factors that explain the persistence of high prison populations is difficult because the production of consolidated and coherent data is not always straightforward. Causes and solutions sometimes overlap, and several factors may combine; in our panel, we focused on sentencing practices and policies, on the judiciary's attitude toward sentencing and decriminalization, and on alternatives to imprisonment.

Scholars have established that the evolution of the prison population is not directly determined by the criminality rate in a country, but by national criminal and prison policies, which influence both the number of admissions to prison and the timing of release.

We must discuss alternative measures and/or community-based programs and approaches, keeping in mind the challenges posed by the net-widening effect: probation is on the rise in many European countries, and yet prison overcrowding remains untouched by this trend.

Two warnings must lead our analysis:

1. **The dualization of the penal system:** Contemporary justice systems are increasingly characterized by a profound dualization structured around citizenship status. While relatively protective and rehabilitative frameworks remain accessible to citizens, a distinctly austere and punitive branch has emerged for foreign nationals and non-citizens. This shift is manifested in the creation of segregated facilities for foreign prisoners, alongside the systematic use of detention and forced removal within migration control—effectively establishing "separate but parallel systems, one for citizens, another for non-citizens." (See, Shammas, V. L., “The Rise of a More Punitive State: On the Attenuation of Norwegian Penal Exceptionalism in an Era of Welfare State Transformation”, Critical Criminology, 24(1), 2016, pp. 57–74.).

2. **Penal populism and the "Penal Turn":** This dualization operates within the broader context of the "penal turn" that has swept across liberal democracies over recent decades. A defining feature of penal populism is the intense politicization of criminal justice policy, where public anxiety is leveraged for political gain. Consequently, this punitive climate severely undermines systemic efforts to mitigate prison overcrowding and curb prison population inflation.

One general and final observation must guide our discussion: a reduction in the overall use of detention, encompassing both the volume of admissions and the duration of custody, cannot be achieved through isolated measures. Instead, it requires **sustained, multi-faceted efforts across the entire criminal justice system**.

Consequently, we must critically evaluate the potentially counterintuitive effects of specific interventions; **any measure implemented outside a coherent, comprehensive policy aimed at reducing carceral reliance risks being ineffective or even counterproductive**. For instance, threshold rules intended to curb short custodial sentences may inadvertently incentivize judges and prosecutors to apply more severe criminal classifications, thereby resulting in longer sentences. Similarly, the expansion of alternative sanctions, when paired with overly intensive probation supervision, often creates a 'net-widening' or rebound effect, ultimately driving more individuals into prison due to technical violations

To understand the complexity of this crisis, we analysed **three national strategies** currently deployed by **Norway, France and Estonia**.

1) Over the past 25 years, **Estonia** successfully reduced its prison population by nearly two-thirds (from approximately 4,800 to 1,720 prisoners) and lowered its imprisonment rate from over 340 to 127 per 100,000 inhabitants. Crucially, this reduction happened alongside a 50% drop in registered crime and an 80% decline in homicides, proving that lowering imprisonment and improving public safety can be achieved simultaneously.

We identified some <u>key factors for success:</u>

- Long-term political commitment: Transitioned from a "custody-first" culture to reserving prison only for protecting society, shifting the focus to crime prevention.
- Strong probation service: Created a trusted, accountable community-based supervision system that currently manages nearly 3,000 offenders daily.
- Expanded alternatives: Integrated community service, conditional sentences, and treatment programs as genuine replacements for prison time.
- Gradual reintegration: Utilized electronic monitoring, conditional release, and open prisons to support offenders transitioning back into society.
- Modernized infrastructure: Replaced 10 outdated, Soviet-era dormitory-style institutions with 3 modern, cell-type prisons to eliminate informal inmate hierarchies and improve safety.

<u>What did not work (Lessons Learned)</u>

- Additive Alternatives: Introducing community sanctions does not automatically reduce prison numbers if courts use them in addition to prison sentences rather than as direct replacements.
- Isolated technology: Tools like electronic monitoring fail if they are not paired with human probation supervision and rehabilitation programs.
- Building more prisons: Prison construction does not solve overcrowding; long-term capacity depends entirely on criminal justice policy.

Broader European implications

Prison overcrowding is a **system-wide criminal justice issue**, not just an administrative prison problem. Because the drivers of overcrowding stem from sentencing practices, pre-trial policies, and social services, sustainable solutions require long-term political patience and coordinated action across the entire justice chain.

2**) Norway** has one of the lowest incarceration rates in the world, with only 55 inmates per 100,000 inhabitants (3,075 inmates total as of February 2026). Norwegian criminal justice policy prioritizes rehabilitation and gradual community reintegration over retribution, utilizing a wide range of alternative non-custodial sanctions to prevent prison overcrowding.

Key alternative measures used in Norway

- Institutional serving (Section 12): Allows offenders with substance abuse or mental health issues to serve their custodial sentences directly inside approved treatment institutions.
- Community sentences: Imposed instead of prison terms under one year (especially for young offenders). They require 30 to 420 hours of rehabilitative activities, education, or community work.
- Suspended sentences with custom conditions: Prison terms are avoided unless the offender reoffends or breaches specific court conditions, which can include:
    - Abstinence and mandatory drug/alcohol testing.
    - Restraining orders or restricted residence/travel.
    - Mandated participation in impaired driving programs.
- Judicially supervised drug treatment programs: A specialized 1-to-5-year program where a prison sentence is suspended if a substance-dependent offender completes intensive, judge-monitored rehabilitation and regular testing.

Sentencing Breakdown (2025 Data)

Out of roughly 14,500 total sanctions imposed by Norwegian courts in 2025, only about half (7,198) resulted in unconditional imprisonment. The rest were successfully diverted to suspended sentences, community service, fines, and specialized youth or medical care programs.

3) The presentation addresses **France**'s critical prison overcrowding crisis, which reached a record high of 89,668 inmates as of August 1, 2026. This equates to an average occupancy rate of 141.6%, peaking at 200% in certain facilities. Despite a vast legal framework of alternatives to incarceration, systemic issues like "net-widening" and immediate backfilling of new prison spaces have hindered reduction efforts. To combat this, France is rolling out targeted procedural, judicial, and digital solutions in late 2026.

Strategic Highlights

- The "Net-Widening" Paradox (*élargissement du filet pénal*): Although French law mandates sentence adjustments for terms under one year, 45% of main sentences in 2024 were still custodial. Non-custodial alternatives (e.g., electronic bracelets, community service) have paradoxically expanded judicial control over low-level offenders who wouldn't otherwise face intrusive sanctions, rather than shrinking the prison population.

- Failure of expansion: Historical data shows that increasing prison capacity is ineffective; newly built cells are automatically filled due to parallel increases in incarceration.
- New 2026 Structural Initiatives:
    - Rapid Social Inquiries: Launched on September 1, 2026, across 5 prison services (SPIP) and 6 courts to provide immediate alternative sentencing profiles and cut delays for electronic monitoring setup.
    - Probationary Judicial Control (CJPP): A specialized trial for domestic violence offenders that enforces multidisciplinary housing placement, preventing recidivism while lowering pre-trial detention numbers.
    - The HORAE Software: A digital tool currently finishing its successful pilot stage across 3 jurisdictions. It tracks pre-trial detentions to eliminate administrative bottlenecks and shorten trial scheduling wait times.
    - National "*fiche correctionnelle*" (Correctional Sheet): Expanding a successful model from Bordeaux, a nationwide working group will begin a rollout to provide judges with standardized data on available local probation and social services, encouraging alternative sentences right at the initial trial.

Discussion and conclusions of the Panel

One of the main theoretical and practical points in our discussion was the need to **deconstruct the mainstream rhetoric that links public safety to retribution** (i.e., harsh prison sentences). On the contrary, as shown in the Estonian case, public safety is increased in systems strongly grounded in social rehabilitative policies and practices.

The Norwegian and Estonian cases also helped argue for a **genuine community-based approach to probation services**. In countries with high prison rates, prison welfare is substituting social and community welfare, leading to expensive social and economic consequences, as well as marginalization and discriminatory effects.

A strong case was made during the debate for the **necessity of data-based criminal policies**, rather than criminal policies based on emotion or reactions to emotions. One interesting example is the Estonian case, where the decrease in the prison rate was sustained by a long-term (and cross-party) political commitment to criminal justice reform. Of course, calls for tougher punishment and increased imprisonment remain a recurring feature of public debate even in Estonia, "yet there is little appetite to return to the situation Estonia faced decades ago, when imprisonment rates were among the highest in Europe and prison conditions reflected the shortcomings of that era." A best practice could come from the Netherlands, which suggested developing data-driven policies through the support of an **independent international pool of experts** and **long-term planning** to escape immediate political pressure. Still, we have seen long-term projects sink or be substantially overthrown—as in the Italian example of the *Stati Generali dell'Esecuzione Penale*—whenever new political forces came into power.

Prison overcrowding may also be addressed through **local initiatives**, as the experience of **France** illustrates. In the absence of a national reform, French judicial and prison authorities have, in certain regions, adopted measures aimed at reducing the prison population. Although these local approaches

have encountered difficulties, they have proved effective in curbing the growth of the prison population and, in some cases, in reducing overcrowding. Further measures that strengthen the involvement of rehabilitation and probation services in decisions on sentence management have also helped to streamline decision-making. These examples demonstrate that meaningful progress in tackling prison overcrowding can be achieved within existing legal framework.

Another relevant issue was the **length of sentences**. The scale and length of available sentences have a major effect on the size and composition of the prison population. In this domain, we discussed the **sustainability dilemma of short-term sentences**: the revision of the sentencing scale could consider the replacement of short prison sentences with non-custodial measures. However, research shows that policies aimed at reducing the use of imprisonment for less serious offences may be accompanied by a parallel hardening of the penal response towards offences or offenders classified as serious, persistent, or dangerous (and by judicial, behavioural, and psychological trends toward increasing the sentence term in order to achieve a prison response in some cases). Concerning **long-term sentences**, overall, it has been demonstrated that long sentences correlate with high incarceration rates, and therefore impact prison density (See Aebi, M. F. and Cocco, E., *Prisons and Prisoners in Europe 2025: Key Findings of the SPACE I survey*, 2026, p. 3. Especially: "Long sentences correlate with high incarceration rates: Countries with elevated prison population rates often report a long average length of imprisonment. This pattern suggests that beyond crime rates or admission flows, sentencing practices - particularly the length of custodial sanctions - play a central role in shaping prison populations over time"). It is important to consider the need for a reduction in the use of long prison sentences.

The panel discussed the issue of the length of sentences by pointing to the fact that for both short-term and long-term sentences, the crucial aspect to evaluate is: what is being done in prison? What individualized sentence plan (or individual treatment plan) is possible as a core requirement for managing prisoners to facilitate social reintegration and respect human dignity? This is a pivotal question to pose to prison policies and sentencing policies alike.

On the long-term sentences area, the Moderator suggested the need to consider the phenomenon of the **criminalization trends of contemporary international human rights law**. Contemporary international human rights law (IHRL) has experienced a profound shift from "human rights by persuasion" (diplomacy, monitoring, and state reporting) to "human rights by coercion" (mandated criminalization, prosecution, and individual punishment). Rather than relying purely on state compliance or systemic and structural remedies, international bodies, courts (such as the European Court of Human Rights - ECtHR), and human rights advocates increasingly demand that states enact criminal legislation, investigate aggressively, and penalize violations. By utilizing the penal system as the primary tool to enforce human rights standards, international frameworks inadvertently fuel a global incarceration crisis. It is pivotal to reflect on this dichotomy and to try to reconcile this conflict. To balance the duty to prosecute severe rights abuses with the obligation to maintain humane conditions, international bodies, including the UN Office on Drugs and Crime (UNODC) and the UN Human Rights Council, advocate for a paradigm shift:

1. **Decriminalization:** Removing minor, petty, and status offenses from criminal codes completely.
2. **Imprisonment as a last resort:** Legally binding justice systems to utilize non-custodial measures—such as community service, electronic monitoring, and robust probation models—throughout the entire criminal process.

3. **Statutory capacity caps:** Establishing strict, legally enforceable maximum capacities for detention centres to prevent judicial systems from over-allocating human bodies to insufficient spaces

The Panel also debated **electronic monitoring measures**, discussing their effectiveness (again, in terms of rehabilitative attitude) and the perception of this kind of measure within the judiciary, at a political level, and in society and public debate. Drawing on the Estonian and Norwegian cases, the lesson to be learned is that technology is not a solution in itself. Electronic monitoring is valuable, but it works best when combined with probation supervision, treatment programmes, and practical reintegration support.

One final and pivotal point surfaced among all the participants of the Panel: the urge to **increase the role and support of Europe** to pressure governments to study and find effective solutions to prison overcrowding and change the narrative concerning public safety in European countries and societies.

Moderator conclusions

We can try to summarise some of the points raised during the panel discussion and attempt to incorporate them into policy memos:

- Prison cannot and should not be regarded as a panacea for all society's ills. It is only one component of the criminal justice system and should not be seen as its central or indispensable element. If the system is to be effective, it must do more than punish: it must provide genuine opportunities for rehabilitation, without which the risk of reoffending rises considerably.
- **Call on States to ensure a coherent penal policy** resolutely aimed at reducing the overall footprint of imprisonment, while undertaking a comprehensive recalibration of sentencing scales across the entire spectrum of custodial penalties. Such reforms must be guided by the principles of restraint, parsimony, and proportionality, reserving incarceration strictly for cases where a less restrictive sanction would be insufficient. States should avoid "bifurcated" reforms where reductions in custody for minor offenses are offset by increasingly severe or prolonged sentences for other categories of crimes. Furthermore, mandatory minimum sentences and enhanced penalties for recidivism should be abolished.
- **Encourage States to reduce reliance on imprisonment** by acting simultaneously across all available levers. In particular, this should be achieved through decriminalization, reassessing the role of custody within the criminal code, comprehensively reviewing sentencing scales, and expanding sentence adjustments and early-release mechanisms. The development of reliable alternatives to detention, such as electronic monitoring, is a way forward.
- **Urge States to limit the prominence of incarceration** within the penal system. Specifically, drug-related offenses should be addressed as a public health issue rather than through criminal justice interventions.
- **Recommend that States move away from punitive responses** to juvenile delinquency, focusing instead on welfare-oriented solutions. Similarly, offenders with mental health conditions should be diverted from the prison system and provided with care in dedicated therapeutic environments.

- **Emphasize** that addressing overcrowding and prison population inflation requires an **evidence-based, pluralistic debate to prevent short-term, politically motivated measures**.
- **Urge States to provide the public with regular, reliable, and evidence-based information** on the functioning of the criminal justice system. To achieve this, public conferences and forums should be organized systematically, bringing together practitioners, researchers, victims' organizations, NGOs, prisoners, former prisoners, and their families.
- **Call on international and European organizations, national human rights institutions, and monitoring bodies** to support and sustain member states policies aimed at reducing overcrowding and changing the punitive turn rhetoric.