EUROPEAN COMMISSION

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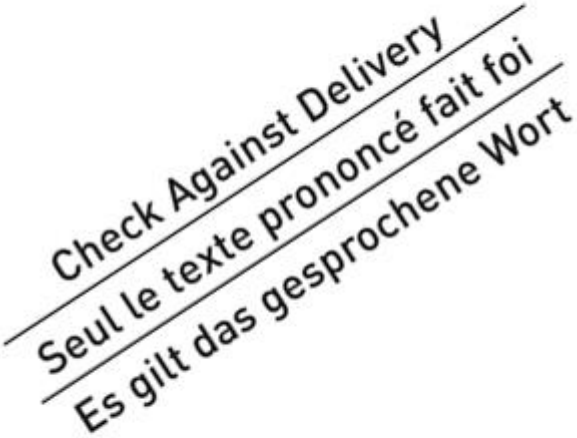
The EU's response to prison overcrowding



High level conference – "Responses to prison overcrowding"

Strasbourg, 24-25/04/2019 at 09.00-10.30

Spokespersons' Service
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SPEECH/XX

Ladies and gentlemen,

Thank you for inviting me to address this distinguished audience. I am impressed that so many professionals and experts from so many countries have come here to discuss the very important topic of prison overcrowding.

Over the last years, we have seen a growing number of pilot judgments relating to this topic from the Strasbourg Court to EU Member States. These judgments have consequences for the individuals concerned, but also for judicial cooperation within the EU.

Our starting point for criminal justice cooperation within the EU is based on mutual trust. We accept judgments from courts in other Member States as if they were judgments from our own national courts.

Our point of departure is that all EU Member States are committed to the principles of freedom, democracy and respect for human rights. And all have adhered to the relevant international law treaties.

So far, two EU legal instruments have a direct link to detention conditions. The European arrest warrant is one. The other – the EU Framework on the Transfer of Prisoners - allows prisoners to be transferred back to their home country in the interest of their social rehabilitation.

But, because of overcrowded prisons, we see more and more delays in surrendering suspects on the basis of an European arrest warrant.

This is a direct consequence of the landmark ruling of the European Court of Justice in the *Aranyosi/Caldararu* case of April 2016 where the Court ruled that judges can no longer "trust" the detention conditions in other EU Member States.

Member States now have to investigate further if there is a real risk of inhuman or degrading treatment in the state, which issued the European arrest warrant. If they receive further information, which means they cannot eliminate the risk, they may have to bring the European arrest warrant to an end.

This may have serious consequences, not least the impunity of the suspected or accused person, who can continue to travel freely within the EU.

Judges therefore now face a difficult dilemma when assessing whether to surrender people to other EU Member States.

It seems that judges may also take a very different approach towards Member States qualified "at risk" and the type of information to be is requested to the issuing State. (For example, does it only relate to the number of square metres available per detainee or also to the time spent outside the cell?). Even within one and the same Member State, judges may take a very different approach.

With more delays in the execution of the European arrest warrants and the increasing number of pilot judgments from the ECHR - which in a way feed into those delays - it becomes apparent that there is more and more interaction between the Council of Europe and the EU.

Today's meeting is one example of this cooperation. It is important to join forces to find common solutions to common problems.

Another example is that, since 2016, we have stepped up the cooperation between the EU and the Council of Europe by funding the creation of a European network of bodies monitoring detention conditions.

The main objective of this network is to enable participants to share know-how and good practices with international monitoring bodies, such as the Committee for the Prevention of Torture.

The Commission also provides funding for the collection of prison statistics in Europe, the so-called SPACE I and II.

At EU level, we have also looked at other possible ways to address the issue of poor detention conditions in some Member States.

The topic of pre-trial detention has been on the agenda for quite some years now. And the Commission performed a comparative law study on it in 2016.

It turned out that, overall, Member States' legislations conform to a reasonably high degree with the European

Court of Human Rights case law and the Council of Europe recommendations.

But, in practice, there are significant shortcomings, notably in relation to the requirement that pre-trial detention should be used as a measure of last resort.

Alternatives to pre-trial detention such as bail, electronic monitoring or an obligation to report to the police, are often not used in practice, although they exist in most legislations.

It also turned out that pre-trial detention remains a sensitive and complex issue.

Increasing a prison's capacity does not solve the problem of overcrowding. The prison population tends to rise at the same rate as the prison capacity.

The focus should rather be on improving existing penitentiary structures. Many of these, in different EU Member States, are obsolete and do not function properly in terms of rehabilitation services.

The Commission has undertaken a mapping exercise to see how different EU funds could be employed to improve the situation in prisons in the Member States.

The European Regional Development Fund can be used under the energy efficiency priority, such as for the installation of central heating, hot water, ventilation systems and isolation of windows and walls, which can directly improve sanitary conditions in prisons.

Many opportunities also exist under the European Social Fund.

Another possibility is training for inmates and staff, social reintegration and programmes enhancing employment opportunities after release.

Ladies and gentlemen,

In concluding, I would like to mention the importance of alternatives to detention.

I have already mentioned the pilot judgments of the European Court of Human Rights. These pilot

judgements may also contain concrete instructions for Member States to adopt alternatives to imprisonment.

This is very important for cooperation at EU level. Indeed, we have two EU Framework Decisions under which Member States committed to accepting alternative measures, both in the pre-trial and the post-trial stage.

However, this does not work so well in practice. Even if the Framework Decisions impose on the Member States to adopt a number of alternatives, you need a certain practice and a developed probation structure to use these alternatives. And that is what could be improved in a number of Member States.

Although some Member States are already well advanced, it is an area in which there is much to gain at EU level.

Exchanges of good practice are helpful to find out why some alternatives do work in some Member States but not in others. A good example is the electronic monitoring, bracelet, which works well in many countries bus is not used in others.

What I would very much like to achieve is a discussion at European level on alternatives in a structured way. This conference will be a first step in the right direction.

Thank you very much for your attention and I wish you very fruitful discussions today and tomorrow.

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