

ANNEX 2

PRIMARY SOURCES

EUROPEAN PRISON LITIGATION NETWORK (EPLN)

Réseau Européen de Recherche et d'Action en Contentieux Pénitentiaire (RCP)

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- I. Ciorap v. Moldova, no. 12066/02, 19 June 2007 (complex problem, closed) & I.D. v. Moldova, no. 47203/06, 30 November 2010 (complex problem, pending)

Case description: <https://hudoc.exec.coe.int/eng?i=004-7196>

In *Ciorap*, the Court found that the applicant had been held in “inhuman” detention conditions, “in particular as a result of extreme overcrowding” (§ 70). The Court made no recommendation in this case.

In *I.D.* the Court further found that the applicant had no effective remedy to challenge his detention conditions. In a later judgment examined under the same group (*Shishanov v. Moldova*, no. [11353/06](https://hudoc.exec.coe.int/eng?i=11353/06), 15 December 2015), the Court requested the authorities to put in place a system of remedies in respect of inadequate detention conditions.

Progress made in the execution of the judgment were examined by the Committee of Ministers, for Ciorap: in **December 2013** (1186th meeting), **September 2016** (1265th meeting), **June 2017** (1288th meeting), **March 2018** (1310th meeting); for I.D.: in **June 2019** (1348th meeting), in **June 2021** (1406th meeting), in **September 2022** (1443rd meeting).

A. Ciorap – 1186th meeting - 3-5 December 2013

(1) Notes prepared by the Secretariat: https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016805c6e4c#Ciorap

The Secretariat stated that “it is important to intensify the efforts made to combat overcrowding, **notably as regards the development of alternatives to detention**”.

(2) CM decision: [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2013\)1186/12](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2013)1186/12)

The CM:

- “further encouraged the Moldovan authorities to intensify their efforts to combat overcrowding, **notably as regards alternatives to detention**”
- “encouraged more generally the Moldovan authorities to take due account of the **recommendations of the CPT as well as all relevant recommendation by the Committee of Ministers**”

B. Ciorap – 1265th meeting – September 2016

(1) Notes prepared by the Secretariat: <https://hudoc.exec.coe.int/eng?i=CM/Notes/1265/H46-18E>

In view of the major challenge posed by overcrowding, the Secretariat therefore called for “**a clear and coherent strategy for the reduction of prison overcrowding, including a variety of steps to ensure that imprisonment is the measure of last resort**”. The Secretariat recommended the authorities to be guided by “**the Committee’s Recommendations, notably No. Rec(99)22 concerning prison overcrowding and prison population inflation, the CPT recommendations, as well as to draw inspiration from the activities carried out within the [Human Rights Trust Fund] project.**”

(2) CM decision: [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2016\)1265/H46-18](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2016)1265/H46-18)

The CM:

- “strongly urged the authorities to adopt, as a matter of priority, a **comprehensive strategy drawing full inspiration from the relevant recommendations of the Committee of Ministers and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) as well as expert opinion from the project funded by the Human Rights Trust Fund (HRTF)**”.

C. Ciorap – 1288th meeting - June 2017

(1) Notes prepared by the Secretariat: <https://hudoc.exec.coe.int/eng?i=CM/Notes/1288/H46-19E>

The Secretariat welcomed and encouraged the measures adopted by the authorities following the *Shishanov* judgment, considered as a “systemic approach aimed at addressing the overuse of deprivation of liberty and prison overcrowding” which include “**the identification of root causes of these issues, revision of criminal law, assessing the prison capacity, prevention and dealing with recidivism and wider use of alternatives to detention**”.

(2) CM decision: [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2017\)1288/H46-19E](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2017)1288/H46-19E)

The CM:

- “noted with interest the information provided with respect to the **systemic approach adopted by the authorities** to fight overcrowding and strongly encouraged them to continue taking measures to reduce the number of detainees”.

D. Ciorap – 1310th meeting, 13-15 March 2018

(1) Notes prepared by the Secretariat: <https://hudoc.exec.coe.int/eng?i=CM/Notes/1310/H46-11E>

The Secretariat noted that the measures adopted so far “have allowed a slight reduction in the overall number of convicted detainees, although the number of remand detainees has slightly increased” and therefore urged the authorities “to continue taking measures to combat overcrowding and provide information on the progress achieved”.

(2) CM decisions [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2018\)1310/H46-11E](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2018)1310/H46-11E)

The CM “urged the authorities to intensify their efforts to fight overcrowding, **drawing inspiration from the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the relevant recommendations of the Committee of Ministers and to inform the Committee about the progress achieved**”.

E. 1348th meeting - June 2019

(1) Notes prepared by the Secretariat: <https://hudoc.exec.coe.int/eng?i=CM/Notes/1348/H46-16E>

Overcrowding

The Secretariat noted that while “legislative amendments [...] related to **release on parole and replacement of imprisonment with non-custodial punishment** brought a notable reduction of the number of prisoners”, prison density rates remained above the European median in 2018. The Secretariat referred to the ECtHR *Draniceru* decision (no. [31975/15](#), 12 February 2019), which encouraged “**the domestic courts to reduce the use of pre-trial detention and increase the use of non-custodial alternatives**”.

(2) CM Decision ([https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2019\)1348/H46-16E](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2019)1348/H46-16E))

The CM:

- “noted with interest that the measures taken so far allowed a reduction of the prison population in 2018 and **strongly encouraged the authorities to pursue their efforts to further reduce overcrowding, including through reduced recourse to detention on remand**”.

F. 1377th meeting – June 2020

(1) Notes prepared by the Secretariat: <https://hudoc.exec.coe.int/eng?i=CM/Notes/1377/H46-21E>

The secretariat noted that the Government has decided to temporarily suspend “the reduction of sentences as a compensatory remedy for inadequate conditions of detention” in order to “assess its impact and to redress possible legislative deficiencies”. The Secretariat also noted that overcrowding remains dire in the country.

(2) CM decision: [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2020\)1377/H46-21E](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2020)1377/H46-21E)

The CM:

- “invited the authorities to complete the revision of the **system of reduction of sentences as a compensatory remedy** without delay, strongly encouraged them to closely cooperate with the Secretariat in this reform process and to keep the Committee of Ministers informed of all developments in a timely manner”

G. 1406th meeting – 7-9 June 2021

(1) Notes prepared by the Secretariat: <https://hudoc.exec.coe.int/eng?i=CM/Notes/1406/H46-19E>

Referring to the [2020 CPT report](#) showing that “prison overcrowding continues to represent a significant challenge, in particular in remand prisons” the Secretariat suggested to urge the authorities to “adopt, as a matter of priority, a clear and coherent strategy to fight prison overcrowding”, which “should consider the root causes of overuse of deprivation of liberty and of prison overcrowding and establish steps to be taken to ensure that imprisonment is a measure of last resort. This should include a multitude of measures: the revision of penal law, adjustment of prison sentences, increased use of alternatives to imprisonment, community sanctions and measures facilitating the reintegration of prisoners in society.”

Referring to the *Draniceru* decision (cited above), the Secretariat emphasized that “measures should also be taken to reduce the number of detainees on remand”.

The Secretariat recommended the authorities to be guided by “the Committee’s Recommendations, notably No. Rec(99)22 concerning prison overcrowding and prison population inflation as well as CPT recommendations.” while defining measures, and to take full advantage of the technical assistance available under the Council of Europe Action Plan for the Republic of Moldova 2021 – 2024.

(2) CM decision: [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2021\)1406/H46-19E](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2021)1406/H46-19E)

The CM:

- noted with concern that overcrowding remains a major challenge and strongly urged the authorities to “adopt, as a matter of priority, a comprehensive strategy to fight prison overcrowding, in particular by adjusting the prison sentences, promoting the use of alternatives to imprisonment and reducing the use of pre-trial detention” taking full advantage of the technical assistance available under the Council of Europe Action Plan for the Republic of Moldova 2021 – 2024.

H. 1443rd meeting - 20-22 September 2022

(1) Notes prepared by the Secretariat: <https://hudoc.exec.coe.int/eng?i=CM/Notes/1443/H46-17E>

The Secretariat noted “the steps taken thus far to address the phenomenon of prison overcrowding [i.e., the legislative amendments of July 2017 related to release on parole and replacement of imprisonment with non-custodial punishment] have [achieved] no significant progress [...] in overcoming this structural problem”.

The Secretariat underlined that “it does not appear that [...] the authorities would have any strategic approach directed to decrease overcrowding” and recalled that “considering the complexity of the issues at stake, the adoption of a clear and coherent strategy is an indispensable step”.

(2) CM decision: [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2022\)1443/H46-17E](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2022)1443/H46-17E)

The CM deplored that “no action has been taken by the authorities to respond to the Committee of Ministers’ repeated invitation to adopt a strategy to fight overcrowding” and “urged them again to develop such a strategy, without any further delay, and strongly encouraged them to request the expert assistance in this process from the Council of Europe”.

II. *Orchowski v. Poland*, no. 17885/04, 22 October 2009 & *Norbert Sikorski v. Poland*, no. 17599/05, 22 October 2009 (pilot, closed)

Cases description: <https://hudoc.exec.coe.int/?i=004-39886>

In these judgments, the Court held that “since 2000 overcrowding in Polish prisons and remand centres revealed a **persistent structural dysfunction**” (*Sikorski*, § 147). The Court also requested the authorities to put in place a system of remedies in respect of inadequate detention, especially of preventive nature as the current remedy (only of compensatory nature), is unable to impact on the root causes of the problem (*Orchowski*, § 154). The Court also stated that “If the State is unable to ensure that prison conditions comply with the requirements of Article 3 of the Convention, it must abandon its strict penal policy in order to reduce the number of incarcerated persons or put in place a system of alternative means of punishment” (*Orchowski*, § 153)

The cases were not immediately qualified as pilot by the Court, but it were in a subsequent case (*Łatak v. Poland*, see below).

Progress made in the execution of the judgment were examined by the Committee of Ministers in **September 2011 (1120th meeting)** and in **March 2013 (1164th meeting)**. It was closed by a resolution adopted in 2016.

A. 1120th meeting, September 2011

(1) Notes prepared by the Secretariat: https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016805c185c

Remedy: The Secretariat noted that the ECtHR rendered two inadmissibility decisions (*Łatak v. Poland*, no. 52070/08, 12 October 2010 and *Łomiński v. Poland*, no. 33502/09, 12 October 2010) following the adoption of a legislation “setting a statutory minimum space of 3m² per person and providing the possibility for inmates to request to be moved away from prisons where this limit was not granted to prisons with better conditions and the possibility for them to bring a civil claim concerning overcrowding”.

Overcrowding: the Secretariat noted that a recent CPT report stating that overcrowding was still persistent in the facilities visited, and recommended the authorities to “revise the standards established by law for the living space per single prisoner, ensuring that they provide for at least 4m² per inmate in multi-person cells”.

(2) CM decision: https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016805c185c

In its decision, the CM:

- Noted with interest information submitted “detailing significant measures taken by the authorities to reduce overcrowding in prisons and remand centres, which remain to be assessed” (see below);

B. 1164th meeting, 7 March 2013

(1) Notes prepared by the Secretariat: https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016805c89e5

Overcrowding: The Secretariat considered that additional information is required to assess the impact of the measures taken by the authorities. The Secretariat summarised the updated Action plan submitted by Poland, indicating that the measures taken so far to tackle overcrowding include: “the amendment of the Code of Execution of Criminal Sentences, **limiting the possibility of placing a detainee in a cell with personal space below statutory 3m² to only exceptional circumstances and for a specified period of time** [...]; the adoption of the **Law on electronic surveillance** of persons serving a sentence outside penitentiaries and providing a **possibility for execution of short-term penalties outside prison facilities** [...]; **acquiring new places in prison facilities**, through investments and renovation; **constant monitoring of the density** of the prison population by the Ministry of Justice”. The Secretariat underlined that additional information is needed on the implementation and impact of the **system of electronic surveillance** that was planned to enter into force on 1 January 2012. The Secretariat also noted that information on the length of pre-trial detention was lacking, although the ECtHR “indicated in the *Orchowski* judgment (§ 150) that **the solution of the problem of overcrowding in detention**

facilities in Poland, is indissociably linked to the solution of the problem of the excessive length of pre-trial detention in Poland". Progress in this area were examined in the *Trzaska* group of cases (see below).

(2) CM decision: https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016805c89e5

The CM:

- **Noted with satisfaction "the range of measures adopted by the Polish authorities** and presented in the updated action report, in order to tackle the problem of overcrowding in prisons and remand centres";
- required additional information on "the system of electronic surveillance, the impact of the measures adopted to remedy the excessive length of pre-trial detention, examined in the *Trzaska* group of cases [...]" (see below).

C. 1265th meeting – Resolution, 20-22 September 2016

The CM adopted a resolution closing the group of cases: <https://hudoc.exec.coe.int/eng?i=001-167361>

The CM refers to the latest consolidated action report submitted by the Polish authorities: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680684b60

The action report mentions among other things: **promotion of alternatives to detention** (amendments to the Code of Execution of Criminal Sentences to "make the enforcement of penalties in the form of **limitation of liberty** easier and more common"; amendments making the **electronic surveillance** system became "a permanent fixture of the national legal regime" and other amendments providing for the possibility of "**serving penalties of imprisonment (up to one year) in the electronic surveillance system**"), **decriminalization of offenses** ("cycling in a state of intoxication, theft or misappropriation of property worth less than ¼ of the minimum wage").

In application of the *Trzaska* group, the report also mentions a **decrease of the length of pre-trial detention and the number of pre-trial detainees**.

D. ECtHR, *Łatak v. Poland & Łomiński v. Poland*, 12 October 2010

The ECtHR issued inadmissibility decisions with respect to applicants who complained of inadequate detention conditions for non-exhaustion of domestic remedies.

See press release: <https://hudoc.echr.coe.int/?i=003-3404137-3819972>) and *main source*: *Łatak v. Poland* (dec.), no. 52070/08, 12 October 2010: <https://hudoc.echr.coe.int/eng?i=001-101349> / *legal summary*: <https://hudoc.echr.coe.int/tkp197/view.asp?i=002-800>

E. *Trzaska* Group

This group is about **excessive length of detention pending trial** and deficiencies in the procedure for reviewing its lawfulness. The corresponding judgment was issued in 2000. The group is considered closed as of 2014.

See description: <https://hudoc.exec.coe.int/eng?i=004-17749>

"Measures have centred on changing the practice of domestic courts, so that these take full account of the Court's case-law. This has been achieved through **extensive training for judges and prosecutors**, supported by the provision of freely available publications of the Court's case-law with regular updates. In addition, an extensive monitoring system of practice has been put in place.

In addition, the **existing possibilities of alternatives to detention on remand have been supplemented by legislative amendments that limit the grounds for detention, ensure better diligence as regards the presentation of the grounds for detention, limit maximum periods of detention, ensure that excessive delays as regards detention on remand are taken into account at all levels of jurisdiction and provide an appeal mechanism against certain types of decisions extending pre-trial detention**. Some of these amendments were made following judgments of the Constitutional Court applying the Court's case-law.

The overall positive impact of the reforms is demonstrated by **statistics notably demonstrating a very significant reduction in the use of pre-trial detention, a decrease in the number of individuals held in pre-trial detention and a corresponding increase in the use of alternative measures to detention [...]**".

III. Nisiotis v. Greece, no. 34704/08, 10 February 2011 (complex problem, pending)

Case description: <https://hudoc.exec.coe.int/?i=004-15760>

The Court noted that overcrowding is of structural nature (§ 29). It also found that no effective remedy was made available to the applicant. No recommendation was made in the frame of the judgment.

Progress made in the execution of the judgment were examined by the Committee of Ministers in **June 2013** (1172nd meeting), **June 2015** (1230th meeting), **June 2017** (1288th meeting), **September 2018** (1324th meeting), **December 2020** (1390th meeting) and in **March 2022** (1428th meeting).

A. 1172nd meeting – 6 June 2013

(1) Notes prepared by the Secretariat
https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016805c81b4#nisiot

The Secretariat welcomed the measures set out in the government's action plan: legislation providing for the **limitation of use of remand custody for serious offences**, reforming the **system of granting stay of execution**, providing for the **commutation of up to 3 years' imprisonment to fine or community service**, introducing the possibility of **early release**, and introducing a **beneficial calculation of the term of execution of the sentence** for vulnerable group of detainees. The Secretariat also noted that a draft law on electronic surveillance is also being discussed

The Secretariat asked for “**an overall strategy to address the chronic problem of prison overcrowding (e.g. further reinforcing measures alternative to detention)**”, other than simply investing into building extension of detention establishments, but without denying that this could be **part of the solution** to ensure detention conditions fully compliant with the requirements of the judgments. The Secretariat assessed that the “Committee of Ministers' Recommendations in this field as well as other recommendations and advice of the Council of Europe's pertinent expert bodies could be a source of inspiration for the authorities”.

(2) CM decision: [https://hudoc.exec.coe.int/?i=CM/Del/Dec\(2013\)1172/10](https://hudoc.exec.coe.int/?i=CM/Del/Dec(2013)1172/10)

The CM:

- Urged the authorities “**to draw up a comprehensive strategy capable of providing a lasting and sustainable solution to the problem of overcrowding, which should be guided by the various relevant recommendations of the CM as of the CoE specialised bodies**”.

B. 1230th meeting – 11 June 2015

(1) Notes prepared by the Secretariat
https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016805c341b

The Secretariat noted additional measures taken by the authorities to address overcrowding, chiefly “measures aimed at decreasing and modulating the number of the prison population (e.g. early release schemes, conversion of certain prison terms to fines or community service, house arrest under electronic surveillance, transfer of detainees to less populated rural prisons etc.). These measures “focus primarily on limiting the number of persons sent to prison to execute a sentence (alternatives to imprisonment) and on ensuring a reduction of the population of convicted inmates by means of suspension of prison terms or early release schemes.” The Secretariat also suggested to increase the use of “**non-custodial measures in the period before the imposition of a sentence**”. The Secretariat recalled the need for a “**comprehensive strategy to combat overcrowding capable of having a lasting effect on the overall prison population appears crucial**”, explaining that “long-lasting improvements will very much depend on the resolution of the chronic problem of overcrowding”.

(2) CM decision: [https://hudoc.exec.coe.int/?i=CM/Del/Dec\(2015\)1230/9](https://hudoc.exec.coe.int/?i=CM/Del/Dec(2015)1230/9)

The CM:

- Noted that the “measures taken with a view to developing alternatives to imprisonment, [...have] yielded some positive results
- “urged the Greek authorities to enhance their efforts to **draw up a comprehensive strategy capable of providing a lasting and sustainable solution to the problem and which should be guided by the various relevant recommendations of the Committee of Ministers in this field as well as the advice of the Council of Europe specialised bodies**”.

C. 1288th meeting, 6-7 June 2017 (DH)

(1) Notes prepared by the Secretariat <https://hudoc.exec.coe.int/?i=CM/Notes/1288/H46-14E>

The Secretariat welcomed measures taken so far to address prison overcrowding, “in particular the increased use of alternatives to imprisonment, the early release of disabled or elderly persons, and the establishment of a new regime for young offenders”. The Secretariat also recommended to put more emphasis “on **non-custodial measures in particular in the period before sentencing** (as, inter alia, highlighted in a recommendation of the CPT contained in § 63 of its 2016 report) coupled with further **training for judges and prosecutors** [...]”. Also, referring to report of National Torture Preventive Mechanism and by the Greek National Commission for Human Rights, the Secretariat noted that “**a more holistic reconsideration of the penal system and the interaction between the legislature (penalty system), the judiciary (sentences) and the correctional system (conditions of detention)** would provide a lasting solution to the problem of prison overcrowding, which is the main cause of sub-standard conditions of detention”.

The Secretariat lastly recalled that “**the drawing up of a comprehensive strategy to combat overcrowding capable of having a lasting effect on the overall prison population appears crucial and should be vigorously pursued in the light of recommendations by the CPT and domestic specialised bodies, as well as the relevant Committee of Ministers’ recommendations**”.

(2) CM decision [https://hudoc.exec.coe.int/?i=CM/Del/Dec\(2017\)1288/H46-14E](https://hudoc.exec.coe.int/?i=CM/Del/Dec(2017)1288/H46-14E)

While noting the measures already taken by the authorities, the CM called upon the authorities vigorously to “**pursue the drawing up and implementation of a comprehensive strategy capable of providing a lasting solution to prison overcrowding and inadequate conditions of detention, in the light of the relevant recommendations of the Committee of Ministers, as well as the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and domestic specialised bodies**”.

D. 1324th meeting, 18-20 September 2018 (DH)

(1) Notes prepared by the Secretariat <https://hudoc.exec.coe.int/?i=CM/Notes/1324/H46-8E>

The Secretariat welcomed the elaboration and implementation of the “Strategic Plan for Prisons 2018-2020 (‘which is the result of a wide consultation with domestic experts and experts from the Council of Europe, including the CPT’) which aims to “the reduction of prison overcrowding through **alternative measures to imprisonment** and their credible implementation as well as the **prevention and control of juvenile delinquency**.” However, the measures taken have “not provided a comprehensive solution”. The Secretariat emphasised the need to use “**non-custodial measures in the period before the imposition of a sentence** [...] coupled with **further training for judges and prosecutors** [...]”.

Also, referring to the 2017 report issued in March 2018 by the Greek Ombudsman as National Preventive Mechanism, the Secretariat noted that “**a more holistic approach is necessary. Parts of this approach are the legislative measures aiming at the reduction of sentences of imprisonment and at the adoption of alternative sanctions** [...]”.

(2) CM Decision: [https://hudoc.exec.coe.int/?i=CM/Del/Dec\(2018\)1324/H46-8E](https://hudoc.exec.coe.int/?i=CM/Del/Dec(2018)1324/H46-8E)

The CM:

- called upon the authorities to provide information on the implementation of the Strategic “so that conclusions can be drawn about its comprehensiveness and capacity to provide a long-term solution to prison overcrowding”

E. 1390th meeting, 1-3 December 2020 (DH)

(1) Notes prepared by the Secretariat <https://hudoc.exec.coe.int/?i=CM/Notes/1390/H46-11E>

The Secretariat noted that “the implementation by the Ministry of Justice of the ‘Strategic Plan for Prisons 2018-2020’ **did not bring to date any major, tangible results**”.

It also noted as positive developments **2019 criminal law amendments, aiming at establishing a more moderate criminal policy and resolving the structural problem of prison overcrowding**. These amendments include “the **abolition of petty offences, suspension of execution of sentences for some crimes, introduction of community service and plea bargaining**. Particular attention was paid to **putting in place alternatives to detention**. Further **extension of the use of measures alternative to detention** (e.g. community service and electronic monitoring) is envisaged.”

Noting that overcrowding persists, the Secretariat called for “**further measures underpinned by a strong and enduring commitment at high political level** to bring about a swift, comprehensive and sustainable resolution of the problem of prison overcrowding and poor conditions of detention”. Also, the Secretariat recalled to “**place greater emphasis on non-custodial measures in the period before the imposition of a sentence and to the use of alternatives to imprisonment**”.

The Secretariat asked the Committee to invite authorities to continue pursuing, “**in close coordination with the Secretariat and the Council of Europe cooperation activities, the necessary prison-related reforms**, taking fully into account the requirements of the European Convention on Human Rights and the Court’s case-law.”

(2) CM decision: [https://hudoc.exec.coe.int/?i=CM/Del/Dec\(2020\)1390/H46-11E](https://hudoc.exec.coe.int/?i=CM/Del/Dec(2020)1390/H46-11E)

The CM :

- Noted with interest the “criminal law **amendments adopted in 2019, aiming at enforcing a more moderate criminal policy and resolving the structural problem of prison overcrowding**, and stressed that their medium and long-term effects still remain to be seen in practice”
- Underlined that “**further measures underpinned by a strong and enduring commitment at high political level** are required to bring about a swift, comprehensive and sustainable resolution of the problem of overcrowding and poor conditions of detention”
- Invited the authorities to continue pursuing, in close collaboration with the Secretariat and the Council of Europe cooperation activities, the necessary prison-related reforms, taking fully into account the requirements of the European Convention on Human Rights and the European Court’s case-law”

E. 1428th meeting, 8-9 March 2022 (DH)

(1) Notes prepared by the Secretariat <https://hudoc.exec.coe.int/?i=CM/Notes/1428/H46-13E>

The Secretariat found that the action plan provided shows that the **Greek authorities** have proceeded with “**rendering more severe sentences for a number of serious criminal offenses**” while **suspending the existing scheme of alternative sentences**”. The Secretariat recalled that CoE and domestic experts have found that “the **increase in punitiveness at the upper level of the penal scale cannot be compensated by the more modest decrease at the lower end**”. Such policy “**usually results in increasing imprisonment rates and, consequently cannot tackle the prison overcrowding consistently**”. The Secretariat suggested the Committee to remind the authorities that their policy “**is likely to result into a further increase of prison inmates**” and therefore, to invite them to “**provide a comprehensive assessment on the concrete impact of the above-mentioned reforms on prison overcrowding**”.

(2) CM decision: [https://hudoc.exec.coe.int/?i=CM/Del/Dec\(2022\)1428/H46-13E](https://hudoc.exec.coe.int/?i=CM/Del/Dec(2022)1428/H46-13E)

The CM:

- Recalled that “the issue of prison detention conditions has been pending before the Committee for more than 10 years and that the Committee has repeatedly urged the authorities to adopt a comprehensive long-term strategy to resolve the problem and introduce a domestic effective remedy”
- Noted that the impact of the Strategic plan “on prison overcrowding is not assessed”
- Noted “with deep concern” that “recent policy changes towards **more severe sentences along with the suspension of enforcement of the alternative sentences scheme is likely to result in a further increase of prison inmates**; invited therefore the authorities to provide a comprehensive assessment on the concrete impact of the above mentioned reforms on prison overcrowding

IV. Mandic v. Slovenia, no. 5774/10, 20 January 2012 (complex problem, closed)

Case description: <https://hudoc.exec.coe.int/eng?i=004-7286>

The case concerned poor conditions of detention in particular due to overcrowding and the lack of an effective remedy to challenge them". The Court did not make specific recommendations.

Progress made in the execution of the case were examined by the CM: in **June 2016** (1259th meeting), in **September 2017** (1294th meeting). The case was closed in 2020 by a CM resolution: <https://hudoc.exec.coe.int/eng?i=001-203100>

A. 1259th meeting, June 2016

(1) Notes prepared by the Secretariat: <https://hudoc.exec.coe.int/eng?i=CM/Notes/1259/H46-32E>

The Secretariat noted that "The Slovenian authorities stated that the most sustainable solution for the problem of overcrowding in Ljubljana prison was to **construct a new prison facility**".

However, the Secretariat insisted that "**the increase in the number of prison places will not alone be sufficient to offer a long-lasting solution to the problem of overcrowding**". In this respect, it is recalled that the CPT encouraged the Slovenian authorities to pursue their endeavours to combat prison overcrowding, including through **increased application of non-custodial measures before imposition of a sentence** (§ 25 of CPT/Inf(2013)16), noting that the authorities should be guided by various recommendations of the Committee of Ministers [see footnote: Recommendation Rec(99)22 of the Committee of Ministers of the Council of Europe concerning prison overcrowding and prison population inflation, Recommendation Rec(2000)22 on improving the implementation of the European rules on community sanctions and measures, Recommendation Rec(2003)22 on conditional release (parole) and Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse]. The Slovenian authorities are therefore **encouraged to promote alternatives to imprisonment and reduce recourse to detention on remand**.

The Secretariat also suggested, as regards remedies, to take the Italian *Torreggiani* pilot-judgment and *Stella* decision as examples. "Moreover, **the measures taken by the respondent State in the case of *Torreggiani* [...] might likewise serve as a source of inspiration.**"

(2) CM decision: [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2016\)1259/H46-32](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2016)1259/H46-32)

The CM:

- "[...] invited the Slovenian authorities to **develop a long lasting solution to the problem of overcrowding** in Ljubljana prison and to improve the living conditions there through the **development of a strategy** for that purpose, while bearing in mind the **possibility of increased application of non-custodial measures, as highlighted by the European Committee for the Prevention of Torture in its relevant reports**"

B. 1294th meeting, September 2017

(1) Notes prepared by the Secretariat: <https://hudoc.exec.coe.int/eng?i=CM/Notes/1294/H46-27E>

The Secretariat noted that "the authorities have [...] devised a **detailed multi-faceted national strategy to combat the problem of overcrowding** [...]. [T]he authorities introduced a **procedure for automatic transfer to other prison facilities if the number of prisoners in Ljubljana prison exceeds 150**. [...] An important focus of the authorities' strategy to combat prison overcrowding included **frequent use of non-custodial measures**. In particular [...] the **State Prosecutor General** issued guidelines on prosecution policy focusing on the **increased use of alternatives to criminal prosecution, notably settlement and suspended prosecution**. Moreover, [...] **suspended sentences were ordered in 75% of cases** [in 2016]; similarly, in 722 cases **settlement** between the State and the defendants was initiated. In addition, the **use of non-custodial measures** has increasingly been promoted" in the form of **weekend sentence** and **house arrest** replacing prison sentences. Also, the authorities

introduced a **dedicated probation body** and is aimed at increasing further the application of non-custodial measures.”

(2) *CM decision:* [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2017\)1294/H46-27E](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2017)1294/H46-27E)

The CM:

- “welcomed the strategic vision pursued by the authorities to combat overcrowding in Ljubljana prison”;
- “noted further, with satisfaction, that as a result of the comprehensive and multifaceted approach adopted by the authorities to combat overcrowding, each prisoner in Ljubljana prison is currently afforded at least 4.5 square metres of living space”.

V. Ananyev v. Russia, no. 42525/07, 1 October 2012 (pilot, pending)

Case description: <https://hudoc.exec.coe.int/?i=004-14142>

“This group of cases concerns, in particular, poor conditions of pre-trial detention in the remand centres (“SIZO”) and the lack of an effective remedy in this respect (violations of Article 13). The Court, while recalling that it is not its “task to advise the respondent Government about such a complex reform process, let alone recommend a particular way of organising its penal and penitentiary system” recommended to lines of actions. First, the Court noted “the close affinity between overcrowding and the equally recurring Russian problem of excessive length of pre-trial detention”. Secondly, it underlined the need for provisional arrangements and safeguards to prevent remand prisons being filled beyond capacity” such as regulations establishing “both maximum and operational capacities for each remand prison, giving remand-centre governors power to refuse additional detainees where capacity would be exceeded”.

Progress made in the execution of the judgment were examined by the Committee of Ministers in **June 2012 (1144th meeting)**, **June 2014 (1201st meeting)**, **June 2017 (1288th meeting)** and in **June 2019 (1348th meeting)**.

A. 1144th meeting, 4-6 June 2012

(1) Notes prepared by the Secretariat:
https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016805ca89c

The Secretariat recalled that the Court, while abstaining from “indicating specific reforms which should be undertaken by the Russian authorities” nevertheless “suggested a number of avenues and underlined that two issues should in particular be addressed by the Russian authorities, namely the problem of excessive length of pre-trial detention and possible additional ways of combating the overcrowding through provisional arrangements and safeguards against the admission of prisoners in excess of the prison capacity.”

(2) CM decision: [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2012\)1144/17](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2012)1144/17)

The CM:

- “recalled that the existence of the structural problems and the pressing need for comprehensive general measures had already been stressed by the Committee of Ministers in the Kalashnikov group of cases”. This group of cases strongly encouraged the Russian authorities to give priority to reforms aiming at reducing the number of persons detained on remand and to other measures combating the overcrowding of remand facilities by **1) ensuring that judges, prosecutors and investigators** consider and use **detention on remand as a solution of last resort** and make wider use of alternative preventive measures; 2) ensuring the availability at the national level of effective preventive and compensatory remedies allowing adequate and sufficient redress for any violation of Article 3 resulting from poor conditions of detention on remand

B. 1157th meeting, December 2012

(1) Notes prepared by the Secretariat:
https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016805c9669

The Secretariat noted that, prima facie, the Action plan submitted by the authorities seems to be consistent with the Court’s finding and to follow “a coordinated and comprehensive approach to the resolution of this structural problem, as has been advocated on several occasions by the Committee of Ministers”. The action mentions measures in three directions (Measures aimed at ensuring a **more balanced approach toward the choice of a preventive measure for suspects and persons accused of having committed a criminal offence, including measures aimed at a wider recourse to alternative measures to detention**; Measures aimed at further improvement of material conditions of detention; Measures aimed at the setting up of domestic compensatory and preventive remedies and at further improvement of the existing ones.)

(2) CM decision: https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016805c9669

The CM:

- “noted with satisfaction that the action plan is **based on a comprehensive and long-term strategy** for the resolution of the structural problem identified by the Court”

C. 1201st meeting, 3-5 June 2014

(1) Notes prepared by the Secretariat
https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016805c5b0b#ANA

The Secretariat recalled that the action “provided in October 2012 included information concerning five main focal points: 1) measures aimed at ensuring a more balanced approach toward the choice of a preventive measure for suspects and the accused; 2) measures aimed at further improvement of material conditions of detention; and 3) measures aimed at setting up new domestic preventive and compensatory remedies and at further improvement of the existing ones; 4) awareness-raising activities; 5) closer co-operation with the civil society institutions.”

The Secretariat focused on the examination of measures aiming at setting up remedies. In this framework, it suggested that “**mitigation of sentence** may additionally be explored by the Russian authorities as a form of compensation”, as mentioned in the Ananyev judgment (§§ 222 et seq.)

(2) CM decision: [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2014\)1201/15](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2014)1201/15)

The CM :

- “recalled the decision adopted at their 1157th meeting (December 2012) (DH) in which they noted with satisfaction that the action plan provided by the Russian authorities in October 2012 was based on a comprehensive and long-term strategy for the resolution of the structural problem identified by the Court”;
- “expressed satisfaction that the Russian authorities have undertaken significant efforts to ensure the swift resolution of similar cases pending before the Court, in line with the Court’s indication made in its pilot judgment”;

D. 1288th meeting, 6-7 June 2017

(1) Notes prepared by the Secretariat: <https://hudoc.exec.coe.int/eng?i=CM/Notes/1288/H46-24E>

Overcrowding

The Secretariat noted that “the authorities have introduced a number of **internal guidelines** aimed at speeding up investigations and **encouraging domestic courts to apply alternative measures of restraint, e.g. home arrest**. The figures provided by the authorities show a steady decrease in detention orders and an increase in orders for other measures of restraint. The authorities are encouraged to continue their efforts, based on the presumption in favour of liberty under Article 5 of the Convention, in directing the domestic courts and investigators **to order detention on remand as an exception.**”

Remedy

Referring to the analyse of the compensatory measures made by the Committee in the case of *Torregiani and Others v. Italy* (No. [43517/09](#)), the Secretariat suggested the authorities could explore “**whether means to mitigate or reduce sentences and provide for early release could be introduced**”

(2) CM decision: [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2017\)1288/H46-24E](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2017)1288/H46-24E)

The CM :

- “welcomed, similarly, the further measures adopted to address the problem of overcrowding in facilities for detention on remand by ensuring that criminal investigations are conducted expeditiously and that less recourse is made to pre-trial detention, notably through **increased use of alternatives thereto**”
- “invited the authorities to explore other possible compensatory measures, such as **systems for the reduction of sentences** (see for example the case of *Torreggiani and Others v. Italy* [...]).”

E. 1348th meeting, 4-6 June 2019

(1) *Notes prepared by the Secretariat:* <https://hudoc.exec.coe.int/eng?i=CM/Notes/1348/H46-23E>

The Secretariat summarised a number of measures taken to reduce the use of detention on remand (amendments requiring “investigators to provide more details about the reasons for which they request the courts to extend pre-trial detention” and “to provide a date until which the detention is prolonged”, introduction of a new alternative measure of restraint, awareness-raising activities towards prosecutors and investigators) and to detention (introduction of the sanction of community work, introduction of special rules on “how the time spent in detention on remand should be taken into account when a person is given a custodial sentence”). The Secretariat welcomed these efforts, while noting that “further progress appears possible, notably **taking into account the persistent problem of unsubstantiated court decisions ordering or extending pre-trial detention and other similar problems**” (see *Klyakhin* group of cases).

(2) *Decision of the CM:* [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2019\)1348/H46-23E](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2019)1348/H46-23E)

The CM:

- “welcomed the measures adopted to reduce overcrowding, notably through reducing recourse to pre-trial detention and to custodial sentences, and the reduction by over 30 per cent in the numbers of both remand and convicted prisoners”
- “noted however with concern that the European Court continues to deliver judgments finding overcrowding in a number of detention facilities and invited the authorities to provide information on the measure taken to address this problem”

Case description: <https://hudoc.exec.coe.int/?i=004-45036>

The cases examined in this group concern poor conditions of detention in Italian prisons, resulting mainly from a structural problem of overcrowding. In the pilot judgment “Torreggiani”, the ECtHR requested Italy to put in place a remedy or combination of remedies providing redress in respect of violations resulting from overcrowding in prison. Significantly, the Court recalled its subsidiary role (original quote, in French: “*Il n’appartient pas à la Cour d’indiquer aux États des dispositions concernant leurs politiques pénales et l’organisation de leur système pénitentiaire. Ces processus soulèvent un certain nombre de questions complexes d’ordre juridique et pratique qui, en principe, dépassent la fonction judiciaire de la Cour. Néanmoins, elle souhaite rappeler dans ce contexte les recommandations du Comité des Ministres du Conseil de l’Europe invitant les États à inciter les procureurs et les juges à recourir aussi largement que possible aux mesures alternatives à la détention et à réorienter leur politique pénale vers un moindre recours à l’enfermement dans le but, entre autres, de résoudre le problème de la croissance de la population carcérale (voir, notamment, les recommandations du Comité des Ministres Rec(99)22 et Rec(2006)13.*” (§ 95).

The Court however recommended general measures such as increasing the use of non-custodial punitive measures and minimising the use of pre-trial detention (§ 94).

Progress made in the execution of the judgment were examined by the Committee of Ministers in several meetings, including, for Sulejmanovic: in **September 2012 (1150th meeting)**, for Torreggiani: in **March 2014 (1193rd meeting)**, in **June 2014 (1201st meeting)** and in **December 2014 (1214th meeting)**. Both cases were closed by a common resolution dated 8 March 2016.

A. Sulejmanovic – 1150th meeting, 24-26 September 2012

(1) Notes prepared by the Secretariat:
https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016805c9ac7

The authorities’ action plan sets out “various measures intended to address the issue of prisons’ overcrowding”. On the **creation of prison places**, the Secretariat recalled that Recommendation R(99)22 on prison overcrowding and prison population inflation, “stressed that “[...] **the extension of the prison estate should rather be an exceptional measure, as it is generally unlikely to offer a lasting solution to the problem of overcrowding** [...]” and that “[...] measures aimed at combating prison overcrowding and reducing the size of prison population **need to be embedded in a coherent and rational crime policy** directed towards the prevention of crime and criminal behaviour, effective law enforcement, public safety and protection, the individualisation of sanctions and measures and the social reintegration of offenders [...]”.

The Secretariat also took note of **penal policy measures** such as the development of **alternatives to detention**, the **decriminalisation of petty offences**, and the **increased recourse to probation**, and the **increase of the use of house arrest: for sentences up to 1 year and, for the final part of the sentence, by rising the “threshold (from 1 year to 18 months) of the final part of longer prison sentences for application of house arrest”**.

Noting that the measures adopted “have only brought a modest decrease of the prison population” the Secretariat suggested to “strongly encourage the Italian authorities to enhance their efforts in this respect, bearing in mind in particular the above-mentioned Recommendation R(99)22”.

(2) CM decision: https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016805c9ac7

The CM:

- “noted with interest the efforts made by the Italian authorities in the framework of the “Prison plan” (“Piano carceri” plan) aiming, notably, at increasing the capacity of prison establishments”
- “noted [...] with interest the measures aimed at **encouraging alternatives to detention**, the draft law on **decriminalisation of petty offences** and the **widening of the recourse to probation**”
- “strongly encouraged the Italian authorities to redouble their efforts so as to **find a lasting solution to the problem of overcrowding taking into account Recommendation (99)22 of the Committee of**

Ministers concerning prison overcrowding and prison population inflation, and of its other pertinent recommendations in this respect”

B. Torreggiani & Sulejmanovic group – 1193rd meeting, 4-6 March 2014

(1) Notes prepared by the Secretariat:
https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016805c637c

On the remedies the authorities are to put in place, the Secretariat recalled that “to be fully effective [a preventive remedy] needs to be underpinned by **substantive measures to address overcrowding**”.

In this respect, the Secretariat assesses positively the measures adopted or planned in this objective. These measures include a “greater use of measures **not involving a deprivation of liberty; limit recourse to pre-trial custody; increase access to alternative measures** to prison [...]”.

The Secretariat noted that some measure had already been adopted via a law that “includes **possibilities to grant early release; maximise use of house arrest; reduce use of pre-trial detention and increases eligibility for release on licence**.” Other are being discussed in Parliament, such as the possibility to “‘stay’ criminal proceedings for juvenile offenders, and to use imprisonment for pre-trial detention as a last resort.”. Other planned measures include “‘urgent legislative initiative’ which will **reduce sentences for some crimes**”.

(2) CM decision: https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016805c637c

The CM:

- Recalled that “to be fully effective [a preventive remedy] needs to **be underpinned by substantive measures to address overcrowding** and in this respect noted with interest the measures [...] which includes **possibilities to grant early release, maximise use of house arrest, reduce use of pre-trial detention and increases eligibility for release on licence**”

C. Torreggiani & Sulejmanovic group – 1201st meeting, 3-5 June 2014

(1) Notes prepared by the Secretariat:
https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016805c5b0b

The Secretariat observed that figures provided by the government indicate a “encouraging, positive trends” in the prison population, which seems to indicate that the measure adopted have an impact.

These measures were mentioned in a previous action plan (see above): “These measures notably **increased the number of days of imprisonment per semester for a prisoner to become entitled to early release; increased use of electronic tagging as an alternative to imprisonment**, as well as **house arrest**; and introduced **more lenient penalties for minor drug-related offences**.”

(2) CM decision: https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016805c5b0b

The CM:

- Welcomed the “**significant results achieved**” in the area of overcrowding “through the **various structural measures adopted** in order to comply with the judgments in this group [Torreggiani & Sulejmanovic], **including an important and continuing drop in the prison population** [...]”;
- Noted “with interest the information provided on the steps taken to establish the compensatory remedy, also required by the pilot judgment [...] will provide for the possibility of a **reduction of sentence for prisoners still serving their penalties** and pecuniary compensation for prisoners who have already been released”

D. Torreggiani & Sulejmanovic, 1214th meeting, 2-4 December 2014

(1) Notes prepared by the Secretariat:
https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016805c4812

The Secretariat to two ECtHR inadmissibility decisions finding the remedies put in place by the authorities to be effective (*Rexhepi and others v. Italy* (47180/10) and *Stella and others v. Italy* (46169/09), *see below*). The Secretariat nevertheless recalled that in the *Stella* decision, the Court indicated that “the grant of monetary compensation **can in no case dispense the state with achieving the necessary structural reforms to resolve the root problem of prison overcrowding**, and the other difficulties generated by it” (§ 20).

In this respect, the Secretariat mentioned the “significant results achieved following the **substantive measures** adopted” with recent statistics continuing “to show the positive trend [a decrease of the prison population and overcrowding] previously observed” (in *Stella* the Court noted that prison overcrowding persisted, though in less dramatic proportions).

The substantive measures commented by the Secretariat include **legislative measures** “aimed at **increasing use of alternatives to imprisonment by removing mandatory imprisonment for a number of minor offences; limiting use of detention on remand for minor offences; and increasing possibilities for prisoners to benefit from early release under supervision** in certain cases” by increasing the number of days of imprisonment per semester for a prisoner to become entitled to early release. The authorities also “**increased use of electronic tagging as an alternative to imprisonment, as well as house arrest; and introduced more lenient penalties for minor drug-related offences**”

(2) CM decision: https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016805c4812

The CM:

- Noted with interest the “latest statistics provided by the authorities, which continue to show the **positive trend previously observed**, and the conclusion of the European Court that, whilst the problem of prison overcrowding persists, it is now **of less dramatic proportions**”;
- “In light of the progress made in executing these judgments, transferred these cases to the standard procedure.”

E. Torreggiani & Sulejmanovic – 1250th meeting, 8-10 March 2016

CM Resolution: <https://hudoc.exec.coe.int/?i=001-161696>

The CM welcomed “the adoption of **major reforms** [by the authorities] aimed at solving the problem of prison overcrowding [see above] and the **significant results** achieved to date in this area”. It decided to close the examination of the case.

F. ECtHR inadmissibility decisions (*Rexhepi and others v. Italy* (no. 47180/10, 2014) and *Stella and others v. Italy* (no. 46169/09, 2014))

In both cases, the Court rejected the applicants’ complaint concerning prison overcrowding for failure to exhaust domestic remedies and declared the applications inadmissible, even though the applications had been lodged before the entry into force of new legislative provisions establishing the said remedies. The Court insisted that the remedies were created as a direct consequence of the pilot judgment.

The Court, desiring “to assert the **crucial importance of its subsidiary role**, [...] considered that there were grounds in the present case for departing from the general principle that the exhaustion requirement should be assessed with reference to the time at which the application was lodged and that this exception could apply to all similar cases pending before it.” (see press release: <https://hudoc.echr.coe.int/eng?i=003-4881114-5965675>).

- Main source: *Stella and others v. Italy* – Judgment: <https://hudoc.echr.coe.int/eng?i=001-146873> / Legal summary: <https://hudoc.echr.coe.int/eng?i=002-10165> (Unless indicated otherwise, the quotes from the legal summary)

The Court examined the effectivity of the remedies. In its assessment of the preventive remedy, it considered the “**crucial aspect**” that “the respondent State had put in place a series of **substantive measures** intended to resolve the structural problem of overcrowding in prisons. Several legislative provisions had been enacted **in**

the area of criminal policy with a view, among other things, to promoting greater use of alternatives to detention and to reducing the sentences laid down for minor offences. The application of those provisions had already resulted in a significant reduction in the prison population and, in so far as they concerned structural reforms to criminal policy, their application was likely to continue to have a favourable impact on prison overcrowding in Italy.

The compensatory remedy offers two types of compensation: “Individuals who were detained and had still to complete their sentence could receive a reduction in sentence equal to one day for each period of ten days of detention that were incompatible with the Convention. Individuals who had served their sentences or in respect of whom the part of the sentence which remained to be served did not allow for full application of the reduction could obtain compensation [...]” The Court stated in this respect that “a reduction in sentence constituted an adequate remedy in the event of poor material conditions of detention in so far as [...] its impact on the length of the sentence of the person concerned was measurable. In addition, this form of redress had the undeniable advantage of helping to resolve the problem of overcrowding by speeding up detainees’ release from prison.” As regards monetary compensation, the Court recalled that it can in no case dispense the state from achieving the necessary structural reforms to resolve the root problem of prison overcrowding (§ 61 of the decision, “*en matière de conditions matérielles de détention l’octroi d’une indemnisation monétaire ne saurait en aucun cas dispenser les États d’accomplir les réformes structurelles nécessaires pour résoudre le problème de fond du surpeuplement carcéral et les autres inconvénients générés par celui-ci*”).

VII. Vasilescu v. Belgium, no. 64682/12, 25 April 2014 (structural problem, pending)

Case description: <https://hudoc.exec.coe.int/eng?i=004-1262>

This case concerns the inhuman and degrading treatment suffered by the applicant due to his conditions of detention. In this judgment, the Court noted that the problems of prison overcrowding, unhygienic and dilapidated prisons were structural in nature (§§ 73 and 127). The Court also noted that detainees had no effective remedies to challenge their detention conditions.

Progress made in the execution of the judgment were examined by the Committee of Ministers in **September 2016** (1265th meeting), **December 2017** (1302nd meeting), **September 2019** (1355th meeting), **March 2021** (1398th meeting), **June 2022** (1436th meeting) and in **September 2023** (1475th meeting)

A. 1265th meeting - September 2016

(1) Notes prepared by the Secretariat: <https://hudoc.exec.coe.int/eng?i=CM/Notes/1265/H46-6E>

Overcrowding

The Secretariat noted with interest the “comprehensive measures taken or envisaged by the Belgian authorities, aimed both at reducing the prison population [through promotion of “alternatives to detention, with increased means for the supervision and the follow up of independent sentences, including electronic surveillance, community service and probation sentences”] and renovating the prison infrastructure”. These two lines of action were defined as “two key aims” that are to be pursued “**to reach a sustainable solution to the problem of overcrowding**”. In this respect, the Secretariat suggested that “**authorities take into account the relevant recommendations and work of the Council of Europe**, including in particular the long-standing recommendations made by the CPT following its visits to Belgium”.

(2) CM decision : [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2016\)1265/H46-6](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2016)1265/H46-6)

The CM :

- “noted with interest the **comprehensive measures taken or envisaged by the Belgian authorities, aimed both at reducing the prison population and renovating the prison infrastructure with a view to, in particular, implementing an appropriate penological policy**; in this respect invited the authorities to pursue determined action rapidly to achieve concrete results while drawing from all the relevant recommendations of the Council of Europe, including those of the Committee for the Prevention of Torture (CPT), and to keep the Committee informed on a regular basis”

B. 1302nd meeting - December 2017

(1) Notes prepared by the Secretariat: <https://hudoc.exec.coe.int/eng?i=CM/Notes/1302/H46-7E>

The Secretariat considered that the four pillars of the 3rd masterplan (construction of new prisons and extension of existing prisons; renovation of prisons; creation of differentiated detention policies; release from prisons of internees), “should ultimately make it possible to respond to the Court's findings”.

The Secretariat also took notes of measures aiming at **promoting alternatives to detention** (electronic surveillance as alternative to pre-trial detention, in addition to conditional release or bail; as for alternatives to detention: addition of electronic surveillance and probation as autonomous sentences, and extended possibility to be imposed probationary sentence as it is made possible for people who had be previously sentenced to a three-year sentence, while the limit was of 12 months before). These measures, according to the Secretariat, “should also contribute to reducing the prison population”.

(2) CM decision: [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2017\)1302/H46-7E](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2017)1302/H46-7E)

The CM:

- Noted “with interest the four complementary pillars of the third masterplan, while inviting the authorities to provide the Committee with a precise timetable for the implementation of its measures; as regards the decrease of the prison population, invited the authorities to provide information on the concrete impact of **alternative measures to detention**, the ongoing initiatives and, if need be, on **conditional release**”.

C. 1355th meeting - September 2019

(1) Notes prepared by the Secretariat: <https://hudoc.exec.coe.int/eng?i=CM/Notes/1355/H46-3E>

While welcoming the authorities' efforts (who are "**pursuing various and complementary measures** in order to achieve the above-mentioned overall objective (increased prison capacity, but in parallel, renovation and closure of dilapidated institutions as well as reflections about the further improvement of alternative measures to detention, the better distribution of detainees and extending the possibilities of open and progressive detention regimes)"), and noting a "significant and constant decrease in the prison population since 2013", the Secretariat recalled that **it has to be "avoided that undue priority is given to increasing the total capacity of the penitentiary" and recalled that it is important "to continue to give priority to the reduction of the prison population and its control"**.

Accordingly, the Secretariat stated that "in addition to respecting the announced deadlines for their construction, the authorities should concentrate their efforts on their objective of reducing the prison population to less than 10,000 detainees – by intensifying their announced reflections to further increase alternative measures to detention, notably pre-trial and for short prison sentences". The Secretariat added that "similar reflections should be carried out in order also to try to increase the measures of adjustment of prison sentences."

The Secretariat regretted that the authorities "do not mention any measure addressed to judges and prosecutors, despite their important role" in increase the "application of alternative measures to detention and of adjustment of prison sentences". It also recalled the importance to ensure that "probation services have sufficient means for their monitoring".

The Secretariat also warned that, according to the [CCSP], "in the absence of appropriate measures, a significant prison population inflation could take place as of 1 October 2020, due to the planned transfer of the prison administration's competences for the execution of sentences of maximum three years to the judge for the enforcement of sentences [and] a law of 5 May 2019 on recidivism [which] should delay the eligibility of many convicted prisoners for conditional release".

(2) CM decision: [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2019\)1355/H46-3E](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2019)1355/H46-3E)

The CM:

- "concerning overcrowding, encouraged the authorities to **rapidly reach their objective of reducing the prison population to less than 10,000 detainees**, by intensifying their reflections to further **increase alternative measures to detention and by carrying out similar reflections on adjusting prison sentences**; invited them in this regard to **raise the awareness of judges and prosecutors concerning their role in the fight against overcrowding**, while ensuring that sufficient resources are allocated to **probation services**; finally, noting with concern that many remand centres remain very overcrowded, called therefore on the authorities to start, as a matter of urgency, reflections on a better distribution of the detainees"

D. 1398th meeting - March 2021

(1) Notes prepared by the Secretariat: <https://hudoc.exec.coe.int/eng?i=CM/Notes/1398/H46-3E>

The Secretariat noted that "despite some progress since the Vasilescu case, **the authorities recall that measures and reflections must continue to put an end to overcrowding** and to ensure conditions of detention in compliance with international standards." Not only does overcrowding remain a serious concern, especially in remand centers, but "**no real progress has been made since 2016 with regard to the authorities' ambition to reduce the prison population to under 10,000 detainees**". In this regard, the Secretariat noted that "**the opportunity presented during the first wave of COVID-19 has been taken but its effects were not maintained over time**". Quoting the CPT, the Secretariat stated that "**the priority in Belgium should be the reduction of the prison population and its control, and not an increase in prison places**".

The Secretariat also suggested to take "**more specific awareness-raising measures for the actors concerned and more dialogue on the ground**, as investigating and sentences enforcement judges, probation services, prison administration, to try to increase alternatives to detention and adjustments of prison sentences, while considering legislative changes to reduce cases of imprisonment".

(2) CM decision: [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2021\)1398/H46-3E](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2021)1398/H46-3E)

The CM:

- “regarding overcrowding, noting with concern that the latest annual rate is the highest since 2014 and that many remand centers remain very overcrowded, exhorted the authorities to urgently put in place any solution to better distribute the detainees, whatever their detention regime”
- “noting the slight decrease in prison population since 2016 despite the authorities' long-standing objective of reducing it, **invited them once again to concentrate their efforts on the wider use of all alternatives to detention and adjustments to prison sentences, while considering legislative changes to reduce imprisonment**; invited, in this regard, the authorities to adopt **more specific awareness-raising measures for the actors concerned, namely the investigating and sentences enforcement judges, the prison administration and the probation services**, and to promote more dialogue between them on the ground”

E. 1436th meeting - June 2022

(1) Notes prepared by the Secretariat: <https://hudoc.exec.coe.int/eng/?i=CM/Notes/1436/H46-03E>

The Secretariat noted with deep concern that, “despite the various measures announced years ago, the situation in Belgian prisons seems to have further worsened since its examination of the case in March 2021” and suggested the Committee to call on the authorities “**to set up, as soon as possible, the Penitentiary Council already provided for in a 2019 law**, in order to evaluate policies and contribute to a comprehensive plan to fight against overcrowding based on an integrated and systematic approach to all its factors and measures permitting surveillance of the evolution in the prison population in real time”.

Recalling the authorities' objective “to reach less than 10,000 detainees”, the Secretariat asked the Committee “to reiterate its firm invitation to the authorities **to concentrate their efforts on a sustainable reduction in the number of detainees, drawing due inspiration from all the Council of Europe's standards and recommendations on combating prison overcrowding and controlling prison population, as well as from the CPT's recommendations and standards and those recalled in the section on the fight against prison overcrowding in its 31th general report**”.

The Secretariat also emphasized the importance to strengthen “**awareness-raising measures for the actors concerned (prosecutors, investigating and enforcement judges, prison administration and probation services) to try to increase, as far as possible, alternatives to detention, in particular to pre-trial detention, and releases on parole**”.

Finally, the Secretariat suggested the Committee “**to reiterate its invitation to the authorities to reduce cases of imprisonment and to invite them to rapidly consider binding measures to regulate the prison population (e.g., numerical limits)**”.

(2) CM interim resolution: <https://hudoc.exec.coe.int/eng/?i=001-218411>

The CM:

- “called upon the authorities, **in view of the seriousness and the long-standing nature of the problems, to set up as soon as possible, the Penitentiary Council provided for by a 2019 law in order to evaluate the policies conducted, and contribute to the elaboration, as soon as possible, of a comprehensive plan to combat overcrowding, based on an integrated and systematic approach to all its factors and measures that make it possible to monitor, in real time, the evolution of the prison population**”
- “reiterated its firm invitation to the authorities to **concentrate their efforts on a sustainable reduction in the number of detainees, drawing due inspiration from all the Council of Europe's standards and recommendations** on combatting prison overcrowding and controlling prison population, in particular those issued by the CPT”
- “invited once again the authorities to **strengthen their means and awareness-raising** measures of competent actors with a view to increasing, as far as possible, alternatives to detention, as well as to **reducing cases of imprisonment**; also **invited the authorities to rapidly consider binding measures to regulate the prison population**”

F. 1475th meeting - September 2023

(1) Notes prepared by the Secretariat: <https://hudoc.exec.coe.int/eng/?i=CM/Notes/1475/H46-09E>

The Secretariat reiterated its call “to set up as soon as possible the Prison Council [...]” (see above). With regard to reducing the prison population, the Secretariat **referred to the statement of the authorities that “the opening of new prison places [...] seems to be leading to an influx of new prisoners”** and asked the Committee

to therefore express its concern regarding “**the fact that the authorities' objective of reducing it to below 10,000 for many years is no longer included in their action plan**”.

Once again, the Secretariat suggested the authorities “**to focus their efforts on a sustainable reduction in the number of detainees and not on increasing prison capacity**, drawing due inspiration from all the Council of Europe's standards and recommendations on combating prison overcrowding and controlling prison population”.

Noting with interest “the increase, throughout the country, of **electronic monitoring as an alternative to detention** (on remand, as an autonomous sentence or a means of enforcing a sentence)”, the Secretariat emphasized the need “**to strengthen the means of the probation services as well as awareness-raising measures among magistrates (public prosecutors, investigating judges and sentence enforcement judges) to increase as far as possible the use of other alternative measures to detention, in particular on remand, and the number of releases on parole**”.

The Secretariat also called The Committee “**to reiterate its invitation to the authorities to reduce the number of cases of imprisonment provided for by law and to consider without delay binding measures to regulate the prison population**”. Indeed, raising “**awareness among magistrates about alternatives to detention no longer seems to be sufficient**, especially as the decisions taken by mayors in an attempt to regulate the prison population are, for the most part, not being respected”.

(2) *CM decision*: [https://hudoc.exec.coe.int/eng/?i=CM/Del/Dec\(2023\)1475/H46-9E](https://hudoc.exec.coe.int/eng/?i=CM/Del/Dec(2023)1475/H46-9E)

The CM:

- “encouraged the authorities to adopt rapidly all necessary and appropriate measures to ensure that the **numerical decrease in the average rate of overcrowding is reflected on the ground and, above all, is sustained over time**; invited once again the authorities to **set up as soon as possible the Prison Council**, provided for in a 2019 law, to assess policies and contribute to a comprehensive plan to combat overcrowding based on an integrated and systematic approach to all its factors and measures allowing to monitor developments in the prison population in real time”
- “expressed their concern regarding the increase in the number of detainees (linked to the increase in prison capacity) and at the fact that the authorities' aim of reducing it to below 10,000 for many years is no longer included in their action plan; **urged the authorities to concentrate their efforts on a sustainable reduction in the number of detainees rather than on increasing prison capacity**, drawing due inspiration from the Council of Europe's standards and recommendations on combating prison overcrowding and controlling prison population, in particular those issued by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment”
- “while noting with interest the **generalised increase in electronic monitoring as an alternative to detention**, urged the authorities to **strengthen the means of the probation services and awareness-raising measures of magistrates in order to increase, as far as possible, the use of other alternatives to detention, in particular on remand, and releases on parole**; also reiterated their invitation to the authorities to **reduce the number of cases of imprisonment provided for by law** and to **consider without delay binding measures to regulate the prison population**, in view of its significant increase”

VIII. Neshkov v. Bulgaria, no. 36925/10, 27 January 2015 (pilot, pending) & Keyahov v. Bulgaria, no. 41035/98, 18 January 2005 (complex problem, pending)

Case description: <https://hudoc.exec.coe.int/?i=004-3945>

The cases examined under this group concern the inhuman and degrading treatment of the applicants in penitentiary facilities in particular owing to overcrowding”.

Ten years after the *Keyahov* judgment, the ECtHR adopted the pilot judgment *Neshkov v. Bulgaria* and asked the authorities to “**create effective preventive and compensatory remedies** [...] and to **address the systemic problems of poor conditions of detention and overcrowding**”. The Court suggested a combination of measures that includes : “the construction of new correctional facilities, better allocation of prisoners in existing correctional facilities, and a reduction of the number of persons serving custodial sentences” (§ 276). Referring to other measures recommended or undertaken in other cases before this Court which “have included reduced recourse to imprisonment as a form of penalty, resorting to shorter custodial sentences, replacing imprisonment with other forms of penalty, increasing the use of various forms of early release, and suspending the enforcement of some custodial sentences” (§ 277).

Progress in the execution of the cases were examined by the CM:

- **Keyahov:** in **November/December 2011** (1128th meeting), in **June 2012** (1144th meeting), in **June 2013** (1172nd meeting)
- **Neshkov & Keyahov:** in **September 2015** (1236th meeting), in **March 2016** (1250th meeting), in **March 2017** (1280th meeting), in **March 2018** (1310th meeting), in **September 2021** (1411th meeting).

A. Keyahov – 1128th meeting, November/December 2011

(1) *Memorandum prepared by the Department for the execution of judgments and decisions of the European Court of Human Rights:*
https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805adccf

Detention conditions: The authorities have mostly taken measures to renovate prisons or build new prisons. However, “overcrowding and poor material and sanitary conditions still persist”.

(2) *CM decision:* https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016805b1668

The CM:

- “noted with interest the adoption by the government on 08/09/2010 of a Programme for improving living conditions in places of detention and an action plan for its implementation for the period of 2011-2013;”
- “invited the authorities to provide information on the impact of the measures already adopted in respect of the shortcomings identified in the judgments of the European Court and on the measures planned and the time-table for their implementation;”

B. Keyahov – 1144th meeting, June 2012

(1) *Notes prepared by the Secretariat:*
https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016805ca89c

The Secretariat took note of a number of measures implemented, among others:

- “some **alternatives to imprisonment** have been more widely used in recent years, such as **more frequent recourse to probation, early release on parole, amnesties and pardon**”;

The Secretariat considered that information was required on e.g. the impact of the construction and renovation works already accomplished on the shortcomings identified in the European Court’s judgments.

(2) *CM Decision:* [https://hudoc.exec.coe.int/eng/?i=CM/Del/Dec\(2012\)1144/7](https://hudoc.exec.coe.int/eng/?i=CM/Del/Dec(2012)1144/7)

The CM:

- “welcomed the efforts of Bulgaria to solve the important systemic problem of overcrowded detention facilities, namely through **more frequent use of alternatives to imprisonment**, as well as through

measures adopted which aim at the achievement of more adequate distribution of detainees between different penitentiary facilities”

- “noted, however, that additional information and clarifications are still required on a number of questions, in particular the functioning modalities of the domestic monitoring mechanisms, the impact of the construction and renovation works already accomplished, the authorities’ precise assessment of the current situation concerning conditions of detention, the construction and renovation works planned for the future, their funding, the time-limits for their implementation as well as their expected impact on the living conditions in the places of detention;”

C. Kehayov – 1172nd meeting, June 2013

(1) Notes prepared by the Secretariat:
https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016805c81b4

The Secretariat noted that overcrowding and poor detention conditions persist and suggested to encourage the authorities to implement their action plan and improve detention conditions “if necessary by continuing to explore **all sorts of possibilities for support and cooperation** in this respect, and by **taking into consideration the recommendations made by national and international monitoring bodies, including in particular the CPT.**” The Secretariat also stated that it would be “helpful to know if the Bulgarian authorities have developed an updated **overall strategy to address the problem of prison overcrowding (e.g. further reinforcing measures alternative to detention)** based on the **relevant recommendations of the Committee of Ministers, as well as other competent bodies of the Council of Europe.**”

(2) CM decision: [https://hudoc.exec.coe.int/eng/?i=CM/Del/Dec\(2013\)1172/7](https://hudoc.exec.coe.int/eng/?i=CM/Del/Dec(2013)1172/7)

The CM:

- “**encouraged the authorities to develop further the use of alternative measures to imprisonment and preliminary detention** and to establish an **updated global strategy to address prison overcrowding**, taking into consideration the **relevant recommendations of the Council of Ministers, as well as other competent bodies of the Council of Europe**”
- “encouraged the authorities to give the highest priority to seeking solutions which would allow them to achieve their goals to improve the conditions of detention, if necessary by continuing to **explore all possibilities of support and cooperation at national and European level**; invited the authorities to establish a revised national programme concerning the improvement of conditions of detention for the period after 2013”
- “invited the authorities to take due account, in their efforts to improve the conditions of detention, of the **relevant recommendations made by monitoring bodies at national and international level, including the CPT and the Ombudsman**”
- “noted that the **improvement of the conditions of detention and the reduction of the prison overcrowding should facilitate the setting-up, at the domestic level, of a preventive remedy** meeting the requirements of the case-law of the Court”

D. Neshkov & Kehayov – 1236th meeting, September 2015

(1) Notes prepared by the Secretariat:
https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016805c2b82

In spite of the regular monitoring of the *Kehayov* group by the Committee of Ministers and recommendations made by the CPT, “the situation has deteriorated, prompting the Court to adopt a pilot judgment on 27 January 2015.” Also, “the CPT was compelled to adopt, on 26 March 2015, a public statement [...] emphasising the **gravity of the problems of overcrowding and poor material conditions**”. The Secretariat emphasised “the **urgent need for the authorities to frame and implement a comprehensive strategy to combat overcrowding and improve detention conditions**”.

The Secretariat noted that the action plan provided “is a step in this direction”, with the following measures being listed:

- “legislative reforms and to bring two closed prison hostels into operation in an effort to reduce overcrowding in Burgas and Varna prisons.”
- “wider use [...] of non-custodial sanctions” having led to a decline of the prison population.
- Working groups were set up to look into the possibility of **relaxing the conditions for parole**, to **review the concept of “dangerous recidivism”** and to **expand the opportunities for initial placement in open prison hostels**. A draft law **widening the scope of electronic surveillance** was also published in June 2015.”

(2) CM decision: [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2015\)1236/6](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2015)1236/6)

The CM:

- “noted with interest the action plan submitted by the authorities, as a step in the right direction, and urged them to frame and implement a comprehensive **long-term strategy to combat overcrowding and improve detention conditions**”;
- noted that “**improving conditions of detention and reducing prison overcrowding are vital for ensuring the proper functioning of the remedies, in particular the preventive remedy**”;
- “with regard more specifically to the problem of overcrowding, noted with interest the information on the reduction that has occurred in the prison population over the past two years and invited the authorities swiftly to **adopt the planned reforms aimed at resolving this problem, in particular wider opportunities for initial placement in open prisons and the use of non-custodial measures**”;

E. Neshkov & Kehayov – 1250th meeting, March 2016

(1) Notes prepared by the Secretariat: <https://hudoc.exec.coe.int/eng?i=CM/Notes/1250/H46-6E>

As regards overcrowding, the Secretariat recalled that significant progress in detention conditions and overcrowding should be achieved before the set-up of remedies, chiefly the preventive remedy, so that they can effectively function.

The Secretariat provided a summary of the measures taken to fight overcrowding: “In recent years, wider use has been made of **non-custodial sanctions** and the prison population has declined. Furthermore, a draft law **widening the scope of electronic surveillance** was also published in June 2015. It is currently before the Parliament. Thus the authorities hope to **expand the application of non-custodial measures**. The draft law of November 2015 provides in addition for the **automatic examination by a court of the possibility to grant conditional release after the detainee has served a predetermined part of his or her sentence**. It provides, moreover, for the possibility **conditionally to release persons who have already benefited from such a measure**.”

(2) CM decision: [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2016\)1250/H46-6](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2016)1250/H46-6)

The CM:

- “strongly encouraged the Bulgarian authorities rapidly to adopt the legislative amendments and other promising measures that they elaborated in response to the pilot judgment Neshkov and others and to the public statement of the CPT adopted on 26 March 2015; invited the authorities to integrate these reforms into a **long term strategy aimed at combatting prison overcrowding and poor material conditions of detention**”
- “recalled that improving conditions of detention and reducing prison overcrowding are vital for ensuring the proper functioning of the remedies”

F. Neshkov & Kehayov – 1280th meeting, March 2017

(1) Notes prepared by the Secretariat: <https://hudoc.exec.coe.int/eng?i=CM/Notes/1280/H46-9E>

The Secretariat noted that the authorities “adopted at the end of January 2017 important new legislation, as well as a number of other legislative and practical measures.” This reform “provides for **wider recourse to placement in open prison hostels** and for the **application of criminal and penitentiary policy measures**” allowing for e.g. a “**wider use of non-custodial sanctions**”, the “**widening [of] the scope of electronic monitoring**” and the possibility for detainees to file “**requests for conditional release** directly with the competent court.”

(2) CM decision: [https://hudoc.exec.coe.int/eng/?i=CM/Del/Dec\(2017\)1280/H46-9E](https://hudoc.exec.coe.int/eng/?i=CM/Del/Dec(2017)1280/H46-9E)

The CM:

- “noted with satisfaction that an **important legislative reform** has recently been adopted in response to the pilot judgment *Neshkov and Others* and the public statement of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment of 26 March 2015; strongly encouraged the authorities to continue their efforts to implement all the promising measures they have indicated;”
- “as concerns prison overcrowding, invited the authorities rapidly to implement the measures foreseen in the recent legislative reform [...]”

G. Neshkov & Kehayov – 1310th meeting, March 2018

(1) Notes prepared by the Secretariat: <https://hudoc.exec.coe.int/eng/?i=CM/Notes/1310/H46-4E>

The Secretariat recalled that “a reform of 2016 **widened the scope of electronic monitoring** (which is however not yet entirely operational). The legislative reform of January 2017 **allowed detainees to file requests for conditional release directly with the competent court** and **relaxed the conditions for early conditional release of detainees considered as ‘recidivists’.**”

(2) CM decision

The CM:

- “welcomed the efforts made and the results obtained in response to the pilot judgment *Neshkov and Others* and the public statement of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment of 26 March 2015; encouraged the authorities to ensure the necessary political and financial support to guarantee the sustainability of the progress achieved;”
- “welcomed the **significant progress achieved as concerns overcrowding in prisons and closed prison hostels** and invited the authorities to provide information on the current situation in investigative detention facilities”

H. Neshkov & Keyahov – 1411th meeting, September 2021

(1) Notes prepared by the Secretariat: <https://hudoc.exec.coe.int/eng/?i=CM/Notes/1411/H46-10E>

The Secretariat recalled that **prison and criminal policy measures** were adopted in the past: “Since the 2017 reform [...] prisoners can **request early conditional release directly with the competent court; conditions for release of repeat offenders were relaxed**”

(2) CM decision: [https://hudoc.exec.coe.int/eng/?i=CM/Del/Dec\(2021\)1411/H46-10E](https://hudoc.exec.coe.int/eng/?i=CM/Del/Dec(2021)1411/H46-10E)

The CM:

- “welcomed the sustained efforts of the Bulgarian authorities to combat overcrowding and improve material conditions of detention and the positive and significant results achieved [...]”.

Case description: <https://hudoc.exec.coe.int/?i=004-10849>

This group of cases concerns inhuman and/or degrading treatment due to the applicants' poor conditions of detention (both pre-trial and post-conviction) resulting mainly from a structural problem of overcrowding in Hungarian prisons, and lack of effective preventive and compensatory remedies in this respect. In the pilot judgment, the Court requested the authorities to put in place a system of remedies in respect of alleged violations of Article 3 of the Convention on account of inhuman and degrading conditions of detention. The Court recalled the recommendations of the Committee of Ministers inviting States to "encourage prosecutors and judges to use as widely as possible alternatives to detention and redirect their criminal policy towards reduced use of imprisonment". The Court also made a reference to "the recent example of Italy [which] shows that such measures, implemented in the context of a pilot procedure, can contribute to solving the problem of overcrowding" (§105).

Progress made in the execution of the judgment were examined by the Committee of Ministers in **September 2015 (1236th meeting)**, **March 2016 (1250th meeting)**, **June 2017 (1288th meeting)**, **March 2018 (1310th meeting)**, **September 2020 (1377th meeting)** and in **March 2021, (1398th meeting)**.

A. 1236th meeting - 22-24 September 2015

(1) Notes prepared by the Secretariat: https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016805c2b82

The Secretariat noted a series of measures taken by the authorities to address prison overcrowding, namely: the relocation of prisoners to less crowded prisons, the creation of new prisons, a new alternative sanction called "restitutive work" and the project to improve the rules and conditions of house arrest. The Secretariat, quoting the 2013 CPT report, recalled that building new prison places "cannot on its own offer a lasting solution" and that "the only viable way to control overcrowding is to **adopt policies designed to limit or moderate the number of persons sent to prison**". Quoting the pilot judgment *Varga*, the Secretariat also stressed that "the Hungarian authorities should rather focus on alternative, 'non-custodial punitive measures and minimising the recourse to pre-trial detention' (see also *Varga and others*, §§ 104-105) as well as measures facilitating the reintegration of detainees into society." This is required in view of the fact that petty offences are often punished by custodial measures. According to the figures received, the Secretariat notes that "alternative sanctions are still being underused".

As regards the remedies the authorities are to put in place, and more broadly measures to be adopted in view of the execution of the judgment, the Secretariat suggested the authorities draw inspiration from the measures taken by the respondent State in the case of *Torregiani and others v. Italy* (see above).

(2) CM decision: [https://hudoc.exec.coe.int/?i=CM/Del/Dec\(2015\)1236/9](https://hudoc.exec.coe.int/?i=CM/Del/Dec(2015)1236/9)

The CM:

- "underlined that any arrangements and measures, in order to be fully effective, need to be underpinned by a **comprehensive strategy capable of addressing the structural problem of overcrowding** and consequently strongly urged the Hungarian authorities to intensify their efforts in this respect, taking into account the various relevant recommendations of the Committee of Ministers in this field and the relevant CPT's recommendations and standards"

B. 1250th meeting – 8-10 March 2016

(1) Notes prepared by the Secretariat <https://hudoc.exec.coe.int/?i=CM/Notes/1250/H46-11E>

Overcrowding

The Secretariat took note of a number of new measures taken by the authorities, namely: the fact that since April 2015 "**persons convicted of petty offences or misdemeanours** can be allowed to spend the last six months of their detention at home, using specially designed **electronic locating devices**" (this measure is called

“reintegration custody”). However, that too few requests have been granted by the domestic courts and recommended the authorities to **“take the necessary further steps in order significantly to increase the number of such requests being granted and to enlarge the application of this instrument”**. The Secretariat also stressed that **“alternative sanctions are still being underused”**.

Noting that authorities almost exclusively focus on the provision of additional accommodation to fight overcrowding, The Secretariat, quoting the [CPT report on Hungary of 2014](#), recalled that **“providing additional accommodation cannot on its own offer a lasting solution. The only viable way to control overcrowding is to adopt policies designed to limit or moderate the number of persons sent to prison”**. Therefore, the Secretariat recommended the Committee to ask the Hungarian authorities to intensify their efforts to **“promote alternative non-custodial punitive measures and minimising the recourse to pre-trial detention”**.

Remedy

The Secretariat recalled that the ECtHR “has [...] affirmed that a reduced prison sentence offered adequate redress to poor material conditions of detention, provided that the reduction was carried out in an express and measurable way (Varga and others, § 109)”, and reiterated that the measures adopted by the Italian government in application of the pilot judgment *Torreggiani* “might likewise serve as a source of inspiration”.

(2) CM Decision: [https://hudoc.exec.coe.int/?i=CM/Del/Dec\(2016\)1250/H46-11](https://hudoc.exec.coe.int/?i=CM/Del/Dec(2016)1250/H46-11)

The CM :

- “welcomed the recent introduction of the so-called ‘reintegration custody’ ; encouraged the Hungarian authorities to **take the necessary further steps in order significantly to increase the number of approvals of such requests** and to enlarge the application of this option as well as, more generally, to **intensify their efforts to promote alternative non-custodial punitive measures and to minimise the recourse to pre-trial detention”**

C. 1288th meeting, 6-7 June 2017

(1) Notes prepared by the Secretariat: <https://hudoc.exec.coe.int/?i=CM/Notes/1288/H46-16E>

While the application of the “reintegration custody” (see above) was further facilitated and extended by law, which seems to have an impact on the average prison overpopulation rate, the Secretariat noted that **“that alternative sanctions are still being underused”**.

The Secretariat asked the Committee to strongly encourage the authorities further to **“pursue their efforts in this regard and to find all possible means “to encourage prosecutors and judges to use as widely as possible alternatives to detention and redirect their criminal policy towards reduced use of imprisonment”**. The Secretariat recalled, in this regard, that a **“reduced prison sentence may also offer adequate redress for poor conditions of detention”**.

(2) CM decision [https://hudoc.exec.coe.int/?i=CM/Del/Dec\(2017\)1288/H46-16E](https://hudoc.exec.coe.int/?i=CM/Del/Dec(2017)1288/H46-16E)

The CM:

- noted with interest the **further extension of the application of “reintegration custody”**, the **facilitation of and increase in the use of house arrest**, and the **slight decrease in the number of defendants placed in pre-trial detention**; strongly encouraged the authorities further to pursue their efforts in this regard and to find all possible means **“to encourage prosecutors and judges to use as widely as possible alternatives to detention and redirect their criminal policy towards reduced use of imprisonment”**; invited them to submit updated statistical information on the impact and further promotion of alternative sanctions and the reduction of overcrowding

D. 1310th meeting, 13-15 March 2018 (DH)

(1) Notes prepared by the Secretariat: <https://hudoc.exec.coe.int/?i=CM/Notes/1310/H46-8E>

The Secretariat recalled that “underlined the importance of **non-custodial punitive measures and minimising the use of pre-trial detention to solve the problem of prison overcrowding**”. While the increased use of alternative sanctions (such as “reintegration custody” and house arrest) have led to a slight decrease in overcrowding, the figures communicated “**by the authorities clearly show that alternative sanctions are still being underused**”.

The Secretariat suggested that **the measures which have been put forward in the communication of the Hungarian Helsinki Committee serve as a source of inspiration**. These include: the abolition of custodial sentences for minor offences (e.g. less severe cases of violent public behaviour); the abolition of short-term criminal confinement (with a maximum duration of 90 days) and its replacement with non-custodial measures; increased use of alternatives to pre-trial detention; no pre-trial detention for offences carrying a sanction of less than 3 years of imprisonment; increasing the daily rate of petty offence fines when transforming them into confinement for non-payment; abolition of unlimited pre-trial detention; abolition of the so-called medium-sentencing requirement (stipulating that as a rule a judge should impose the mean length of imprisonment, and that a specific reasoning obligation prevails if he/she wants to diverge from the mean of the scale of imprisonment set forth by the Penal Code (see the corresponding communication: [https://hudoc.exec.coe.int/?i=DH-DD\(2017\)1003E](https://hudoc.exec.coe.int/?i=DH-DD(2017)1003E))

Mentioning the *Stella v. Italy* decision, the Court recalled that “**reducing the prison population is a crucial aspect of enabling the effective functioning of a preventive remedy**”. Therefore it asked the Committee to reiterate its call on the authorities further to pursue their efforts in “**promoting non-custodial measures and minimising the use of pre-trial detention**”.

(2) CM decision: [https://hudoc.exec.coe.int/?i=CM/Del/Dec\(2018\)1310/H46-8E](https://hudoc.exec.coe.int/?i=CM/Del/Dec(2018)1310/H46-8E)

The CM:

- “having regard to the importance of measures to solve the continuing structural problem of prison overcrowding and guarantee the effective functioning of the new preventive remedy, urgently called on the authorities further to **pursue their efforts in promoting alternative sanctions and minimising the use of pre-trial detention**, and invited them to submit comprehensive updated statistical information on the use of alternative sanctions and pre-trial detention”

E. 1377bis meeting, 1-3 September 2020 (DH)

(1) Notes prepared by the Secretariat: <https://hudoc.exec.coe.int/?i=CM/Notes/1377bis/H46-16E>

The Secretariat, while noting that the use of alternative measures continue to increase, considered that their “**potential [...] still appears to be underused**” with only 2.5% of the overall prison population in reintegration custody. Furthermore, the Secretariat noted that “release on parole is showing a decreasing tendency [... and that] a bill envisaging further restriction of that possibility is currently pending before Parliament”.

Therefore, the Secretariat suggested the Committee to renew its urgent call on the authorities “**further to pursue their efforts in promoting alternative sanctions and minimising the use of pre-trial detention**”.

(2) CM decision: [https://hudoc.exec.coe.int/?i=CM/Del/Dec\(2020\)1377bis/H46-16E](https://hudoc.exec.coe.int/?i=CM/Del/Dec(2020)1377bis/H46-16E)

The CM:

- “with regard to the potential of alternative measures still not being fully exploited and in view of the extant prison capacity deficit of more than 3,000 missing places in 2018, renewed their urgent call on the authorities further to pursue their efforts in promoting alternative sanctions and minimising the use of pre-trial detention, and invited them to submit comprehensive updated statistical figures of yearly average in this respect”

E. 1398th meeting, 9-11 March 2021 (DH)

(1) Notes prepared by the Secretariat: <https://hudoc.exec.coe.int/?i=CM/Notes/1398/H46-12E>

Noting that overcrowding has been eradicated in the country, the Secretariat suggested the Committee “to strongly encourage them to pursue their efforts in maintaining adequate occupation levels, **in particular by further promoting the use of alternatives to detention**”, which still appears to be underused. Referring to the [2014 CPT report](#) the Secretariat recalled that “**the only viable way to control overcrowding is to adopt policies designed to limit or moderate the number of persons sent to prison**”.

(2) CM decision [https://hudoc.exec.coe.int/?i=CM/Del/Dec\(2021\)1398/H46-12E](https://hudoc.exec.coe.int/?i=CM/Del/Dec(2021)1398/H46-12E)

The CM:

- “noted with satisfaction the eradication of overcrowding on an average in each prison facility; recalled, however, that the only sustainable solution to control overcrowding is to **moderate the number of persons sent to prison**; strongly encouraged therefore the authorities to **pursue their efforts in maintaining adequate occupation levels, in particular by further promoting the use of alternatives to detention**, and strongly urged them to submit comprehensive updated statistical figures of yearly average allowing for an assessment of the trends of implementation of the different alternative measures”

- X. *Rezmiveş v. Romania*, no. 61467/12, 25 April 2017 (pilot, pending) & *Bragadireanu v. Romania*, no. 22088/04, 6 December 2007 (complex problem, pending)

Case description: <https://hudoc.exec.coe.int/eng?i=004-12985>

This group of cases concerns the inhuman and/or degrading treatment suffered by the applicants due to overcrowding and poor conditions of detention in prisons and the lack of an effective remedy in this regard.

In the pilot judgment *Rezmiveş* the Court indicated that the authorities are to adopt general measures to be chosen by the State, under the supervision of the CM) to reduce overcrowding and improve material detention conditions, and to put in place remedies.

The Court, reiterated that “where a State is unable to guarantee that each prisoner is detained in conditions compatible with Article 3 of the Convention, the Court encourages it to take action with a view to reducing the prison population, for example by making greater use of non-custodial punitive measures and minimising recourse to pre-trial detention” (§ 115)

Progress made in the execution of the judgment were examined by the Committee of Ministers in **March 2015** (1122nd meeting), **March 2018** (1310th meeting), **December 2018** (1131st meeting), **June 2019** (1348th meeting), **December 2019** (1362nd meeting), **March 2020** (1369th meeting), **March 2021** (1398th meeting) and **5-7 June 2023** (1468th meeting).

A. 1122nd meeting – 11-12 March 2015

(1) Notes prepared by the Secretariat https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016805c4f42#braga

The Secretariat noted the entry into force in 2014 of a criminal law reform which introduced “**new alternatives to detention on remand**, modifie[d] the conditions for applying **measures alternative to imprisonment** and strengthen[ed] the role of the **probation service**.” The reform was also “accompanied by **training activities for judges and prosecutors** and other authorities concerned in the application of the new provisions which may contribute to reduce prison population.”

The Secretariat however considered that the “provisions adopted [...] cannot contribute in a significant manner to the objective of reducing the size of the prison population, within a reasonable period” and found it “necessary to adopt additional measures”.

The Secretariat, reacting to the authorities plan to increase the capacity of the prison system, recalled that this measure (while it can improve detention conditions) is “**as a general rule unlikely to offer a lasting solution to this problem and cannot be a substitute for policies designed to limit or to adjust the number of imprisoned persons**”.

(2) CM decision [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2015\)1222/12](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2015)1222/12)

The CM:

- considered that “**the legislative measures adopted in the context of the above-mentioned reform do not appear by themselves capable of leading to a lasting solution to the problem of overcrowding within a reasonable period**” and consequently urged the authorities to “**rapidly define and implement appropriate additional measures to reach this objective**”.

B. 1310th meeting, 13-15 march 2018

(1) Notes prepared by the Secretariat <https://hudoc.exec.coe.int/eng?i=CM/Notes/1310/H46-13E>

Overcrowding

The Secretariat noted the project to make extensive use of electronic monitoring as “**as a promising avenue, provided that such a measure can be swiftly applied and that its impact is not cancelled out by the factors of prison inflation identified by the authorities (longer sentences for reoffenders and tougher conditions of access to conditional release under the reform of 2014).**”

In view of the central role played by the probation service in this respect, the Secretariat found it “crucial to rapidly adopt the measures required to resolve this staffing problem”.

Remedy

As regards the compensatory remedy, the Secretariat found recent developments “very positive”, as “**those detained in substandard conditions now benefit from a reduction in sentence** which is explicitly awarded to redress the Article 3 violation and has a **measurable impact on the length of their prison term**”. The Secretariat referred to the decision *Stella v. Italy* in which such remedy was considered effective (see above).

(2) CM decision: [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2018\)1310/H46-13E](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2018)1310/H46-13E)

The CM :

- “**encouraged the authorities to pursue the wider application of electronic monitoring, while ensuring that this measure can effectively contribute to attaining the objective pursued; called on them rapidly to make available to the Probation Service all the resources required for it to be able to carry out its functions efficiently and thus to contribute to the global strategy against prison overcrowding**”

C. 1331st meeting – 4-6 December 2018

(1) Notes prepared by the Secretariat: <https://hudoc.exec.coe.int/eng?i=CM/Notes/1331/H46-23E>

The Secretariat noted that the 2014 reform (see above, 1122nd meeting) and the introduction on a compensatory remedy consisting in reductions of sentences are two factors that can explain the “**unprecedented decrease in Romania’s prison population**” (“from 33,434 in December 2013 to 21,322 in October 2018, a trend which, at least for now, appears firmly consolidated”). The Secretariat analysed that the second factor (sentence reduction as compensatory remedy) “**will no longer be granted with the same frequency in the future [as the detention conditions should improve]**”. It is therefore important for the authorities to determine whether it is necessary to **develop other means to reduce the prison population to make sure that their global strategy against prison overcrowding remains sustainable in the long run**. In this respect, the **wider use of electronic monitoring which the authorities are currently exploring** would certainly be effective as means of maintaining the prison population at a manageable level”. Consequently, the Secretariat found the “**efficient functioning of the Probation Service is crucial to the short- and long-term success of this strategy**” and therefore encouraged the recruitment of additional staff.

(2) CM decision: [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2018\)1331/H46-23E](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2018)1331/H46-23E)

The CM:

- “noting with satisfaction the significant reduction in the prison occupancy rate achieved to date and the continuing downward trend in the size of the prison population, encouraged the authorities to continue to monitor the situation to ensure that the current promising prospects of a near-term solution to prison overcrowding are brought to fruition; invited them to **determine whether it is necessary to develop other means to reduce the prison population to make sure that their global strategy against prison overcrowding remains sustainable in the long term;**
- **underlining the probation system’s crucial contribution to this strategy**, the CM called on the authorities to “**increase staffing levels within the Probation Service according to the time-table presented to the Committee and to indicate how they will ensure that any further staffing shortage is swiftly tackled**”.

D. 1348th meeting, 4-6 June 2019

(1) Notes prepared by the Secretariat: <https://hudoc.exec.coe.int/eng?i=CM/Notes/1348/H46-21E>

Overcrowding

The Secretariat noted that “the legislative measures adopted in 2014 and 2017 **have led to an unprecedented decrease in Romania’s prison population** [...] a trend which, at least for now, appears firmly consolidated”, **welcoming the fact that the authorities have “reconsider widening the use of electronic monitoring, to ensure that their strategy against prison overcrowding remains sustainable long-term”.**

Again, the Secretariat called for “**decisive action to reinforce the Probation Service without further delay**” which should be now “addressed as a matter of priority”.

(2) CM decision: [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2019\)1348/H46-21E](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2019)1348/H46-21E)

The CM, as regards general measures to resolve the structural problems of overcrowding and inadequate conditions of detention

- “firmly called upon the authorities to **provide the Probation Service, as a matter of priority, with the human resources required** for it to be able effectively to carry out its mission”.

E. 1362nd meeting – December 2019

(1) Notes prepared by the Secretariat: <https://hudoc.exec.coe.int/eng?i=CM/Notes/1362/H46-19E>

Overcrowding

The Secretariat noted that the authorities reacted negatively to its previous suggestion to **widen the use of electronic monitoring**: the authorities “have concluded that such a measure is no longer a priority for the time being, in view of the continuing decrease in the size of the prison population, but will reconsider should this trend be reversed.” The Secretariat also noted that “**decisive action is required to reinforce the Probation Service** without further delay. This Service remains severely understaffed **despite its fundamental contribution to diverting more than 100,000 people from the prison system, which makes its effective functioning vital to the short- and long-term success of Romania’s strategy against overcrowding**”.

Remedies

The Secretariat pointed out on an even greater concern the “envisaged repeal of the compensatory mechanism without providing for any other remedy in its place”, although it “has undoubtedly helped containing the flow of repetitive applications before the European Court, as well as a significant decrease in the prison population over the recent years”. The Secretariat asked the authorities to “carry out a prior **impact assessment and take steps to mitigate any adverse consequence they may have on prison overcrowding**” and for that, to **draw inspiration from “the Committee of Ministers’ Recommendation Rec(99)22 concerning prison overcrowding and prison population inflation, the European Committee on Crime Problems’ 2016 White Paper on Prison Overcrowding and the specific recommendations of the CPT”,** and to strengthen their cooperation with the Secretariat and their dialogue with the Committee.

(2) CM decision: [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2019\)1362/H46-19E](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2019)1362/H46-19E) (with the presence of the Romanian Minister of Justice)

The CM:

- Expressed “grave concern that [...the] Parliament decided at short notice to move forward on a parliamentary initiative resulting in the **abolition of the remedy introduced to provide compensation in the form of reductions of sentence to persons detained in such conditions**, without providing at the same time for any other avenue of redress capable of meeting the requirements of the Convention”.

F. 1369th meeting – 3-5 March 2020

(1) Notes prepared by the Secretariat: <https://hudoc.exec.coe.int/eng?i=CM/Notes/1369/H46-23E>

The Secretariat noted that while prison overcrowding in Romania has been under scrutiny for over 10 years, the phenomenon persists. While “measures adopted by the Romanian authorities have gradually improved the situation [...] further sustained efforts and a strong and enduring commitment on their part, **including at high political level**, are needed fully to execute these judgments.”

(2) CM decision [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2020\)1369/H46-23E](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2020)1369/H46-23E)

The CM:

- “reiterated that, notwithstanding the significant progress already achieved, in particular in reducing overcrowding, **further measures underpinned by a strong and enduring commitment at high political level are required to bring about a swift, comprehensive and sustainable resolution of these problems**”
- “**regretted in particular, after the abolition of the compensatory mechanism in the form of reduction of sentences without providing alternative** Convention-compliant remedies, the absence of any near prospect of setting up an effective system of compensatory remedies”

G. 1398th meeting, 9-11 March 2021

(1) Notes prepared by the Secretariat <https://hudoc.exec.coe.int/eng?i=CM/Notes/1398/H46-21E>

As regards the conditions of detention

The Secretariat welcomed the adoption of the November 2020 revised action plan, which “includes measures which appear to adequately address many of the deficiencies which gave rise to violations of Article 3” such as investments to expand the capacity of the prison system, actions to reinforce the probation service, a new strategy for 2020-2024 aiming at strengthening the domestic capacities for the social rehabilitation prisoners. However, the Secretariat noted a recent increase in the number of prisoners, following a downward trend between 2014 and 2020. The Secretariat recommended to request additional information on the legislative actions envisaged by the authorities in this respect, to be implemented in parallel with the planned expansion of the prison estate “**since these alone do not appear capable of delivering a sufficiently swift and definite solution to this problem**”. The Secretariat stressed “**the importance for the authorities to draw on the indications on the *Rezmiveş and Others* pilot judgment (§§ 117 – 119), the Committee of Ministers’ Recommendation Rec(99)22, the European Committee on Crime Problems’ 2016 White Paper on Prison Overcrowding and the specific recommendations of the CPT**”.

(2) CM decision: [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2021\)1398/H46-21E](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2021)1398/H46-21E)

The CM:

- Noted “with concern, the persisting overcrowding in the prison system and the recent data attesting to an aggravation of the situation over the past six months, stressed the importance of a swift and decisive action to address this problem, in particular in view of its humanitarian implications; requested therefore the authorities to provide details about the additional legislative measures announced in the revised action plan and their expected impact, and called upon them to **draw on the European Court’s indications in the *Rezmiveş and Others* pilot judgment and the Council of Europe’s relevant work to ensure that these measures will allow meeting the objectives pursued**”

H. 1468th meeting - 5-7 June 2023

(1) Notes prepared by the Secretariat: <https://hudoc.exec.coe.int/eng?i=CM/Notes/1468/H46-21E>

Noting that the number of prisoners has continued to grow in 2021 and 2022, the Secretariat repeated the “importance of legislative action to lastingly address prison overcrowding” (see also *Polgar v. Romania*, no. [39412/19](#)). The Secretariat also referred to a CPT report recommending the authorities “that the authorities make increased efforts to tackle prison overcrowding through promoting **greater use of alternatives to imprisonment**, in addition to increasing the capacity of the prison estate”.

The Secretariat noted positively the fact that the authorities are considering “major reform of the State’s criminal policy”, and recommended to “draw on the specific indications in pilot judgment (§§ 117 - 119) and on the Council of Europe’s other relevant work (in particular the Committee of Ministers’ Recommendation Rec(99)22 concerning prison overcrowding and prison population inflation and other similar instruments in the fields of criminal law and procedure, criminology and penology; the CPT general and specific recommendations; and the European Committee on Crime Problems 2016 White Paper on Prison Overcrowding).”

The Secretariat also recommended that the authorities pursue “**their action to strengthen the Probation Service** in view of the “**probation system’s vital role in the authorities’ strategy to combat prison overcrowding**.”

(2) CM decision: [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2023\)1468/H46-21E](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2023)1468/H46-21E)

The CM:

- stressed that “**measures designed to reduce prison population and to keep it at manageable levels, embedded in a rational and coherent penal policy, are crucial to achieving a lasting solution**”
- “noting with great interest that the authorities are considering a major reform of the State’s penal policy, strongly called upon them to draw fully in this process on the European Court’s relevant indications in the *Rezmiveş and Others* pilot judgment and on the Council of Europe’s other expertise, work and instruments in this respect”

XI. Petrescu v. Portugal, no. 23190/17, 3 December 2019 (structural problem, pending)

Case description: <https://hudoc.exec.coe.int/eng?i=004-54997>

The case concerned “the inhuman and degrading treatment of the applicant due to **overcrowding** and poor material conditions”. Overcrowding is qualified as “**structural**” in Portugal, affecting more than half of the prison establishments (§ 66). The Court recommended to improve detention conditions and to make a remedy “available to prisoners for the purpose of preventing the continuation of an alleged violation or obtaining an improvement in the conditions of detention (§ 117).”

Progress made in the execution of the judgment were examined by the Committee of Ministers in **March 2021 (1398th meeting)** and in **September 2023 (1475th meeting)**.

A. 1398th meeting, 9-11 March 2021 (DH)

(1) Notes prepared by the Secretariat: <https://hudoc.exec.coe.int/eng?i=CM/Notes/1398/H46-20E>

Prison overcrowding

In spite of an “overall positive trend in reducing prison overcrowding”, some prisons continue to operate above their capacity. The Secretariat therefore suggested to ask the authorities whether they plan to “**promote greater use of [alternatives to imprisonment]** via a more extended use of [the 2017 law], which foresees this possibility”. In this respect, the Secretariat notes that the authorities “do not mention any **measures addressed to judges and prosecutors**, who have an important role in this area” to **raise their awareness**.

The Secretariat also suggested recommending making **measures adopted during the COVID-19 pandemic** (partial pardon of prison sentences, granting of extraordinary administrative leave, remissions of sentence and early release on parole) a “**permanent feature**”

(2) CM decision: [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2021\)1398/H46-20E](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2021)1398/H46-20E)

In its decision, the CM:

- Noted with concern that “despite a positive overall situation [...] a number of prisons continue to operate at 120% or higher of their official capacity” and invited the authorities to “reflect on **specific measures** to address overcrowding in these prisons”;
- Invited the authorities to pursue their effort to promote “**greater use of alternatives to imprisonment**, inviting them to **raise the awareness of judges and prosecutors** concerning their role in this respect”;
- Recommended to make **permanent the “more flexible enforcement of sentences introduced by the authorities in the context of the COVID-19 pandemic”**, which have decreased the prison population

B. 1475th meeting, 19-21 September 2023 (DH)

(1) Notes prepared by the Secretariat: <https://hudoc.exec.coe.int/eng?i=CM/Notes/1475/H46-25E>

Overcrowding

The Secretariat noted that the situation has worsened since the previous examination of the case, with more than half of the country’s prisons operating above their capacity, and the “the overall occupancy rate in the prison system [being] now close to 100%.” The Secretariat noted that the prison population inflation and overcrowding grew **in spite of a greater use of alternatives to imprisonment**, and said that the authorities “could be urged to rapidly conduct a **thorough and comprehensive analysis of the factors which fuel these problems**” on the basis of relevant CoE work (**see footnote: Committee of Ministers’ Recommendation Rec(99)22 concerning prison overcrowding and prison population inflation and other similar instruments in the fields of criminal law and procedure, criminology and penology; the CPT relevant general and specific recommendations; and the European Committee on Crime Problems 2016 White Paper on Prison Overcrowding**) and Portuguese NPM reports, in order to **bring lasting solution to these problems**. To this end, the Secretariat underlined the added value of “**consulting all stakeholders**” and referred to the **NGO submission [EPLN & Forum Penal]** received for the examination of the case (“In this process, **there is a clear added value in consulting all stakeholders, as evidenced by the Rule 9 (2)**”

submission received from relevant civil society actors, which provides solid insights into the root causes of the problems and the type of action which can address these”).

The Secretariat suggested the CM to recommend to make greater use of “all the means available under the current legislation to limit the entries in the prison system” and of the means (such as conditional release) to reduce “the length of time spent in prison”.

Mentioning the CPT Annual report for 2021, the Secretariat also suggested that the authorities could consider introducing a “binding legal system of prison regulation, to be activated as soon as overcrowding situations occur (for example by introducing an absolute upper limit for the number of prisoners for every prison [...]”).

(2) CM decision: [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2023\)1475/H46-25E](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2023)1475/H46-25E)

In its decision, the CM:

- Noted with concern that **despite an increased use of alternatives to imprisonment**, the prison population “has been on the rise since their March 2021 examination, with **overcrowding now affecting more than half of the prisons in the country”**;
- Urged the authorities to “rapidly adopt a comprehensive strategy aimed at identifying and tackling the root causes of prison overcrowding, in consultation with all stakeholders and **drawing fully on the relevant Council of Europe expertise, work and instruments and recommendations of the National Preventive Mechanism”**;
- Called upon the authorities to “consolidate and strengthen the use of all means available under the current legislation to limit the entries in the prison system and pursue all other possible avenues to alleviate overcrowding in the establishments most critically affected including effective access to conditional release”;

XII. Sukachov v. Ukraine, no. 14057/17, 30 January 2020 (pilot, pending)

Case description: <https://hudoc.exec.coe.int/?i=004-55367>

These cases mainly concern “inhuman and/or degrading treatment due [i.a.] to overcrowding [...] in police establishments, pre-trial detention centres and prisons, [...] and lack of effective preventive and compensatory remedies in all these respects [...]”. While recalling that its judgments are “essentially declaratory”, the Court recalled that it “may exceptionally indicate the type of measures that might be taken in order to put an end to a problem it has identified” (§ 144 – with references to *Orchowski v. Poland*, *Torreggiani v. Italy*, *Ananyev v. Russia*, *Neshkov v. Bulgaria*, *Varga v. Hungary*, *Rezmiveş v. Romania*).

The Court reiterated that “when a State is not able to guarantee each detainee conditions consistent with Article 3 of the Convention, the most appropriate solution to the problem of overcrowding would be to reduce the number of detainees by more frequent use of non-custodial measures and by minimising the recourse to pre-trial detention” (§ 146). In this respect, the Court recalled that the problem of the length of pre-trial detention in Ukraine has been highlighted in a number of judgments.

Progress made in the execution of the judgment were examined by the Committee of Ministers in **December 2020 (1390th meeting)**, **June 2021 (1406th meeting)**, **December 2021 (1419th meeting)** and in **September 2023 (1475th meeting)**

A. 1390th meeting, 1-3 December 2020

(1) *Notes prepared by the Secretariat:* <https://hudoc.exec.coe.int/?i=CM/Notes/1390/H46-31E>

While noting that a “number of draft laws, action plans, programs and concept papers to address the issue of overcrowding are in different stages of elaboration”, the Secretariat emphasized that the “**lack of sufficient funding and of a long-term strategic approach to address overcrowding [...] remain a serious concern.**”

The Secretariat also positively assessed the efforts put by the authorities in the development of the probation service. In parallel, the Secretariat suggested the Committee to “reiterate its call on the authorities to further streamline their efforts in **promoting alternative sanctions and minimising the use of pre-trial detention**”.

(2) *CM decision:* [https://hudoc.exec.coe.int/?i=CM/Del/Dec\(2020\)1390/H46-31E](https://hudoc.exec.coe.int/?i=CM/Del/Dec(2020)1390/H46-31E)

The CM:

- “noted with concern that a **lasting solution** to resolve the malfunctioning of the Ukrainian prison system as regards overcrowding, [...] in pre-trial detention facilities and prisons has not been adopted so far; reiterated once more the urgent need to adopt such a solution in particular in the light of the indications given by the European Court in the *Sukachov v. Ukraine* pilot judgment and in response to the Committee of Ministers’ interim resolution of December 2018”, which underlined “the urgent need for the authorities to follow up on their Passport for Reform and continue to work on the adoption of a **comprehensive long-term strategy** capable of leading to the resolution of these problems of a structural nature, with clear and binding timelines for the adoption of the relevant measures and the provision of the necessary human and financial resources”
- “reiterated their call on the authorities to further streamline their efforts in **promoting alternative sanctions and minimising the use of pre-trial detention**”

B. 1406th meeting, 7-9 June 2021 (DH)

(1) *Notes prepared by the Secretariat:* <https://hudoc.exec.coe.int/?i=CM/Notes/1406/H46-38E>

The Secretariat stated that “the statistics on **reduction of use of pre-trial detention** and the continued work on developing the **probation system** are encouraging and disclose a potentially positive trend although it remains to be seen whether these tendencies are sustainable in the long term.” In particular, in the absence of any clear decrease in the total number of detainees, it cannot be “conclusively demonstrate[d]” that there is a reduction **overcrowding, which “continues to subsist”** according to a recent [CPT report](#), expressed its concern on the fact that overcrowding “continues to subsist in Ukraine”.

Noting that the CoE has been supervising policies adopted by the authorities to remedy structural problems in prison for over fifteen years, the Secretariat underlined that “in order to adequately address the structural issues at hand, **legislative action needs to go hand in hand with renewal and expansion of the prison estate and adequate budgeting** for amenities, food and transport, since none of these measures alone appear capable of delivering a sufficiently swift and definite solution to the extensive problems that the Ukrainian prison system is faced with” and suggested to invite the authorities to “make full use” of the CoE work in prison matters (notably Committee of Ministers’ Recommendation Rec(99)22 concerning prison overcrowding and prison population inflation, the European Committee on Crime Problems’ 2016, White Paper on Prison Overcrowding and the specific recommendations of the CPT).

(2) *CM decision:* [https://hudoc.exec.coe.int/?i=CM/Del/Dec\(2021\)1406/H46-38E](https://hudoc.exec.coe.int/?i=CM/Del/Dec(2021)1406/H46-38E)

The CM:

- “noted with interest the authorities’ statement that the issue of the prison reform remains a key priority, as well as the positive trend demonstrated by the statistics submitted indicating that the number of court decisions granting applications for **detention on remand has decreased** and that work on the full implementation of the **probation system** continues”
- “noted nevertheless with profound concern the persisting malfunctioning of the Ukrainian prison system as regards overcrowding and poor material conditions of detention and transportation; stressed the **importance of comprehensive action and long term vision** leading to concrete results to address these problems”
- “reiterated their call on the authorities to further streamline their efforts in **promoting alternative sanctions and minimising the use of pre-trial detention**, as well as to increase the minimum standard of personal space for detainees by amending the respective legislative provisions to ensure its full harmonisation with the requirements of the Convention”

C. 1475th meeting, 19-21 September 2023 (DH)

(1.) *Notes prepared by the Secretariat:* <https://hudoc.exec.coe.int/?i=CM/Notes/1475/H46-42E>

The Secretariat noted that the government approved the **Penitentiary Reform Strategy for up to 2026** and that **legislative work** is ongoing “to promote alternative sanctions and minimise the use of pre-trial detention and the ongoing administrative work to improve the probation system”. However, “these steps are still **too narrow** in scale to address all the problems raised by these judgments”. The Secretariat also emphasized the need for **all the stakeholders and relevant actors to be involved** in the reform, so there is a coordinated approach to the systemic problems of poor conditions of detention.

As regards remedies specifically, the Secretariat recalled that their adoption “**should go hand-in-hand with substantive measures aimed at significantly reducing overcrowding and improving conditions of detention**”.

As regards alternative sanctions and reduction of the use of pre-trial detention, the Secretariat noted that the ongoing work is “noteworthy”, but “should be further reinforced to ultimately substantially reduce the prison population, in particular, **in the current context where the number of functional detention centres has decreased**”.

(2.) *CM decision:* [https://hudoc.exec.coe.int/?i=CM/Del/Dec\(2023\)1475/H46-42E](https://hudoc.exec.coe.int/?i=CM/Del/Dec(2023)1475/H46-42E)

The CM:

- “noted with interest the adoption of the Penitentiary Reform Strategy until 2026 defining eight directions of reform, including on increasing the minimum standard of personal space in pre-trial detention and introducing remedies for poor conditions of detention, and the ongoing work on promotion of alternative sanctions, minimisation of use of pre-trial detention and force-feeding;”
- “underlined the need to ensure continuity and thus invited the authorities to adopt the action plan for the implementation of the Penitentiary Reform Strategy until 2026, the **proposed legal instruments for increasing the use of alternative sanctions and reducing the use of pre-trial detention [...]**”: these are four draft laws i.a. creating the “probationary supervision”, increasing accessibility of bail as an

alternative to detention on remand and limiting the total period of detention on remand (12months, 24months, 48monhts depending on the gravity of the crime);

- “noted further with deep regret **that an overall strategic approach to improve material conditions of detention is still lacking to date**; strongly urged the authorities to take stock of the results of the measures taken so far and draw up a list of lessons learned and steps forward, in order to adopt the necessary Convention-compliant legal and administrative measures to bring significant and long-term sustainable changes in the penitentiary system in Ukraine”

Case description: <https://hudoc.exec.coe.int/?i=004-55363>

“This case concerns the degrading treatment suffered by [...] the applicants, due to prison overcrowding and poor conditions of their detention (personal space of less than 3 m² in the majority of the establishments [...]). [...] Noting a structural problem of overcrowding (§ 315), the Court recommended to the State, under Article 46, to adopt general measures, including **putting a permanent end to overcrowding in prisons**. These measures could concern the overhaul of the **method of calculating prison capacity** and improving compliance with it, as well as [...] **prison and penal policy provisions** that could have a positive impact in the reduction of the number of persons in prison. An **effective preventive remedy** should also be established to enable detainees, together with the compensatory remedy, to redress the situation of which they are victims and prevent the continuation of an alleged violation (§ 316)”.

Progress made in the execution of the judgment were examined by the Committee of Ministers in **September 2021 (1411th meeting)** and in **December 2022 (1451st meeting)**.

A. 1411th meeting, 14-16 September 2021 (DH)

(1) *Notes prepared by the Secretariat:* <https://hudoc.exec.coe.int/?i=CM/Notes/1411/H46-12E>

Overcrowding

The Secretariat referred to the [2021 CPT report](#) calling on the authorities to adopt “a **comprehensive penal and penitentiary strategy**” to reduce prison occupancy rates.

The Secretariat, “in the light of the CPT’s recent recommendations”, suggested to invite the authorities to adopt “measures to **improve the distribution of detainees** and a **coherent strategy to reduce, in the long term**, the occupancy rate of prisons”. In particular, the Secretariat suggested to invite the authorities to “**strengthen the means necessary to develop non-custodial measures rather than continuing to increase the number of prison places [...]** to further **increase the awareness of the judiciary** of the prison reduction objectives of the [2018-2022 Programming Law], while considering the rapid adoption of new **legislative measures that would regulate the prison population in a more binding manner**”.

Remedy

The Secretariat suggested to ask the authorities to provide additional information on the practical functioning of the remedy recently put in place, in particular **in a structural context of overcrowding**.

The Secretariat emphasised “the **crucial role of the judge** [...] as **the only actor** who can order release or adjustments of sentence and thus, be **able to act on the ‘sources’ of violations of Article 3**”.

(2) *Decision of the Committee of Ministers:* [https://hudoc.exec.coe.int/?i=CM/Del/Dec\(2021\)1411/H46-12E](https://hudoc.exec.coe.int/?i=CM/Del/Dec(2021)1411/H46-12E)

In its decision, the CM recommended the authorities:

- “in the light notably of the recommendations formulated by the European Committee for the Prevention of Torture following its periodical visit made in December 2019 (CPT/Inf(2021)14), to **rapidly adopt measures to better distribute the detainees between prisons and a coherent long-term strategy to reduce the prison occupancy rate**”

- “to privilege and strengthen the means needed to **develop non-custodial measures**, as well as to further **raise awareness among the judiciary of the prison reduction objectives** of the 2018-2022 Programming Law (PLJ), while **rapidly considering new legislative measures that would regulate the prison population in a more binding manner**”

- as regards the preventive remedy, to provide information on its functioning, “**in a structural context of overcrowding**”.

B. 1451st meeting, 6-8 December 2022 (DH)

(1) Notes prepared by the Secretariat: <https://hudoc.exec.coe.int/fre?i=CM/Notes/1451/H46-11E>

The Secretariat made reference again to the latest [2021 CPT report](#), which “called on the authorities to **learn from the ineffectiveness of the measures taken over the last thirty years**, since **despite the constant increase in prison capacity and the adoption of numerous measures and legislations, the prison population has continued to grow**”, and reminded that **building new prison is not a long-lasting solution to prison overcrowding**. The Secretariat noted that the CPT insisted that “the focus should be on **all non-custodial measures and a concerted strategy is necessary, in particular with the judiciary**”.

Overcrowding

In view of the severe overcrowding impacting remand centres and remand centres quarters, it stated that “[i]t is thus the use of **short-term prison sentences** (between one month and three years) and **pre-trial detention** that should be reduced quickly”. In spite of this the Secretariat noted that short-term sentences above six months, are increasing – “which seems to indicate that **judges are more severe**”. The Secretariat underlines that the same analysis can be made about **longer sentences, which contributes to “the over-occupation of prison places over time”**.

Referring to CPT recommendations, the Secretariat reiterated its suggestion to invite the authorities to “to adopt promptly a **comprehensive and coherent strategy to reduce, in the long term**, the occupancy rate of prisons and to continue to adopt as many measures as possible to **better distribute the detainees** [...] to emphasise all **alternatives to detention** and to strengthen the means necessary for their development and implementation by the jurisdictions, **instead of continuing to increase the number of prison places.**”

In particular, the Secretariat suggested to encourage the authorities to increase the efforts to **raise jurisdictions’ awareness on alternatives to detention** (through steering tools, circulars and training). Mentioning reports from NHRI (CGLPL, CNCDH) and of the *États Généraux de la Justice*, the Secretariat also suggested to invite “the authorities to introduce a **binding legal system of prison regulation** as soon as possible in case of overcrowding”.

The Secretariat also suggested other measures, such as “a **stricter framework for recourse to pre-trial detention**” or “**restoring the possibility of *ab initio* adjustment of imprisonment sentences between one and two years**”, which had been recently abolished.

Remedy

The Secretariat considered that “giving priority to prisoner transfers [as envisaged in the remedy set up] seems **unrealistic in the current context of overcrowding**” and recalled the “**crucial role of the judge** [...] being the only person who can **order release or sentence adjustments and thus act on the ‘sources’ of violation of Article 3.**”

(2) CM decision: [https://hudoc.exec.coe.int/fre?i=CM/Del/Dec\(2022\)1451/H46-11E](https://hudoc.exec.coe.int/fre?i=CM/Del/Dec(2022)1451/H46-11E)

The CM recommended the authorities:

- Once again, in the light of the CPT report, “to adopt promptly a **comprehensive and coherent strategy** to reduce, in the **long term**, the prison overcrowding [...]”
- To “emphasize all **alternatives to detention** and to strengthen the means necessary for their **development and implementation by the jurisdictions, instead of continuing to increase the number of prison places**”
- To **increase “the efforts already made to raise awareness of the judges and prosecutors** on possible alternatives to detention [...] in order to achieve sustainable results in terms of prison reduction”
- Once again, to “rapidly to **consider new legislative measures that would regulate the prison population in a more binding nature**”.



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