EUROPEAN PRISON LITIGATION NETWORK

European Implementation Network

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STRUCTURAL PROBLEMS IN PRISONS: Prospects for European Intervention

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RATIONALE

Since the early 2000s, the Council of Europe's (CoE) bodies have defined with increasing precision the obligations incumbent on States to guarantee the fundamental rights of prisoners. This has been achieved through the development of a legal status for prisoners in the case law of the European Court of Human Rights (ECtHR, the Court),[1] involving an extensive dialogue between European judges, the Committee of Ministers (CM) and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

Faced with institutions that were both severely run-down and historically resistant to reform, the ECtHR, overwhelmed by the volume of prison-related cases, mobilised the instruments at its disposal to deal with structural problems, and prisons became the chosen subject for pilot and quasi-pilot judgments. In the context of what has been described as the procedural turn in European case law and the rise of the principle of subsidiarity, the judicial policy that followed has largely been based on the establishment of effective domestic remedies. Although the ECtHR grants a wide margin of appreciation to States in this area, it has managed to issue guidance on criminal policy, albeit not without some internal tensions.

In addition to building up a body of case law on prisons, covering almost every aspect of life in detention, the Court's work has had a knock-on effect on the other CoE bodies and beyond, leading to a real increase in both the frequency and specificity of European intervention in the field of prisons.

The number of prison cases under the supervision of the CM has automatically followed the increase in the caseload dealt with by the ECtHR in this area. The remit and configuration of discussions before the CM have naturally placed it in a position to deal with structural problems. By assisting States in adopting general measures designed to eliminate the underlying causes of individual violations, it is led to determine the scale and causes of the problems at stake. In addition, the introduction in 2011 of a system for prioritising cases, designed to enable a focus on more complex cases, has accentuated this approach.
Increased dialogue with civil society in recent years has led the CM to deepen its analysis of national situations and to promote more holistic and complex responses in the field of penal and prison policy, drawing on its abundant soft law, particularly the European Prison Rules and the White Paper on prison overcrowding.[2]

The CPT was proactive in addressing endemic problems in the States it visited, identifying them at an early stage. Its standards and findings have significantly influenced the case law of the Court and the work of the CM. In turn, the dynamic evolution of ECtHR case law has undoubtedly prompted the CPT to systematise its methodologies, as demonstrated by the comprehensive standards developed concerning conditions of detention.[3] Although the ECtHR has explicitly stated that its own functions differ from the CPT's, and thus their analyses can diverge, this has not impeded the dialogue between the two bodies.[4]

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[1] See i.a. *Kudła v. Poland* [GC], no. 30210/96, 26 October 2000.
[2] See respectively European Prison Rules, Rec(2006)2-rev, 2020 and European Committee on Crime Problems, *White Paper on Prison Overcrowding*, PC-CP (2015) 6 rev 7, 2016.
[3] CPT, *Living space per prisoner in prison establishments: CPT standards*, CPT/Inf (2015) 44, 15 December 2015.
[4] See *Muršić and Others v. Croatia* [GC], no. 7334/13, 12 March 2015, § 112.

The recent involvement of the Court of Justice of the European Union (CJEU) has renewed the legal environment surrounding penitentiary issues. The CJEU has drawn strong legal conclusions from "systemic" deficiencies in detention conditions concerning the implementation of the European arrest warrant, prompting the European Commission to recently adopt a specific recommendation on this very issue.[5] The factual findings of the CoE bodies regarding the nature and scale of prison problems risk undermining the principle of mutual trust in cooperation in criminal matters between EU Member States. In effect, this intensifies the legal and political repercussions of the conclusions drawn by these bodies. The system developed by the CJEU relies heavily on the assessments of the CoE bodies, amplifying their effects. Furthermore, the prospect of the accession of States such as Ukraine and Moldova, whose prison systems have "deep-rooted" problems already identified by CoE bodies,[6] heightens the urgency for the EU to intervene more decisively in this area.

Yet **the problems that led to these European interventions persist**. If European average prison population rates have been steadily declining since 2012,[7] this continent-wide trend conceals major disparities between CoE Member States. In no less than 19 States, prison population rates have significantly increased between 2005 and 2023 (+14.7% in France, +28% in Greece, +63% in Albania, and +439% in Türkiye).[8] Moreover, prison overcrowding remains an acute problem in a quarter of CoE countries: as of 31 January 2023, prison systems were affected by severe overcrowding or were operating at full capacity in 15 Member States.[9] Among the countries experiencing prison overcrowding in 2023, a majority were already experiencing this problem ten years prior. The problem has persisted over the past decade despite seven States having been subject to the pilot or quasi-pilot judgment procedure (Romania, France, Belgium, Hungary, Italy, Greece, Portugal). Furthermore, cases relating to poor detention conditions associated with a lack of effective remedies represented in 2022 "one of the highest percentages of leading cases in enhanced supervision (8%)" by the Committee of Ministers.[10]

Based on these observations, the **European Prison Litigation Network** along with academic and civil society partners[11] from nine countries[12] have conducted a study in 2022-2023 to assess the effectiveness of European interventions in safeguarding prisoners' fundamental rights. This conference will draw on the findings of the study to enhance the dialogue between European and national authorities and civil society actors engaged in the defence of detainees' fundamental rights, and to outline prospects for reinforced European interventions on prison issues.

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[5] See i.a. *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, 5 April 2016 as well as European Commission, *Recommendation on the procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions*, 2023/681, 2022

[6] See i.a. CPT, Report on the visit to the Republic of Moldova carried out from 5 to 11 June 2018, CPT/Inf (2018) 49, 2020, § 60.

[7] From 146 inmates per 100,000 inhabitants in 2012 to 124 in 2023. However, this trend seems to have reversed as there has been a rise between 2022 (118) and 2023 (124). See M. Aebi et al., *Prisons and Prisoners in Europe 2023: Key Findings of the SPACE I survey*, 2024, pp. 23-26.

[8] *Ibid.*, p. 24.

[9] *Ibid.*, pp. 16-18.

[10] Committee of Ministers, 16th Annual Report of the Committee of Ministers, 2022, p. 26.

[11] Université Libre de Bruxelles, University of Florence, Helsinki Foundation for Human Rights (Poland), Hungarian Helsinki Committee, Bulgarian Helsinki Committee, Forum Penal (Portugal), Centre for European Constitutional Law (Greece), APADOR-CH (Romania).

[12] Belgium, Bulgaria, France, Greece, Hungary, Italy, Poland, Portugal, Romania.

With almost 25 years' hindsight, taking stock of this European effort to bring prison systems into line with European requirements means tackling the issue from four angles.

Firstly, what precisely accounts for the characterisation of violations as systemic? Prisons are generally described as places where people's rights are regularly violated. What leads to defining a problem as a structural one? What is the function of such a characterisation – does it reflect internal concerns (managing the flow of repetitive applications, safeguarding the Court's authority) or genuine strategic choices to resolve the prison's problems? If the latter, what conclusions can be drawn from this kind of prioritisation of reform efforts?

Secondly, given the centrality of the penal issue and the problems of overcrowding in the proceedings before the Court and, more broadly, in the contemporary debate on prisons, what penological model emerges from the guidelines given to the States? Beyond the references to common standards, are the recommendations addressed to the respondent States consistent with the knowledge produced by the CoE relating to prison inflation?

Then, naturally, there is the question of the effects of European standards on national policies and practices. What are the repercussions of European intervention on national penal and penitentiary policies? What shortcomings do persisting structural problems in European prisons reveal in the mechanism of supervision of the execution of ECtHR judgments and of monitoring the state of the rule of law in CoE Member States? Faced with problems of this nature, what role can alternative dispute resolution play?

Finally, the conference will examine the ways in which the resolution of prison structural problems can benefit from a greater synergy between the CoE and the EU. Can the legal obstacles to cooperation in criminal matters serve as a lever for reform and boost the execution of pilot and quasi-pilot judgments? Will the control that the EU intends to exercise over prison and judicial reforms in the candidate countries strengthen the Union's demands on Member States in the long term?

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