Documentation

SUPERVISING MATTERS RELATED TO DETENTION

THE COUNCIL OF EUROPE'S AND INTERNATIONAL BODIES' WORK IN IMPROVING DETENTION CONDITIONS

316DT68

Strasbourg, 23-24 June 2016

Co-funded by the Criminal Justice
Programme of the European Union 2014-2020

Objective

This seminar will focus on the work of the Council of Europe and international bodies in improving conditions related to detention.

Key topics

- Pros and cons of the revised UN Standard Minimum Rules for the Treatment of Prisoners ('Nelson Mandela Rules')
- The work of the Subcommittee on Prevention of Torture (SPT) and its cooperation with the National Preventive Mechanisms (NPM)
- The Council of Europe's legal body of recommendations, conventions and resolutions, in particular the European Prison Rules
- The work of the Council of Europe, its Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), and Council for Penological Cooperation (CP-PC) in the field of detention
- Initiatives and solutions regarding prison overcrowding, the prevention of radicalisation in prison, and foreign national prisoners

Who should attend?

Officials from prison administrations, the probation system and prison monitoring bodies, ministry officials, and officials from judicial training institutions, judges, prosecutors, and lawyers in private practice.

Speakers

Jennie von Alten, Governor, Swedish Prison and Probation Service, Stockholm

Catalin Bejan, Director General, National, Administration of Penitentiaries, EuroPris Board Member, Bucharest

Marija Definis-Gojanović, Medical Doctor, Member of UN Subcommittee on Prevention of Torture (SPT), Geneva

Natacha De Roeck, Head of HELP Unit, Council of Europe, Strasbourg

Ramin Farinpour, Course Director, European Criminal Law Section, ERA, Trier

André Ferragne, Secretary-General, General Inspector of Places of Deprivation of Liberty (*contrôleur général des lieux de privation de liberté*), Paris

Mauro Palma, former President of the European Committee for the Prevention of Torture, National Ombudsman for the Rights of Persons Detained or Deprived of their Liberty, Rome

Marie De Pauw, Prison Governor, Representative of the Belgian Prison Service, Brussels

Xavier Ronsin, First President of the Court of Appeal of Rennes; Member of the European Committee for the Prevention of Torture (CPT), Council of Europe, Strasbourg

Olivia Rope, Programme Officer, Penal Reform International, London

Alessio Scandurra, Coordinator, Antigone (Observatory on Prison Conditions in Italy), Rome

Ilina Taneva, Secretary to the Council for Penological Cooperation, Council of Europe, Strasbourg

Gerrit Zach, Researcher, Ludwig Boltzmann Institute of Human Rights (BIM), Vienna

Professional Training (CPD) www.era.int 12 hours

For further information

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SUPERVISING MATTERS RELATED TO DETENTION

THE COUNCIL OF EUROPE'S AND INTERNATIONAL BODIES' WORK IN IMPROVING DETENTION CONDITIONS

Strasbourg, 23-24 June 2016
Council of Europe
Agora Building, 1, Quai Jacoutot, Strasbourg, France

Organiser:
ERA (Ramin Farinpour) in cooperation with the Council of Europe and the European Organisation of Prison and Correctional Services (EuroPris)

Co-funded by the Justice Programme of the European Union 2014-2020

Languages: English and French (simultaneous interpretation)

Event number:
316DT68

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Thursday, 23 June 2016

08:30 Arrival and registration of participants

09:00 **Welcome and introduction**
Natacha De Roeck and Ramin Farinpour

I. THE COUNCIL OF EUROPE'S WORK IN IMPROVING DETENTION CONDITIONS
Chair: Ramin Farinpour

09:20 **The Council of Europe's standard-setting work related to prisons and probation and its impact in practice**
Ilina Taneva

09:45 **Preventing torture and ill-treatment of persons in detention: the impact of the Council of Europe's Committee for the Prevention of Torture (CPT) on detention facilities in Europe**
Xavier Ronsin

10:15 Discussion

10:30 Coffee break

11:00 **The role of prison and probation services to identify, prevent and deal with radicalisation and violent extremism: new guidelines of the Council for Penological Cooperation**
Mauro Palma

11:30 **The need to improve education, mental healthcare and restorative justice in prison and probation in Europe**
Catalin Bejan

12:00 Discussion

12:30 Lunch

II. UN STANDARDS TO PROMOTE BETTER TREATMENT OF PRISONERS AND EFFECTIVE MONITORING
Chair: Mauro Palma

13:30 **The Subcommittee on Prevention of Torture (SPT) and its cooperation with the National Preventive Mechanisms (NPM)**
Marija Definis-Gojanović

14:00 **The influence of National Preventive Mechanisms (NPM) on legal and practical reforms regarding detention conditions: a practical example**
André Ferragne

14:30 Discussion

15:00 Coffee break

15:30 **The 'Nelson Mandela Rules': novelties under the revised UN Standard Minimum Rules for the Treatment of Prisoners**
Olivia Rope

16:15 **Panel discussion**

Tools of international supervision: comparing the Nelson Mandela Rules with the European Prison Rules
Marija Definis-Gojanović
Olivia Rope (Chair)
Alessio Scandurra
Ilina Taneva

16:45 Discussion

17:15 End of the first day

19:30 Dinner

Friday, 24 June 2016

III. ACTIONS ON IMPROVING DETENTION CONDITIONS: BEST PRACTICE ON THE BASIS OF MEMBER STATES' EXPERIENCES
Chair: Marija Definis-Gojanović

08:45 Registration

09:00 **From contracting prisons abroad to alternatives to imprisonment: solutions to prison overcrowding in the EU Member States**
Alessio Scandurra

09:30 **Prison overcrowding in Belgium: experiences and measures to improve the situation**
Marie De Pauw

10:00 Discussion

10:15 Coffee break

10:45 **Foreign national prisoners: the Swedish experience**
Jennie von Alten

11:15 **Cooperation between NPMs and the judiciary as a possibility to improve fundamental rights' conform implementation of the EU instruments related to detention**
Gerrit Zach

12:00 Discussion

12:30 End of seminar and lunch

Programme may be subject to amendment.
For programme updates: ***www.era.int***

The Council of Europe standard-setting work related to prisons and probation and its impact in practice

Ilina Taneva, Secretary to the Council for Penological Co-operation (PC-CP), Council of Europe

ERA Seminar "Supervising matters related to detention" 23-24 June 2016, Strasbourg

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

47 MEMBER STATES
47 ÉTATS MEMBRES

Albania - Albanie
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Andorra - Andorre
Andorra-la-Vella
Andorre-la-Vieille

Armenia - Arménie
Yerevan - Erevan

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Vienna - Vienne

Azerbaijan - Azerbaïdjan
Baku - Bakou

Belgium - Belgique
Brussels - Bruxelles

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Bosnie-Herzégovine
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Sofia

Croatia - Croatie
Zagreb

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Nicosia - Nicosie

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Prague

Denmark - Danemark
Copenhagen - Copenhague

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Tallinn

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Helsinki

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Tbilisi - Tbilissi

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Berlin

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Athens - Athènes

Hungary - Hongrie
Budapest

Iceland - Islande
Reykjavik

Ireland - Irlande
Dublin

Italy - Italie
Rome

Latvia - Lettonie
Riga

Liechtenstein
Vaduz

Lithuania - Lituanie
Vilnius

Luxembourg
Luxembourg

Malta - Malte
Valletta - La Valette

Republic of Moldova - République de Moldova
Chişinău

Monaco
Monaco

Montenegro - Monténégro
Podgorica

Netherlands - Pays-Bas
Amsterdam

Norway - Norvège
Oslo

Poland - Pologne
Warsaw - Varsovie

Portugal
Lisbon - Lisbonne

Romania - Roumanie
Bucharest - Bucarest

Russian Federation - Fédération de Russie
Moscow - Moscou

San Marino - Saint-Marin
San Marino - Saint-Marin

Serbia - Serbie
Belgrade

Slovakia - Slovaquie
Bratislava

Slovenia - Slovénie
Ljubljana

Spain - Espagne
Madrid

Sweden - Suède
Stockholm

Switzerland - Suisse
Bern - Berne

"The former Yugoslav Republic of Macedonia" - "L'ex-République yougoslave de Macédoine"
Skopje

Turkey - Turquie
Ankara

Ukraine
Kyiv - Kiev

United Kingdom - Royaume-Uni
London - Londres

non-member state of the Council of Europe (Belarus)

- **The European Prison Rules –**
  CM Recommendation (2006)2
- **The Council of Europe Probation Rules –**
  CM Recommendation (2010)1
- **The European Rules for juvenile offenders subject to sanctions or measures –**
  CM Recommendation (2008)11

The Committee of Ministers is the decision taking body of our Organisation.

Its adopted texts may be found at:
www.coe.int/cm

Its recommendations related to prisons and probation can be found in a Compendium at:
www.coe.int/prison

In 1957 the Committee of Ministers set up the European Committee on Crime Problems (CDPC), which is an intergovernmental steering body where sit high level experts in criminal law, usually from the national ministries of justice

In June 1980 the Committee of Ministers set up an advisory body to the CDPC which was initially called "Committee for Co-operation in Prison Affairs (PC-R-CP)" composed of 7 elected members, chosen for their renowned expertise in the penitentiary field. The committee was later renamed Council for Penological Co-operation (PC-CP)

Conferences of Directors of Prison Administration have been organised since 1971

Since 2013 they are called Council of Europe Conferences of Directors of Prison and Probation Services

Since 2015 the Directors are consulted on draft texts to be adopted by the Committee of Ministers.

The difference between the Committee of Ministers and the European Court of Human Rights is that the latter is not a policy making body and its standards and decisions are developed within the context of a specific case

In 2004 the Committee of Ministers adopted Resolution Res(2004)3 on judgments revealing an underlying systemic problem

The Court started delivering on such occasions the so called “pilot Judgments” which since 2011 are being regulated by a special procedure provided for in Rule 61 of the Rules of the Court

The Court in its pilot judgments identifies both the nature of the structural or systemic problem or other dysfunction and the type of remedial measures required.

After a final judgement is adopted by the Court, in accordance with Article 46, paragraph 2 of the Convention, the Committee of Ministers starts supervising the measures taken by the state to execute the judgment.

- Right of correspondence with the Court
- Right of access to a lawyer and to a court
- Ill-treatment and torture
- Inhuman conditions of detention
- Life imprisonment
- Prison work and social security system
- Transfers and transportation of prisoners
- Strip searches
- Special prison regimes
- Handcuffing and caging
- Healthcare in prison
- Old age terminal illness and disability
- Automatic classification as high security or dangerous prisoners
- Lack of proper investigation of allegations of ill-treatment in prison
- Duration of pre-trial detention and arbitrary detention
- Passive smoking

Since the adoption of the new European Prison Rules in 2006 the Court has made over 100 times references to the European Prison Rules

Most frequently in the part concerning relevant international texts but in a number of cases directly in the part related to the applicable law

This upgrades the standards to "quasi-binding"

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- **Thank you for your attention!**

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- More information can be found at:

- www.coe.int/prison
- www.coe.int/justice

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Justice pénale de l'Union Européenne 2014-2020

« Prévenir la torture et les mauvais traitements des personnes détenues : impact du comité européen de prévention de la torture sur les centres de détention en Europe »

Intervention de M Xavier RONSIN

Membre du CPT

1 - Préambule

Liens entre la torture, les mauvais traitements et les conditions de détention inhumaines et dégradantes, les dernières étant le « marche- pied « des premières

Notion large de « lieux de privation de liberté » : geôles de commissariat, prisons, hôpitaux ou quartiers psychiatriques, foyers fermés de jeunesse, centres administratifs de rétention, etc…

2 - Etapes internationales

2.1 Le 10 décembre 1948: Déclaration universelle des droits de l'homme

Article 5 : « Nul ne sera soumis à la torture, ni à des peines ou traitements cruels, inhumains ou dégradants. «

2.2 Le 4 novembre 1950 : Convention de sauvegarde des droits de l'homme et des libertés fondamentales dont l'article 3 proclame : « nul ne peut être soumis à la torture ni à des peines ou traitements inhumains ou dégradants.

Afin d'assurer le respect des engagements pris, est créée une « cour européenne des droits de l'homme » installée le 18 septembre 1959 à Strasbourg.

2.3 Le 10 décembre 1984: Convention internationale contre la torture et autres peines ou traitements cruels inhumains ou dégradants (ratifiée par la France le 18 février 1986 et entrée en vigueur le 26 juin 1987)

Description de la torture dans son article 1 :

« tout acte par lequel une douleur ou des souffrances aiguës, physiques ou mentales, sont intentionnellement infligées à une personne aux fins notamment d'obtenir d'elle ou d'une tierce personne des renseignements ou des aveux, de la punir d'un acte qu'elle ou une tierce personne a commis ou est soupçonnée d'avoir commis, de l'intimider ou de faire pression sur elle ou d'intimider ou de faire pression sur une tierce personne, ou pour tout autre motif fondé sur une forme de discrimination quelle qu'elle soit, lorsqu'une telle douleur ou de telles souffrances sont infligées par un agent de la fonction publique ou toute autre personne agissant à titre officiel ou à son instigation ou avec son consentement exprès ou tacite. Ce terme ne s'étend pas à la douleur ou aux souffrances résultant uniquement de sanctions légitimes, inhérentes à ces sanctions ou occasionnées par elles. »

2.4 Le 26 juin 1987, Convention européenne pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (entrée en vigueur le 1/02/1989).

Son article 1er précisait : "Il est institué un Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants .... Par le moyen de visites, le Comité examine le traitement des personnes privées de liberté en vue de renforcer, le cas échéant, leur protection contre la torture et les peines ou traitements inhumains ou dégradants".

3 - causes multiples de la torture et des traitements inhumains et dégradants:

Culturelles :

Toute puissance des forces de sécurité et absence de remise en cause politique ou sociétale de leur fonctionnement

Rapport de la société à l'autorité

Place prépondérante de l'aveu dans les procédures judiciaires et de la punition dans l'exécution de la peine

Aveu **versus** preuve scientifique

Punition / châtiment / souffrance **versus** prévention de la récidive / amendement du condamné en vue de sa réintégration dans la communauté

Pression excessive sur les policiers ou les gardiens de prison par leur hiérarchie dans le cadre d'une culture dévoyée du résultat ou de la sécurité maximale

économiques :

Budgets insuffisants pour entretenir les lieux de privation de liberté ou leur offrir des conditions décentes de séjour (accès à la lumière, à l'air, aux WC, à une cour de promenade, à des leiux d'activités et de travail, etc …)

Moyens scientifiques d'investigation insuffisants

Insuffisance des effectifs de surveillants de prison ou d'infirmiers psychiatriques / démission de la hiérarchie / politique de sécurité par la peur inspirée

Budget d'aide légale insuffisant pour indemniser les avocats ou les médecins de GAV

juridiques :

Garanties procédurales insuffisantes quant à l'accès à l'avocat, à la famille, au médecin, au dossier

judiciaires :

Absence de contrôle des conditions d'obtention des preuves

Manque d'indépendance des juges et procureurs à l'égard des forces de police

Absence de contrôle des procureurs et des juges sur la phase ante jugement ou post jugement

Manque de professionnalisme ou de volonté dans le traitement des allégations de torture ou de traitements inhumains et dégradants (problématique de la lutte contre l'impunité)

4 - Est-ce que la torture et les mauvais traitements existent toujours en Europe (47 pays) ?

- Allégations nombreuses

Oui naturellement mais :

- à des degrés divers selon les zones géographiques (rappel de la zone d'influence du CPT : 47 pays y compris Russie et Turquie)
- en fonction de l'état du parc immobilier des commissariats et centres de détention
- en fonction des règles de droit applicables (mécanisme national de contrôle des lieux et effectivité ou non de son contrôle, durée de la privation de liberté dans des locaux de police ou dans des cellules disciplinaires ou d'isolement en prison, délai de présentation à un juge, accès à un avocat)

Exemples :

Usage excessif de la force lors de l'arrestation ou coups lors de la phase d'interrogatoire

Aveux extorqués sous la violence ou obtenus sans garantie qu'ils correspondent à la réalité

Conditions de détention inhumaines ou dégradantes
Saleté, exiguité, entassement dans m2 insuffisants (norme 4 m2)
Privation de lumière, de nourriture, de produits d'hygiène, de douches, d'activités

Durée excessive de détention avant présentation à un juge (norme 4 jours de la CRDH)

Incarcération longues dans des locaux de police ou des cellules disciplinaires (norme CPT 14 jours)

Surpeuplement des prisons (cellules collectives, matelas par terre, ou occupés par rotation, ...)

5 L'importance des investigations – combat contre l'impunité

Proclamer des valeurs ou des objectifs ne suffit pas

Il faut :

- qu'un **contrôle effectif** soit mis en place d'abord **en interne** au sein de l'institution elle-même (de type inspection générale rattachée au directeur général)

- Mais aussi **en externe** avec les caractéristiques suivantes :
    - Indépendance
    - Impartialité
    - Professionnalisme (protocoles précis de visites)
    - Régularité des contrôles
    - Procédures de suivi des suites des visites et des recommandations faites

- Que des **mesures correctrices** soient prises (sur le plan législatif si nécessaire, réglementaire, ou budgétaire)
-
- Que des **sanctions efficaces soient prises sur le plan disciplinaire voire judiciaire**, afin de lutter contre l'impunité
-

6 Une visite d'un lieu de détention par le CPT

- **6.1 Quels lieux ? Notification ? quand (matin / soir / nuit)?**

Identification préalable des lieux précis de privation de liberté d'un pays (par recoupement des informations reçues du pays visité mais aussi des « interlocuteurs habituels « du CPT comme les ONG, ou le MNP, ou les plaignants qui s'adressent directement au CPT

Notification préalable au pays : en cas de visite périodique pour certains lieux seulement (dépôt central, centres de détention les plus importants) et de manière plus restreinte en cas de visite dite adhoc

Caractère inopiné de la visite de jour u et de nuit pour d'autres afin d'éviter :
- que des modifications soient apportées aux lieux juste avant la venue du CPT (peinture, équipements, soins aux détenus ou transfert inopiné de ceux-ci)

- ou que des consignes de silence soient données aux détenus

- **6.2 Les pouvoirs d'une délégation**, **déroulement type** :

Entretien avec le plus haut gradé de permanence puis avec le responsable selon son heure d'arrivée

Accès à toutes les pièces, à toutes les cellules, à tous les bureaux et locaux y compris les annexes (ateliers, garages, véhicules de transport)

Utilité ?

Compréhension des conditions générales de travail des gardiens et policiers , de vie des détenus (importance du dialogue avec les gardiens : source d'informations mais aussi importance de faire comprendre que l'amélioration des conditions de détention profite non seulement aux détenus mais aussi aux personnels qui les gardent et les surveillent)

mais **aussi recherche des dispositifs ou des matériels susceptibles de favoriser les mauvais traitements voire la torture**

Pour les cellules : contrôle de l' accès à la lumière naturelle, à l'air libre, conditions d'entassement dans une cellule, conditions de couchage (un lit pour plusieurs détenus ou pas ? état de la literie (insectes, hygiène) accès à des points d'eau, accès à la promenade (1 heure par jour au minimum)

Pb de la norme du CPT d'espace vital de 4 m2 par détenu en cellule collective et de 6 m2 en cellule individuelle, + annexe sanitaire

Pour les salles d'interrogatoires et les bureaux des personnels

Exemple cages de détention, anneaux pour immobiliser des détenus au sol, sur un mur, au plafond

Battes de base ball, bâtons divers, pistolets à impulsion électrique, pseudo scellés non étiquettés et qui peuvent être détournés pour impressionner ou frapper les détenus (barres, tuyaux, couteaux, etc)

Accès aux détenus

Confidentialité (en dehors de la vue et de l'écoute par des gardiens)

Anonymisation des témoignages (notes écrites par chaque membre) dans l'analyse par le CPT du résultat de la visite :

Examen médical si nécessaire

Comment interroger ?

Pas à la manière inquisitoriale d'un policier

Nécessité d'une empathie, d'une écoute, mais aussi d'une vigilance contre les manipulations possibles

Précisions des données recueillies à recouper obligatoirement avec le témoignage d'autres détenus, mais aussi avec les registres détenus au poste de police

Accès aux dossiers et registres

Fastidieux mais indispensable (à recouper ensuite avec les déclarations des détenus)

Traçabilité juridique des arrivées et départ : éviter les gardes à vue « officieuses » ou les placements en cellules disciplinaires « sauvages« dans le but :

- Soit de dépasser la durée des délais légaux de garde à vue
- Soit de différer irrégulièrement le bénéfice des droits dont les détenus doivent bénéficier (ex droit à l'avocat)

Question particulière des « dépôts de police « qui ne sont pas des prisons mais détiennent des détenus en attente, parfois pendant plusieurs mois, de leur date de jugement

Traçabilité des jours et heures de venues des familles, du médecin, des avocats

Sujet particulier des **dossiers médicaux** et de leurs confidentialité : double objectif :

- Objectiver l'état de santé à l'entrée et à la sortie du local de police (traces de coups)
- Vérifier, surtout si la détention dure longtemps, que les soins apportés étaient à la hauteur des besoins

Attention particulière aux détenus les plus fragiles, les plus vulnérables

Mineurs, femmes, personnes malades (notamment sur le plan psychiatrique), minorités sexuelles

- **8 - efficacité du CPT ? oui**

Esprit général de **coopération**

Dialogue **confidentiel** avec les autorités même si tendance générale à publier les rapports et réponses (cf site web du CPT : http://www.cpt.coe.int/fr/

Mécanisme de **suivi** des recommandations du CPT et de l'effectivité des promesses

Pression de la « **notoriété démocratique** » et du regard européen

Production de normes par le CPT (soft law) : textes généraux thématiques dans le rapport annuel mais aussi « jurisprudence » : culture du précédent et donc d'une recommandation faite à un pays X qui est opposable à un pays Y

(http://www.cpt.coe.int/fr/docsnormes.htm)

Exemples :

- situation des détenus condamnés à la réclusion à perpétuité : http://www.cpt.coe.int/fr/documents-travail/cpt-inf-2016-10-part-fra.pdf
- espace vital par détenu dans les établissements pénitentiaires : http://www.cpt.coe.int/fr/documents-travail/cpt-inf-2015-44-fra.pdf

-

Intégration des « normes du CPT » par la **cour européenne des droits de l'Homme** dans la motivation de ses arrêts

CPT **partenaire et non adversaire des autorités gouvernementales**

Lucide et pragmatique pour renforcer le **professionnalisme** des forces de sécurité afin que les personnes privées de leur liberté soient traitées conformément au respect des droits de l'Homme

Conclusion : il appartient aux autorités administratives et judiciaires de jouer pleinement leur rôle de gardien des libertés publiques. Le CPT ne peut qu'inciter ou compléter leur action

Rennes, le 15 juin 2016

Xavier RONSIN

Annexes : table des matières des « normes du CPT »

CPT/Inf/E (2002) 1 - Rev. 2015
Français

Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT)

Normes du CPT

Chapitres des rapports généraux du CPT consacrés à des questions de fond

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L'isolement de détenus ....
Services de santé dans les prisons ....

III. Etablissements psychiatriques ....

Placement non volontaire en établissement psychiatrique ....
Moyens de contention dans les établissements psychiatriques
pour adultes ....

IV. Rétention des étrangers ....

Personnes retenues en vertu de législations
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L'éloignement d'étrangers par la voie aérienne ....

**V. Les mineurs privés de liberté
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VI. Femmes privées de liberté ....

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Academy of European Law - Trier

SUPERVISING MATTERS RELATED TO DETENTION

Seminar
Strasbourg 23-24 June 2016

Mauro Palma

Distinguished participants, it is a pleasure and a honour for me to address this Seminar of the Academy of European Law and to share views with this audience about a topic which the Council of Europe considers as extremely important in present times. The issue is the role of Prison and Probation services in dealing with the risk of radicalization in their respective services; the risk of spreading radicalized ideologies possibly influencing more vulnerable prisoners as well as the risk of the engagement of radicalized prisoners in terrorist activities after their release. This issue puts some questions about the model of detention and probation we are implementing in the European context and about the proper, positive and meaningful training to be offered to those who operate in these Institutions. Indeed it will be never enough underlined the great importance that is attached by the Council of Europe to the adequate recruitment and training of prison staff, even when discussing such difficult topics.

After the events in Paris in January 2015, the Heads of the European States and Governments adopted a text where it is clearly said that the following measures should (inter alia) be taken:

- adequate measures in accordance with national constitutions, to detect and remove internet content promoting terrorism or extremism, including through greater cooperation between public authorities and the private sector at EU level, also working with Europol to establish internet referral capabilities;
- communication strategies to promote tolerance, non-discrimination, fundamental freedoms and solidarity throughout the EU, including through stepping up inter-faith and other community dialogue, and narratives to counter terrorist ideologies, including by giving a voice to victims;
- initiatives regarding education, vocational training, job opportunities, social integration and rehabilitation in the judicial context to address factors contributing to radicalisation, including in prisons.

The Council of Europe approved a Resolution about the recording of travel data of persons visiting a number of countries included in a special list and a Directive about the fight against

terrorism and asked the Council for Penological Co-operation for drafting Guidelines about the radicalization and possible de-radicalisation in prison.

Indeed prison and probation services have come – more and more – to the attention of governments in at least three ways. First, failed or successful terrorist plots in the recent years have pointed out that several of the perpetrators have passed through prison and probation services. Such institutions have therefore been pointed out as specific "places of radicalisation". Second, prison and probation services have been identified by governments as places in which individuals might be susceptible to benefit from programmes and interventions helping them to become resilient to joining violent movements and ideologies. Finally, many prison and probation staff have expressed their concern and their lack of training to help them identify and deal with such matters.

Six actions should be seen as crucial when discussing about a strategy to deal with the problem of possible radicalisation to violent extremism and terrorism in prison and probation services:

1. How to <u>prevent</u> such a radicalisation. This implies a social strategy and action outside prison, in particular within the context of neglected areas of urban surroundings; in the context of prisons it implies a strategy to protect vulnerable persons deprived of their liberty from the possible influence of strong ones.
2. How to <u>detect</u> signs of a possible growth of a radical and violent approach to the difficulties inherent to the collective and closed environment of a prison. And, in particular, how to detect signs indicating the tendency to surrogate the own weak identity with the supposed strong identity as part of an external widespread group based on overwhelming values;
3. How to <u>deal with</u> radicalised persons either deprived of their liberty, in the prison context or under the control, support and care of the probation service. There are prisoners who are convicted of or awaiting trial for violent extremist or terrorist offences, but so far exact data are not readily available even because of differing definitions of such crimes from country to country.
4. How to implement programmes of <u>de-radicalisation</u> and how to evaluate their effects. In particular which actors should be involved in these programmes: what kind of staff is required in terms of professions and personal attitude? May other prisoners have a role in this context? And if so, what is their role?
5. How to prepare radicalised prisoners or prisoners under radical influence <u>for their release</u>. This issue implies also how to prepare the community at large to receive such persons in order to reintegrate them or in case of foreigners irregularly present in the country to open the file of their return to their own country. In both cases an effective and appropriate informative flux between different agencies is required in order to protect the community as well as to ensure the due safeguards to the persons concerned.

6. Last, how to act within the context of legality and obligations under article international treaties and conventions. In particular in full compliance with the obligations enshrined by article 3 of the European convention on human rights, that cannot to be derogated in any exceptional circumstances (nothing may be invoked to diminish the absolute nature of this ban).

These actions designate some indicators to be examined and developed when discussing about radicalisation. They are very similar to the points listed in 2009 in the United Kingdom project called *Context II* that identifies four strategic lines:

- *To Prevent* (about the preventive strategy),
- *To Pursue* (about the prevention and the repression of direct terroristic threats),
- *To Protect* (about borders control, infrastructures, movements and travels) and
- *To Prepare* (to reinforce the resilience of The United Kingdom's population facing a possible terrorist attack.

These indicators are also at the basis of the *Guidelines for prison and probation services regarding radicalisation and violent extremism* drafted by the Council for Penological Co-operation (PC-CP) , discussed and approved by the supervisory European Committee on Crime Problems and adopted by the Committee of Ministers of the Council of Europe on 2 March 2016.

In the preamble the Guidelines define what is meant as "radicalisation" and "violent extremism":

Radicalisation is a dynamic process whereby an individual increasingly accepts and supports violent extremism. The reasons behind this process can be ideological, political, religious, social, economic or personal.

Violent extremism consists in promoting, supporting or committing acts which may lead to terrorism and which are aimed at defending an ideology advocating racial, national, ethnic or religious supremacy or opposing core democratic principles and values.

The commentary to the Guidelines stresses that they are not concerned with the adoption of radical political opinions, but with the undemocratic adoption, promotion and support of violent means to obtain demands.

Therefore the Guidelines aim at offering a basis for the development of actions in different Administrations and contexts having the same basic principles. Indeed the Guidelines contain a list of 14 basic principles. These are principles for the prison and probation services, but also for other law enforcement agencies as the idea is that any contact with law enforcement agencies like the police, probation or prison institutions should be the occasion to carry out preventive work.

As regards prisons the main principle – we could say the core of the Guidelines – is principle n.8 that says as follows: «*Good management and good order in prison shall respect diversity,*

tolerance and human dignity of both prisoners and staff as this helps avoid situations conducive to radicalisation and violent extremism».

Good management, material conditions of detention respectful of the dignity of each prisoner and a regime aimed at giving responsibility of their daily time, under control and support, constitute the best strategy against possible radicalisation in prison. Because – and this is the basic principle n. 12 «*Prisoners' feelings of safety and trust in the legitimacy of staff's actions are likely to induce positive change and facilitate their rehabilitation and resettlement. Every effort shall therefore be made to preserve and build on such relations of trust in order to help offenders start or develop a crime-free life*».

The *Basic Principles* of the Guidelines are organised in four different groups.

1. Respect for human rights and fundamental freedom,
2. Respect for data protection and privacy,
3. Imprisonment as a measure of last resort,
4. Good prison management.

The *respect for human rights and fundamental freedom* is stated in two paragraph recalling that torture and inhuman or degrading treatment can never form part of a counter-radicalisation or counter-terrorism policy that complies with the principles and values shared by the members of the Council of Europe.

In addition the paragraph , the paragraph reiterates the fact that key principles such as freedom of expression and freedom of religion shall be respected. Measures aimed at tackling radicalisation shall indeed never infringe on the ability for individuals to hold and express their political views within the boundaries of the law, nor to practice their religion.

The reference of the three paragraphs of the second group of basic principles – *the respect for data protection and privacy* – is to the Charter of Fundamental Rights of the European Union. In particular to article 8 of the Charter, stating that «everyone has the right to the protection of personal data concerning him or her». In its paragraph 2 it recalls the principles of necessity and proportionality that should be respected when infringing upon the privacy of communication of prisoners, in full compliance with Rule 24 of the European Prison Rules. This principle is stressed as follows: (*Principle 2*) «*Any supervision and restriction of contacts, communications and visits to prisoners, due to radicalisation concerns, shall be proportionate to the assessed risk and shall be carried out in full respect of international human rights standards and national law related to persons deprived of their liberty and shall be in accordance with Rule 24 of the European Prison Rules concerning contact by prisoners with the outside world*».

In addition this group of principles includes the necessity for staff involved in the rehabilitation of prisoners of concern (social workers, educators, religious representatives, psychologists, etc.) to be able to work in appropriate autonomy and independence from

those engaged in tasks of intelligence gathering, surveillance and policing. As it is said in the Commentary to the *Guidelines* by the scientific expert involved in the drafting process, the idea underpinning this paragraph is that this autonomy is the *sine qua non* condition for the establishment and preservation of a key element of professional success in rehabilitation: genuine relations of trust.

The third group of basic principles is composed of only one paragraph reaffirming that *imprisonment must be seen as a measure of last resort*. This principle is reiterated in several Council of Europe recommendations concerning prisons. It is a principle shared by most academics, prison observers, people who take the floor in conferences. It is a principle often repeated as obvious: on the contrary the gap between the statement and the practice is striking : many European countries still consider imprisonment as "the" real sanction, in a number of cases the only sanction provided for by the Criminal Code. Therefore it is important to repeat this principle in all the document concerning the role and the limits of imprisonment. In fact the *Guidelines* should not be considered in isolation, but within a set of the relevant Council of Europe rules and regulations that concern prison and probation services – namely the European Prison Rules, the Council of Europe Probation Rules, the European Rules for juvenile offenders subject to sanctions or measures, the Recommendations respectively concerning foreign prisoners, dangerous offenders the use of electronic monitoring.

Finally the last group of basic principles concerns the *Good prison management*, which I mentioned before as a corner stone of a successful policy of tackling the risk of radicalization. This group is composed of 8 paragraphs, in line with the social scientific understanding of the mechanisms that lead individuals or groups to commit acts of political violence. The scientific expert. Prof. Ragazzi who helped the PC-CP in its drafting exercise, reported in his Commentary to the *Guidelines* that academic literature on terrorism and political violence generally distinguishes two categories of factors that lead to political violence: (1) *root causes* and (2) *trigger causes*. He takes this distinction from the book of Martha Crenshaw, in 1981, *The causes of terrorism* and says:

«Root causes (or structural factors) are the factors that the literature considers as necessary but not sufficient factors to understand the passage to political violence. They correspond to those structural issues that produce collective feelings of injustice, exclusion or marginalisation. Among such factors, one generally finds: *first*, foreign policy and international relations: for example, the revelations around the incarceration conditions in the prison of Abu Ghraib in Iraq, the controversial CIA detention and interrogation programme; *second*, domestic policy aspects, such as the lack of integration of minorities, racism, islamophobia; *third*, economic factors, such as the exclusion from the labour market and/or poverty.

Trigger causes are the precipitating factors which can trigger the passage to violence. They are generally found in personal histories of exclusion; they can be grafted onto the root

causes to build coherent narratives legitimating violence. While never a sufficient predictor of violence, they are specific to each individual and are very much linked to specific circumstances. For instance, they can fall under the desire to belong to a group, the social influence of a charismatic figure and peer pressure from the group or under personal experiences of discrimination, rejection or marginalisation. Here the experience of use of excessive force by state authorities (police, army, prison staff) can be a key factor. They can also relate to the resentment related to unmatched or frustrated expectations in economic, social or political circumstances (the so called «*relative deprivation*»).

The Guidelines suggest that holding political, ideological or religious views, even quite radical, should not be a matter of concern for probation and prison staff as freedom of thought consciousness and religion are protected by Article 9 of the ECHR. What prison and probation services should do, however, is to create the feeling of justice of the sanction executed thus avoiding further sources of resentment for individuals under their control who might use them to further convince themselves or others of the legitimacy of violent methods to achieve their personal or political goals.

Starting from these *definitions* and *basic principles*, the *Guidelines* develop four topics:

Prison and probation work, starting from the key question of assessing the risks posed by prisoners (to fellow prisoners, to prison staff or to themselves) but also the needs they may have when they enter the prison system. Pproperly assessing risks and needs is indeed a key factor to determine the appropriate attention and care provided to each individual prisoner, as specified in paragraphs 51.3 and 52.1 of the European Prison Rules. The admission to prison the proper assessment for sentence planning, classification and allocation are examined. The *Guidelines* do not take a position with regard the debate as to whether offenders entering the prison for terrorist crimes should be dispersed in multiple institutions of the prison system or if they should instead be regrouped in locations such as high security prisons: decisions to be taken in this respect depend on national circumstances, cultural differences, individual situation and other factors.

Particular attention is given in this first group of guidelines to culture and religion, emphasizing principle included in the European Prison Rules (22.1, 29.1 and 29.3), recommending in addition to provide opportunities for celebrating religious holidays and for taking meals at times which meet religious requirements. Selection, access and training of religious representatives are also taken into account, giving guidance in such processes.

Finally a paragraph concerns the need for a multi-agency comprehensive approach in order to deal successfully with radicalisation and the need to involve civil society and local communities in the reintegration process.

Procedures and practices for detection, prevention and dealing with radicalization and violent extremism in prison constitute the second topic.

The context is given by the implementation of dynamic security as a key element for dealing promptly with radicalization process as well as a factor contributing to the rehabilitation of prisoners.

This articles of this second topic alert prison and probation staff that what might be perceived as "signs" can very often be usual external or behavioural markers of enhanced religious practice. It is therefore of utmost importance, in order to avoid unnecessary escalation of violence between probationers and prisoners and probation and prison staff to make sure that the assessment is properly made. The role of frontline staff is critical, it requires the authorities to invest in their proper training in order to ensure adequate assessment procedures and the possibility to make appropriate decisions when necessary.

Reference to special programmes aimed at addressing radicalisation – often referred to as "de-radicalisation" or "disengagement programmes" – in particular to " mentoring programmes", which might include former violent radicals who have renounced violence, is made in this part of the *Guidelines*.

The third topic is about the *Post-release work.* In particular it is stressed that (*Paragraph 37*) «In order to aim at successful reintegration, prison and probation services shall not work in isolation, but communicate and establish links with community organisations in order to ensure the continuation of special programmes developed during imprisonment or probation after release, or after probation supervision ends, where appropriate». Moreover (*paragraph 38*): «Former prisoners shall be assisted in contacting different support structures in the community. On a case-by-case basis, the involvement of families and social networks shall be considered, as these may affect positively the resettlement process».

Finally the last topic concerns *the research, the evaluation for programmes and the communicative strategy*: a special key point is made on the media, which obviously play a special role in building the so called "public opinion". The last guideline says: «*In order to ensure public reassurance and understanding, regular work with the media shall be carried out*».

It's a very short and simple sentence, but it is one of the most difficult recommendations to be implemented. Nevertheless we cannot renounce to it.

ERA Seminar 2016

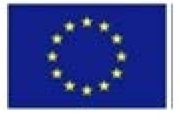
SUPERVISING MATTERS RELATED TO DETENTION

Co-funded by the Justice
Programme of the European Union 2014-2020

Mauro Palma

Head of the Italian NPM under OPCAT
Former President
European Committee for the Prevention of Torture
Former President
European Council for Penological Co-operation

THE ROLE OF PRISON AND PROBATION SERVICES TO IDENTIFY, PREVENT AND DEAL WITH RADICALISATION



Co-funded by the Justice Programme of the European Union 2014-2020

Six Actions
defining a strategy to deal with the problem of possible radicalisation to violent extremism and terrorism in prison and probation services:

1. How to prevent such a radicalisation
2. How to detect signs
3. How to deal with radicalised persons
4. How to implement programmes of de-radicalisation
5. How to prepare radicalised prisoners or prisoners under radical influence for their release
6. How to act within the context of legality and obligations

Article 3 of the European Convention on Human Rights (1950) provides that

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment"

No exceptional circumstances of any kind may be invoked to diminish the absolute nature of this ban and allow practices disrespectful of the dignity of a person deprived of his/her liberty by a public authority.

UK project *Context II*:

- *To Prevent* (about the preventive strategy),
- *To Pursue* (about the prevention and the repression of direct terroristic threats),
- *To Protect* (about borders control, infrastructures, movements and travels) and
- *To Prepare* (to reinforce the resilience of The United Kingdom's population facing a possible terrorist attack).

Radicalisation is a dynamic process whereby an individual increasingly accepts and supports violent extremism. The reasons behind this process can be ideological, political, religious, social, economic or personal.

Violent extremism consists in promoting, supporting or committing acts which may lead to terrorism and which are aimed at defending an ideology advocating racial, national, ethnic or religious supremacy or opposing core democratic principles and values.

Basic Principles of the Guidelines

1. Respect for human rights and fundamental freedom,
2. Respect for data protection and privacy,
3. Imprisonment as a measure of last resort,
4. Good prison management.

1. Respect for human rights and fundamental freedom

The *respect for human rights and fundamental freedom* is stated in two paragraphs recalling that torture and inhuman or degrading treatment can never form part of a counter-radicalisation or counter-terrorism policy that complies with the principles and values shared by the members of the Council of Europe.

2. Respect for data protection and privacy

Three paragraphs referring to article 8 of the Charter of Fundamental Rights of the European Union (*everyone has the right to the protection of personal data concerning him or her*). In its paragraph 2 it recalls the principles of necessity and proportionality that should be respected when infringing upon the privacy of communication of prisoners, in full compliance with Rule 24 of the European Prison Rules.

.

2. Respect for data protection and privacy

EPR 24:

Any supervision and restriction of contacts, communications and visits to prisoners, due to radicalisation concerns, shall be proportionate to the assessed risk and shall be carried out in full respect of international human rights standards and national law related to persons deprived of their liberty and shall be in accordance with Rule 24 of the European Prison Rules concerning contact by prisoners with the outside world.

3. Imprisonment as a measure of last resort

The *Guidelines* should not be considered in isolation, but within a set of the relevant Council of Europe rules and regulations that concern prison and probation services – namely the European Prison Rules, the Council of Europe Probation Rules, the European Rules for juvenile offenders subject to sanctions or measures, the Recommendations respectively concerning foreign prisoners, dangerous offenders the use of electronic monitoring.

.

4. Good prison management

Eight paragraphs, in line with the social scientific understanding of the mechanisms that lead individuals or groups to commit acts of political violence:

- **Root causes** (or structural factors): a) foreign policy and international relations; b) domestic policy aspects; c) economic factors, such as the exclusion from the labour market and/or poverty.
- **Trigger causes** (or precipitating factors): which can trigger the passage to violence; they are generally found in personal histories of exclusion.

Guidelines

The *Guidelines* develop four topics:

- ***Prison and probation work***
- ***Procedures and practices for detection, prevention and dealing with radicalization and violent extremism in prison***
- ***Post-release work***
- ***the research, the evaluation for programmes and the communicative strategy***

Prison and probation work

Properly assessing risks and needs is a key factor to determine the appropriate attention and care provided to each individual prisoner, as specified in paragraphs 51.3 and 52.1 of the European Prison Rules.

Particular attention is given in this first group of guidelines to culture and religion, emphasizing principles included in the European Prison Rules (22.1, 29.1 and 29.3).

A multi-agency comprehensive approach in order to deal successfully with radicalisation.

Procedures and practices for detection, prevention and dealing with radicalization and violent extremism in prison

Implementation of dynamic security as a key element for dealing promptly with radicalization process as well as a factor contributing to the rehabilitation of prisoners.

To alert prison and probation staff that what might be perceived as “signs” can very often be usual external or behavioural markers of enhanced religious practice.

Special programmes aimed at addressing radicalisation – often referred to as “de-radicalisation” or “disengagement programmes” – in particular, “ mentoring programmes”.

Post-release work

(*paragraph 37*)

In order to aim at successful reintegration, prison and probation services shall not work in isolation, but communicate and establish links with community organisations in order to ensure the continuation of special programmes developed during imprisonment or probation after release, or after probation supervision ends, where appropriate.

Research, evaluation, communicative strategy

In order to ensure public reassurance and understanding, regular work with the media shall be carried out.

One of the most difficult recommendations to be implemented

Thank you

The need to improve education, mental healthcare and restorative justice in prison and probation in Europe

SUPERVISING MATTERS RELATED TO DETENTION. THE COUNCIL OF EUROPE'S AND INTERNATIONAL BODIES' WORK IN IMPROVING DETENTION CONDITIONS

Strasbourg, 23-24 June 2016

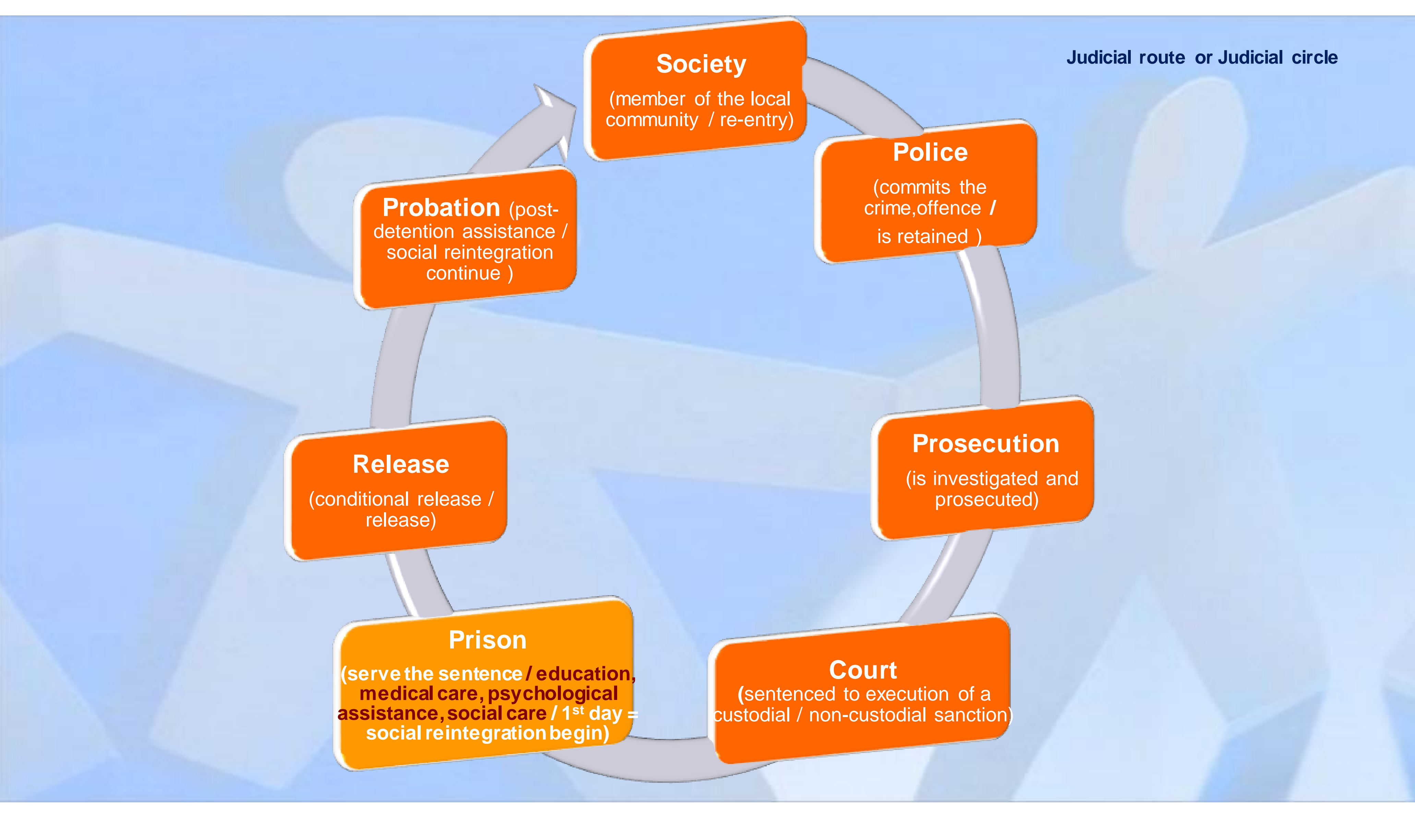
Catalin Bejan
ROMANIA

Co-funded by the Justice Programme of the European Union 2014-2020

No one was born in prison …

…except some children that aren't guilty for the crimes of their parents ...

Respect of fundamental rights


Judicial route or Judicial circle
Society
(member of the local community / re-entry)
Police
(commits the crime,offence /
is retained)
Prosecution
(is investigated and prosecuted)
Court
(sentenced to execution of a custodial / non-custodial sanction)
Prison
(serve the sentence / education, medical care, psychological assistance, social care / 1st day = social reintegration begin)
Release
(conditional release / release)
Probation (post-detention assistance / social reintegration continue)

The need to improve education…

"…education in prison helps to humanize prisons and to improve the conditions of detention…"

" 1. All prisoners shall have access to education, which is envisaged as consisting of classroom subjects, vocational education, creative and cultural activities, physical education and sports, social education and library facilities;"

" 8. Special attention should be given to those prisoners with particular difficulties and especially those with reading or writing problems;"

RECOMMENDATION No. R (89) 12 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON EDUCATION IN PRISON

" 9. Vocational education should aim at the wider development of the individual, as well as being sensitive to trends in the labour-market; "

" 13. Social education should include practical elements that enable the prisoner to manage daily life within the prison, with a view to facilitating his return to society; "

" 16. Measures should be taken to enable prisoners to continue their education after release;"

RECOMMENDATION No. R (89) 12 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON EDUCATION IN PRISON

" Rule 102

1. The maximum daily and weekly working hours of the prisoners shall be fixed by law or by administrative regulation, taking into account local rules or custom in regard to the employment of free workers.

2. The hours so fixed shall leave one rest day a week and sufficient time for education and other activities required as part of the treatment and rehabilitation of prisoners. "

UNITED NATIONS STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS (THE NELSON MANDELA RULES) A /RES/70/175

“ Rule 104

1. Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterate prisoners and of young prisoners shall be compulsory and special attention shall be paid to it by the prison administration.

2. So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty. “

UNITED NATIONS STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS (THE NELSON MANDELA RULES) A /RES/70/175

“ Rule 105

Recreational and cultural activities shall be provided in all prisons for the benefit of the mental and physical health of prisoners.”

UNITED NATIONS STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS (THE NELSON MANDELA RULES) A /RES/70/175

“ Article I

1. These rules concern the involuntary placement of persons suffering from mental disorder. Placement decided pursuant to criminal proceedings is not covered by these rules; however, Rules 5, 9, 10 and 11 apply to such a placement.

2. Involuntary placement (hereinafter referred to as "placement”) means the admission and detention for treatment of a person suffering from mental disorder (hereinafter referred to as "patient") in a hospital, other medical establishment or appropriate place (hereinafter referred to as "establishment"), the placement not being at his own request.”

RECOMMENDATION No. R (83) 2 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES CONCERNING THE LEGAL PROTECTION OF PERSONS SUFFERING FROM MENTAL DISORDER PLACED AS INVOLUNTARY PATIENTS

“ Article 5

1. A patient put under placement has a right to be treated under the same ethical and scientific conditions as any other sick person and under comparable environmental conditions. In particular, he has the right to receive appropriate treatment and care.”

“ Article 9

1. The placement, by itself, cannot constitute, by operation of law, a reason for the restriction of the legal capacity of the patient.

2. However, the authority deciding a placement should see, if necessary, that adequate measures are taken in order to protect the material interests of the patient. “

RECOMMENDATION No. R (83) 2 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES CONCERNING THE LEGAL PROTECTION OF PERSONS SUFFERING FROM MENTAL DISORDER PLACED AS INVOLUNTARY PATIENTS

“ Article 10

In all circumstances, the patient's dignity should be respected and adequate measures to protect his health taken. “

“ Article 11

These rules do not limit the possibility for a member state to adopt provisions granting a wider measure of legal protection to persons suffering from mental disorder subject to placement. “

RECOMMENDATION No. R (83) 2 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES CONCERNING THE LEGAL PROTECTION OF PERSONS SUFFERING FROM MENTAL DISORDER PLACED AS INVOLUNTARY PATIENTS

“ Rule 109

1. Persons who are found to be not criminally responsible, or who are later diagnosed with severe mental disabilities and/or health conditions, for whom staying in prison would mean an exacerbation of their condition, shall not be detained in prisons, and arrangements shall be made to transfer them to mental health facilities as soon as possible.

2. If necessary, other prisoners with mental disabilities and/or health conditions can be observed and treated in specialized facilities under the supervision of qualified health-care professionals.

3. The health-care service shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment. “

UNITED NATIONS STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS (THE NELSON MANDELA RULES) A /RES/70/175

“ Rule 110

It is desirable that steps should be taken, by arrangement with the appropriate agencies, to ensure if necessary the continuation of psychiatric treatment after release and the provision of social-psychiatric aftercare. “

UNITED NATIONS STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS (THE NELSON MANDELA RULES) A /RES/70/175

The need to improve restorative justice…

Restorative justice is a theory of justice that emphasizes repairing the harm caused by criminal behaviour. It is best accomplished through cooperative processes that include all stakeholders. This can lead to transformation of people, relationships and communities.

A system of criminal justice which focuses on the rehabilitation of offenders through reconciliation with victims and the community at large.

The benefits of restorative justice for children and young people are numerous. Children who participate in restorative processes show fewer tendencies towards anti-social behaviour in the community and at home. Participation in restorative justice processes gives children an understanding of the consequences of their acts on others and an opportunity to take responsibility.

Restorative justice is also a crucial alternative measure to ensure that children's deprivation of liberty is a measure of last resort. Not only does it reduce the risk of secondary re-victimization and violence during the criminal justice proceedings and while deprived of liberty, but it also reduces the risk of stigmatization of the child in the community.

The need to improve restorative justice...

A study in England found that £9 expenditure in the criminal justice system was saved for every £1 spent on restorative justice.

It also holds offenders to account for what they have done and helps them to take responsibility and make amends. Government research demonstrates that restorative justice provides an 85% victim satisfaction rate, and a 14% reduction in the frequency of reoffending.

THANK YOU !

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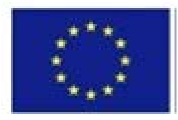
Council of Europe and international bodies in improving conditions related to detention

The Subcommittee on Prevention of Torture (SPT) and its cooperation with the National Preventive Mechanisms (NPM)

Strasbourg, France
23-24 June 2016

Marija Definis-Gojanović
SPT member



Co-funded by the Justice Programme of the European Union 2014-2020

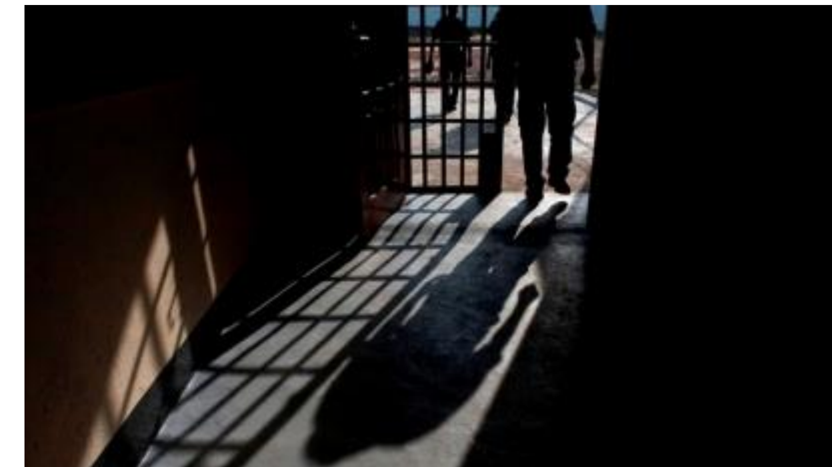
INTRODUCTION

- UN: 10 human rights treaty bodies
- 9 monitor implementation of the core international human rights treaties
- 10. - SPT - monitors places of detention in states parties (SPs) to the Optional Protocol

<u>new type of body</u>: acts proactively, its work (in the field) is opposed to passive and reactive traditional treaty-based bodies

Differences?

- The OPCAT is based on the premise that the more open and transparent places of detention are, the less abuse will occur a priori.
- It aims at long-term and sustained collaboration with SPs to prevent violations from occurring.



UNIQUE MANDATE

- Key elements (art. 11):

- to visit places of detention
- to work directly with NPMs
- to co-operate with UN, international, regional and national bodies

- essential for the prevention of torture

?

of torture an CIDT

With regard to the taking of **measures to prevent torture**, the distinction between torture and ill-treatment is less important.

?

of prevention

- a comprehensive approach:
- to identify the links and breaking it before the end is reached,
- to ensure that sufficient safeguards against ill-treatment are in place to reduce the risk,
- to insist on conditions necessary for places of detention not to be or become inhuman or degrading,
- to demand reaction to torture in terms of investigation, complaint mechanism and sanctions.

Why visits are so important?

- Allow examining the places, to understand the situation on the spot, directly check conditions of detention and treatment of persons there.
- Based on them and all other information gathered a fair and true complex analysis can be made and conclusions can be taken where problems and shortcomings are and what should be improved and changed.

POWERS of SPT

- To conduct visits
- To have unrestricted access to all information
- To take private interviews

Basic guidelines:

confidentiality, impartiality,

non-selectivity, objectivity

PREVENTIVE APPROACH

- Is:
- forward looking,
- focused on examination examples of both good and bad practice,
- conducting visit according to the principle of co-operation,
- applying strict confidentiality concerning work and findings.

The preventive visits are:

- proactive rather than reactive,
- global rather than individual,
- based on cooperation rather than criticism,
- comprehensive.

Visiting mechanism should be credible, independent, with unrestricted access. Preventive visiting looks at legal and system features and current practice, including conditions, in order to identify where the gaps in protection exist and which safeguards require strengthening.

Recommendations

- At the end of a country mission, the SPT communicates its recommendations and observations to SPs, and if necessary to NPMs .
- They are requested to respond.
- The SPT visit report remains confidential until the State Party requests its publication.

Purpose of reports and recommendations

- Is not only to bring about compliance with international obligations and standards but to offer practical advice and suggestions as to how to reduce the likelihood or risk of torture or ill-treatment occurring and will be firmly based on, and informed by, the facts found and circumstances encountered during the visits undertaken
- The implementation of recommendations?

Other preventive actions

- to adopt and implement safeguards and procedures relating to deprivation of liberty and to places of detention,
- to establish domestic legal guarantees,
- to combat impunity,
- to identify groups requiring special protection,
- to allow domestic procedures for complains and reports of torture and ill-treatment,
- to provide effective training,
- ....

KEY PRINCIPLES IN SPT's PREVENTIVE MANDATE

(a) The Subcommittee is deeply interested in the general situation within a country concerning the enjoyment of human rights and how this affects the situation of persons deprived of their liberty.

(b) The Subcommittee must engage with the broader regulatory and policy frameworks relevant to the treatment of persons deprived of their liberty and with those responsible for them, as well as how these are translated into practice.

KEY PRINCIPLES IN PREVENTIVE MANDATE – cont.

(c) Prevention will include ensuring that a wide variety of procedural safeguards for those deprived of their liberty are recognized and realized in practice.

(d) Recommendations regarding conditions of detention play a critical role in effective prevention.

(e) Visits to SPs should be carefully prepared in advance taking into account all relevant factors, including the general legal and administrative frameworks, substantive rights, ...

KEY PRINCIPLES IN PREVENTIVE MANDATE – cont.

(f) Reports and recommendations will be most effective if they are based on rigorous analysis and are factually well grounded. SPT believes that it is appropriate to focus on those issues which appear to it to be most pressing, relevant and realizable.

(g) Effective domestic mechanisms of oversight, including complaints mechanisms, form an essential part of the apparatus of prevention.

KEY PRINCIPLES IN PREVENTIVE MANDATE – cont.

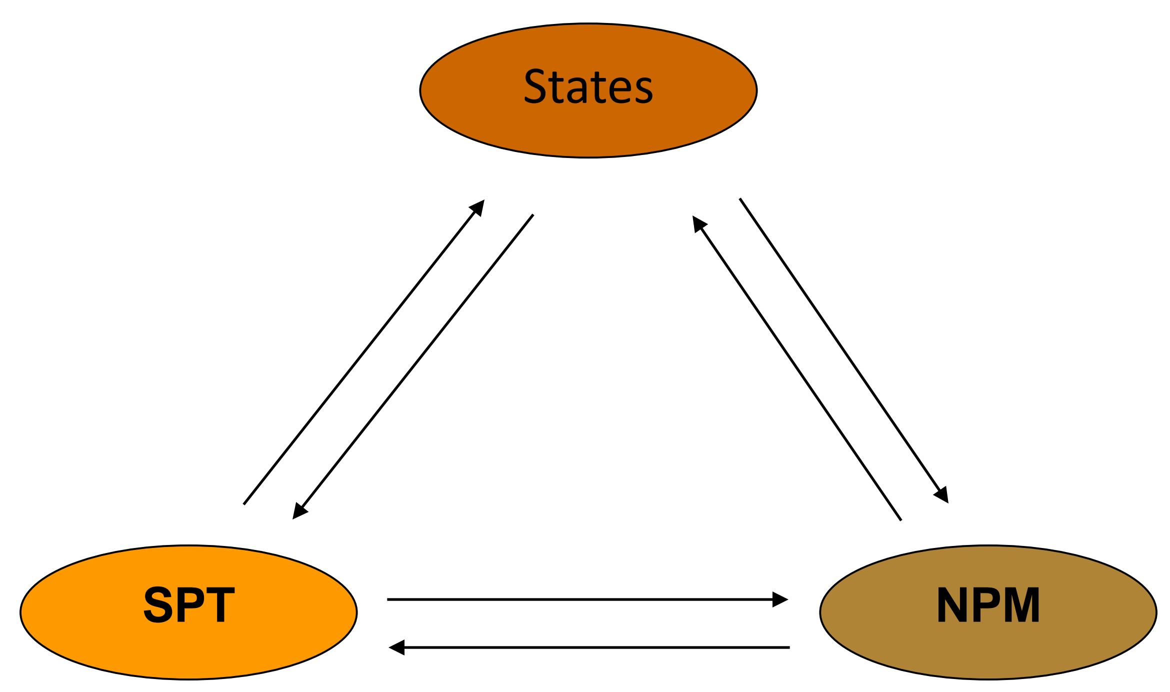
(h) Torture and ill-treatment are more easily prevented if the system of detention is open to scrutiny by NPMs, national human rights institutions, civil society, and by judicial oversight.

(i) There should be no exclusivity in the prevention. Prevention is a multifaceted and interdisciplinary endeavor.

(j) Expertise in relation to all vulnerabilities is needed in order to lessen the likelihood of ill-treatment.

INTERPLAY AND COOPERATION

- SPT should communicate and cooperate with State Parties and NPMs, as well as they should communicate and cooperate among each other and with the SPT



SPT - NPM

- cooperation of the SPT with NPMs:

- maintain direct (and confidential) contact with the NPMs, offer them training and technical assistance (art. 11 b ii),
- advice and give assistance for evaluation of the needs (art.11 b iii)

- relationship between NPMs and the SPT:

- right to have contacts with the SPT, to send it information and to meet with it (art. 20 f)

- SPT and NPMs: to make recommendations to the relevant authorities of States Parties (art. 11 a, art. 119 b)

SPT - NPM

- different stage of NPMs’ development
- if no NPM exists: SPT needs to talk about its future with relevant actors
- different institutions may have already been given tasks and responsibilities of the NPM - to find out whether this assignment guarantees certain baselines in the spirit of the OPCAT

Current status
81 States Parties

Current status
17 Additional States signatories

Current status
64 States have designated their NPMs

Types of NPMs

- The OPCAT does not prescribe any specific structure or model for the NPM.
- So far, several models have emerged:

- a new and specialized body on torture prevention;
- a National Human Rights Institution, including Ombudsperson's Offices;
- a National Human Rights Institution with formal involvement of civil society organizations;
- several institutions to serve the purpose of the NPM;
- others.

Current status

http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/NationalPreventiveMechanisms.aspx

Albania	01.10.2003 (a)	People's Advocate	Correspondence
Argentina	15.11.2004	Sistema Nacional para la Prevención de la Tortura y Otros Tratos Crueles, Inhumanos o Degradantes	Correspondence
Armenia	14.09.2006 (a)	Human Rights Defender of the Republic of Armenia	Correspondence
Austria	04.12.2012	Austrian Ombudsman Board	Correspondence
Azerbaijan	28.01.2009	The Commissioner for Human Rights (Ombudsman)	Correspondence
Bulgaria	01.06.2011	Ombudsman of the Republic of Bulgaria	Correspondence
Chile	12.12.2008	Instituto Nacional de Derechos Humanos	Correspondence
Costa Rica	01.12.2005	Defensoria de los Habitantes	Correspondence

SPT on NPM

- “NPM should be developed by a public, inclusive and transparent process of establishment, including civil society and other actors involved in the prevention of torture; where an existing body is considered for designation as the NPM, the matter should be open for debate, including civil society.”

NPMs effectiveness

- Conditions for NPMs effectiveness:
- independence
- sufficient resources
- multidisciplinarity of NPM team
- powers and guarantees.

SPT notes with concern the lack of progress →

Guidelines

Analytical assessment tool

Contacts with NPMs

- various bilateral and multilateral contacts
- number of meetings at the national, regional and international level, concerning the development of NPMs
- SPT developed a program for assistance to NPMs, based on a combination of workshop and observation of NPM visits in action
- directly with NPMs during its sessions in Geneva and through letters and other communications

Types of SPT visits

- Regular – 30
- Follow up – 4
- Focused on NPM – 10
- Advisory - 48

Types of SPT visits

- Longer in-country missions (up to ten days) to visits different places of detention; and
- Shorter in-country missions (up to four days), which may focus on NPM developments or on follow-up to previous SPT visits

Outline of SPT advisory visits to NPMs

- In accordance with art. 11(b) of the OPCAT
- Allow the SPT to focus on the legal and practical framework within which the NPM is working
- May also include visits to places of detention in the company of the NPM
- The objective is to help strengthen the NPM
- In situations where the State visited has yet to designate its NPM, the SPT will meet with State authorities, National Human Rights Institutions, civil society and others

CONCLUSION

- The role of the SPT:

to understand and advise.

- With the NPMs - with whom will now seek to work more closely on substantive as well as process issues:

to suggest practical steps to address issues where they occur and then discuss the implementation of these in detail and in an on-going manner.

Thank you

for your attention

dignité
liberté d'expression
intimité
centre éducatif fermé
respect
maintien des liens familiaux
hôpitaux psychiatriques
prisons
garde à vue
accès aux soins
rétention administrative
zone d'attente

L'impact des MNP sur les reformes juridiques et pratiques des conditions de détention

André FERRAGNE
Secrétaire général du CGLPL
ERA 23 juin 2016

Co-financé par le programme
Justice pénale de l'Union Européenne 2014-2020

Le Contrôleur général des lieux de privation de liberté, mécanisme national de prévention français

AUTORITÉ ADMINISTRATIVE INDÉPENDANTE CHARGÉE DE LA PRÉVENTION DE LA TORTURE ET DES AUTRES PEINES ET TRAITEMENTS CRUELS, INHUMAINS ET DÉGRADANTS

Les préalables

Rapport Canivet – 6 mars 2000

Assurer tant l'instruction et la réponse aux requêtes individuelles des personnes détenues que le contrôle général des conditions de détention

Le traitement d'un détenu doit être conforme aux principes fondamentaux d'un Etat régi par la prééminence du droit et l'objectif primordial de la garantie des droits de l'Homme

Etant close et sans transparence, [la société carcérale] ne peut, comme la société civile, bénéficier du regard extérieur du citoyen, des medias, des associations, que ce contrôle doit substituer

Le protocole facultatif contre la torture et autres peines et traitements cruels, inhumains et dégradants

Adopté par l'AG des Nations Unies le 18 décembre 2002

Ratifié par la loi du 28 juillet 2008, publié par décret du 15 décembre 2008

Objectifs

Un système de visites régulières

Effectuées par des organismes internationaux et nationaux indépendants sur les lieux où se trouvent des personnes privées de liberté

Afin de prévenir la torture et autres peines ou traitements cruels, inhumains ou dégradants

Loi du 30 octobre 2007 instituant un Contrôleur général des lieux de privation de liberté

Une mission de prévention

Contrôler les conditions de prise en charge et de transfèrement des personnes privées de liberté

Contrôler l'exécution par l'administration des mesures d'éloignement prononcées à l'encontre d'étrangers jusqu'à leur remise aux autorités de l'Etat de destination

S'assurer du respect de leurs droits fondamentaux

Une indépendance protégée

Il ne reçoit instruction d'aucune autorité

Est nommé par le Président de la République après avis du Parlement pour un mandat non révocable et non renouvelable

Il tient directement ses moyens du Parlement et choisit librement ses collaborateurs

Tous ses travaux (rapports, avis ou recommandations) sont rendus publics

Il reste en relation directe avec les instances internationales auprès desquelles la France s'est engagée

Les missions du CGLPL

Protéger les droits fondamentaux

Les droits intangibles inhérents à la dignité humaine

- Droit à la vie
- Droit à ne pas être soumis à la torture ou à un traitement dégradant ou inhumain
- Protection de l'intégrité physique et psychique
- Etc.

Un juste équilibre entre le respect des droits fondamentaux et les considérations d'ordre public et de sécurité

- Vie privée et familiale
- Droit au travail et à la formation
- Liberté d'expression
- Liberté de conscience et de pensée
- Accès à l'information
- Droit de vote
- Etc.

Conditions de travail des personnels et des différents intervenants

Visiter les lieux de privation de liberté

Tous les établissements pénitentiaires

Des établissements de santé

- Services psychiatriques
- Chambres sécurisées
- Unités médico-judiciaires
- Unités hospitalières sécurisée interrégionales (UHSI)
- Unités hospitalières spécialement aménagées (UHSA)

Les locaux de garde-à-vue et de rétention

Les centres et locaux de rétention administrative et les zones d'attente

Les centres éducatifs fermés

Les véhicules transportant des personnes privées de liberté

Un contact direct et étroit avec les personnes privées de liberté

Des possibilités de saisine larges

- Par toute personne,
- Par les pouvoirs publics
- Autosaisine

Une liberté complète d’accès aux personnes, aux lieux et aux documents

Un droit de communication libre

- Téléphone non enregistré
- Courrier non ouvert

Récemment confortée par la loi

- Accès aux dossiers médicaux
- Sanction des entraves et représailles

Une équipe pluridisciplinaire de professionnels aguerris (29 permanents, 22 contrôleurs extérieurs)

- Garantie de professionnalisme et d’expertise
- Prévention du risque de corporatisme ou d’accoutumance

Des référentiels de contrôle

- Internationaux
- Propres au CGLPL

Une liberté réelle de voir et dire

Une forte présence dans les lieux de privation de liberté

Des visites nombreuses

- 150 visites par an
- 905 établissements visités
- 100 % des prisons, des CEF et des CRA
- 37 % des établissements de santé
- 10 % des locaux de garde à vue dont 35 % de ceux de la police

Des visites longues

- 11 ans et 5 mois en détention
- 3 ans et 4 mois en garde-à-vue
- 4 ans et 5 mois en établissements de santé

Près de 25 000 courriers traités

Des moyens d'action diversifiés

Des rapports sur les visites

Des avis sur les modifications à apporter à l'ordre juridique

Des recommandations sur les situations alarmantes

Des rapports annuels pour évaluer périodiquement la situation des lieux de privation de liberté

Des rapports thématiques pour approfondir les questions

Une parole directe au Parlement et dans les instances internationales

L’impact sur les conditions de détention

ENTRE DES AVANCÉES VISIBLES ET MESURABLES ET DES PROGRÈS PLUS IMPALPABLES

La pari gagné de la notoriété

Donner de la visibilité à la population privée de liberté

- Lutter contre le risque d'oubli d'une population mise à l'écart
- Diffuser une information objective, des constats
- Imposer le sujet dans le débat public
- Lutter contre les clichés
- Susciter un questionnement systématique

Conforter le poids de associations

- Donner écho à leur fonction d'alerte
- Mettre à leur disposition des infirmations objectives
- Veiller localement au respect de leur fonction auprès des personnes privées de liberté

Aider les services à s'approprier les recommandations

- Rendre nos recommandations plus intelligibles
- Prendre exemple sur le processus de qualité comptable sans en copier les défauts
- Organiser un « cycle vertueux » entre « contrôle interne », « audit interne » et « audit externe »
- Organiser des relais entre contrôle interne et contrôle externe

Agir sur la formation

- De réelles lacunes (éducateurs, soignants)
- Partenariats à construire avec les école

Les succès quotidiens mais modestes de la réforme des pratiques

Forcer des avancées concrètes sur les situations inacceptables

Exemples

- Des prisons : Les Baumettes, Nouméa, Strasbourg, quartier mineurs VLM
- Deux hôpitaux
- Cinq centres éducatifs fermés

Des mesures exceptionnelles

- Rares
- Efficaces
- Souvent consensuelles
- Parfois ambigües

Susciter des mesures concrètes parfois discrètes

Des améliorations immédiates en fin de visite

- Pratiques individuelles
- Traitement du courrier des détenus
- Travaux mineurs

Des mesures qui ne coûtent rien

Des mesures individuelles liées aux saisines

- Mise en lumière de situations enfouies
- Levée de blocages administratifs
- Rappel à l'application du droit

Des marges de progression

La difficulté majeure : les moyens

- Surpopulation
- Sous-effectifs
- Vétusté

La difficulté seconde : la culture

- Exemples : Extractions médicales, Fouilles, informatique
- Lutter contre les habitudes et contre les craintes (sécurité, responsabilité)

Le meilleur mode d'action : la diffusion des bonnes pratiques

- Montrer qu'on le fait ailleurs sans provoquer de drame

La difficile évolution du droit

Des acquis

Inspirer directement des mesures
- Situation des femmes enceintes et jeunes mères
- Suivie de l'isolement et de la contention en psychiatrie

Accompagner des réformes
- Motivation des fouilles intégrales
- Présence des avocats en garde-à-vue

Maintenir un contact étroit avec le pouvoir législatif
- Auditions sur le rapport annuel
- Consultation sur les projets de loi et le projet de budget de l'administration pénitentiaire
- Auditions dans le cadre des enquêtes parlementaires

Des difficultés réelles

Le discours sur les droits fondamentaux est globalement peu audible

Des reculs inquiétants
- Fouilles intégrales pour des motifs non liés à la personne
- Refus du téléphone en centre de semi liberté
- Refus d'accès à internet

Des décisions sans portée
- Encellulement individuel

Importance des mécanismes internationaux (CEDH)

16/18 quai de la Loire
BP 10301
75921 PARIS CEDEX 19
www.cglpl.fr

REVIEW OF THE UN STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS

Revision process of the 1955 UN Standard Minimum Rules

> First UN Congress on the Prevention of Crime and the Treatment of Offenders in 1955

> **UNGA Resolution 2010**
  – Targeted revision
  – Principles

> **4 Inter-governmental Expert Group Meetings**

> Crime Commission

> **General Assembly** December 2016 as the **Nelson Mandela Rules**

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REVIEW OF THE UN STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS

Targeted revision

1. Respect for prisoners' inherent dignity and value as human beings.
2. Medical and health services.
3. Disciplinary action and punishment, including the role of medical staff, solitary confinement and reduction of diet.
4. Investigation of all deaths in custody, as well as any signs or allegations of torture or inhuman or degrading treatment or punishment of prisoners.

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REVIEW OF THE UN STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS

Targeted revision

5. Protection and special needs of vulnerable groups deprived of their liberty
6. The right of access to legal representation
7. Complaints and independent inspection
8. Training of relevant staff to implement the SMR
9. Replacement of outdated terminology

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Principles of revision

> Not lowering of existing standards

> Incorporating existing human rights and criminal justice standards, not creating new (including regional, such as European Prison Rules, jurisprudence, etc.)

> Updates to 'correctional science'

> Understanding that the SMRs are the 'blueprint' for many prison systems globally, need to be updated

REVIEW OF THE UN STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS

Participation / who was involved

> **Member state-led**
- **83 participated in one or more IEGMs**
- **A further 50 made submissions**

> UN agencies: UNODC, Human rights bodies, Torture prevention …

> Intergovernmental organisations: World Health Organization ..

> Non-governmental organisations

> Academics: Essex university

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REVIEW OF THE UN STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS

Adoption marked as “historic”

> Often regarded by states as the primary – if not only – source of standards relating to treatment in detention

> Key framework used by monitoring and inspection mechanisms in assessing the treatment of prisoners

> Critical advancements (e.g. solitary confinement)

> Global application – “minimum standards” / unanimous adoption

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Respect for dignity

New Rule 1 – general principles

> Treatment of prisoners with respect for their dignity and value as human beings, prohibition of torture and other cruel, inhuman or degrading treatment or punishment, ensuring safety and security for prisoners and staff (Rule 6(1)).

REVIEW OF THE UN STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS

Respect for dignity

Searches – Rules 50-52 (NEW)

New!

> Laws and regulations in accordance with int'l law.
> Respectful of dignity and privacy; proportionality, legality and necessity.
> Not to harass, intimidate, unnecessarily intrude on privacy.
> Appropriate records for purpose of accountability, in particular for strip, body cavity and cell searches: reasons, identity of those conducting them and results.
> Intrusive searches only if absolutely necessary.
> Alternatives to be developed and used.

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Respect for dignity (cont'd)

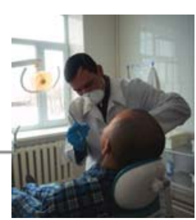
Searches – Rule 50

> Intrusive searches to be conducted in private and by trained staff of the same sex.

> Body cavity searches only by qualified health-care professionals other than those primarily responsible for care; and at a minimum by staff appropriately trained by a medical professional in standards of hygiene, health and safety.

➢Searches of visitors – Rule 60

Medical and health services



General health-care provisions (Rules 24-35):

> State responsibility, same standards as in community.

> Qualified personnel acting in full clinical independence.

> Clinical decisions only by health-care professionals and not to be overruled or ignored by non-medical staff.

Medical ethics (Rule 32):

> same ethical and professional standards as in community

> Informed consent, full confidentiality, prisoner's autonomy

Medical files (Rule 26):

> Up-to-date and confidential, access of prisoner

Disciplinary measures & sanctions

Use of restraints – Rules 47-49, added *inter alia*:

> General principles:
  – only if no lesser form of control effective
  – least intrusive method that is necessary and reasonably available
  – removed as soon as possible after risk no longer present.
> Training in use of control techniques
> Alternatives

Disciplinary measures & sanctions

Disciplinary sanctions – Rules 42, 43:

> General living conditions apply to all prisoners without exception

> Prohibitions: reduction of diet or drinking water, collective punishment

Disciplinary measures & sanctions

Rule 44 – definition of solitary confinement New!

> Confinement of prisoners for 22 hours or more a day without meaningful human contact

> Prolonged = excess of 15 consecutive days

Rule 37(d)

- Legal basis required

REVIEW OF THE UN STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS

Disciplinary measures & sanctions

Solitary confinement – Rule 45 New!

> Only in exceptional cases as a last resort, for as short a time as possible and subject to independent review.

> Not to be imposed by virtue of a prisoner's sentence (eg death or life sentences).

> Prohibited for prisoners with mental or physical disability when their conditions would be exacerbated by such measures.

> Prohibition for women and children as referred to in other UN standards (footnote Beijing and Bangkok Rules).

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REVIEW OF THE UN STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS

Deaths in custody, signs of torture or CID

Rules 6-10 – Prisoner file management

> Standardised prisoner file management system

> System to ensure secure audit trail and prevent unauthorised access or modification

> Confidentiality of records

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REVIEW OF THE UN STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS

Deaths in custody, signs of torture or CID

Investigations (NEW) - Rule 71

> Reporting by the director: death, disappearance or serious injury, torture/ CID

> Cooperation and evidence

> Preserving independence and uncorrupted investigation

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REVIEW OF THE UN STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS

Vulnerable groups

Rule 5(2): General protective clause

- > Requirement to take account of individual needs of prisoners, in particular vulnerable categories, to protect and promote the rights of prisoners with special needs.
- > Such measures not to be regarded as discriminatory.

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REVIEW OF THE UN STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS

Vulnerable groups

Children imprisoned with their parent (Rule 29)

Prisoners with disabilities (Rule 5(2):

- > Prison administration shall make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis.
- > plus change of terminology old 82, 83

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REVIEW OF THE UN STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS

Access to legal representation

> Rule 53:

- Prisoners shall have access to/ be allowed to keep in their possession documents relating to their legal proceedings.

> Rule 61:

- Opportunity, time and facilities to consult with legal adviser of own choice or legal aid provider.
- Without delay, interception or censorship and in full confidentiality on any legal matter (may be within sight but not within hearing)….

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REVIEW OF THE UN STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS

Access to legal representation

Rules 119, 120 (Prisoners under arrest or awaiting trial):

> **Denial of access** to legal adviser/legal aid provider subject to independent review without delay.

Complaints – Rules 56, 57:

> Entitlements if rejected or undue delay

> Safeguards for safety

> Allegations of torture or other CID to be dealt with immediately and result in prompt and impartial investigation by independent national authority (See 57(3)).

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Complaints and independent inspection

Internal and external inspections – Rules 83-85:

> Twofold system for regular inspections: internal and external

Authority of inspectors – Rule 84:

> Same as OPCAT

After inspections – Rule 85:

> Strong provisions on steps that are required as follow-up

Training of staff

Rules 75, 76:

> “reflective of contemporary evidence-based best practice in penal sciences.”

> Passing requirement

> “Continuous” of in-service training – to maintain & improve knowledge and professional capacity.

Training of staff

Rules 75, 76 (cont'd):

Training to include:

> Rights & duties:
  including respect for human dignity and prohibitions (torture…)

> Security & safety

> First aid, psychological needs, social care & assistance.

> Specialised training

Further information

> Marked version of the SMR

> Short guide to the Nelson Mandela Rules

> Animated introduction

www.penalreform.org

> Next year: Guidance document

> 18 July: Summary of 'Essex expert meeting

Thank you for your attention!

"It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones." Nelson Mandela

Co-funded by the Justice Programme of the European Union 2014-2020

From contracting prisons abroad to alternatives to imprisonment: solutions to prison overcrowding in the EU Member States

Alessio Scandurra

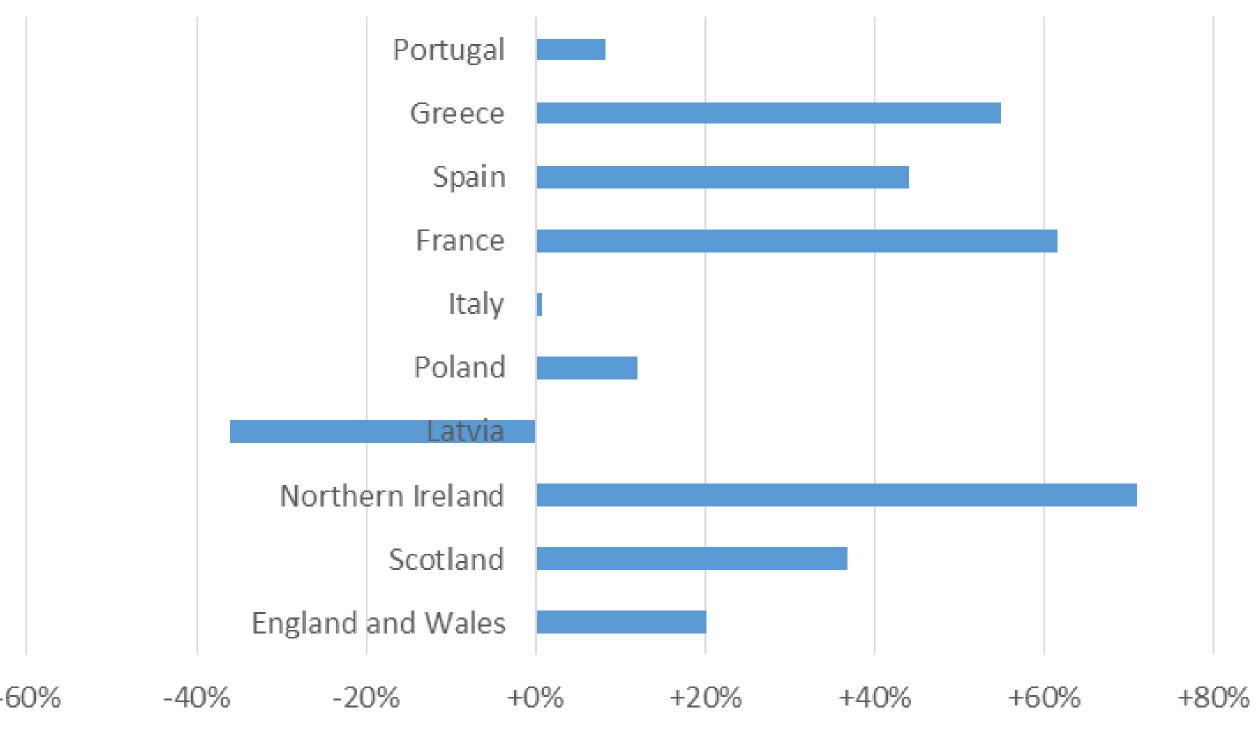
Supervising matters related to detention

Strasbourg, 23-24 June 2016

The European Prison Observatory

Prison overcrowding or prison overuse?

Prison population change, 2000 to 2014



Contracting prisons abroad?

Building new prisons?

Depenalization?

The European Convention on Human Rights (Article 5) (ECHR) contains safeguards against the misuse of pre-trial detention.

Almost all the countries in the Observatory saw reductions in the overall number of pre-trial detainees.

England and Wales, and Scotland maintained the lowest ratios of pre-trial detainees in the prison population due to a strong presumption in favour of bail (conditional liberty before trial).

Greece and Italy are unusual in that their systems feature ‘rehabilitative’ measures at the pre-trial stage.

In both cases the successful implementation of the pre-trial ‘alternative’ can mean a complete end to the prosecution and no further penalty.

Many states have introduced, or extended their use of, electronic monitoring as a core element of conditional release pre-trial.

The most frequently used measures in the countries concerned are:

1. community sanctions (often involving unpaid work for a stated number of hours or days)

2. supervision or control without treatment or rehabilitation (for example, curfews, suspended custodial sentences, etc.)

3. supervision or control with treatment or rehabilitation (for example supervised access to training, education, drug or alcohol treatment, etc.)

The trend is that of a general growth

International and European rules on probation and alternative sanctions are clear: measures must prioritise the person's rehabilitation, social inclusion and reintegration, comply with human rights and not discriminate or stigmatise in their application

"Instead of being alternatives to imprisonment, community sanctions and measures have contributed to widening the net of the European criminal justice systems. The situation in Europe is thus similar to the one described 20 years ago in the United States and Canada. [These measures] have become one of the instruments of an increasingly punitive approach to crime control".

Aebi, M., Delgrande N and Marguet, Y. (2015), 'Have community sanctions and measures widened the net of the European criminal justice systems?', Punishment & Society, Vol 17(5), pp. 575-597.

Three key types of measure are used in the eight countries

1. parole
2. home detention
3. electronic monitoring

Rehabilitation, social inclusion and reintegration?

Italy

Extensions to home detention for the last 18 months of prison sentence

Early release – 75 days for every six month of compliance with prison rules

18 regional Commissions under the authority of the Ministry of Health.

Services are aimed at empowering individuals and are voluntary.

In case of crimes people can be directed to the local Commissions by the police, public prosecutor, or criminal courts (depending on the amount of drugs involved).

Between 2010 and 2013: on average 7.879 cases per year.

Failures to comply can never be punished by imprisonment; the regime and its sanctions are civil/administrative, not criminal.

LATVIA: REFORMS TO SENTENCING AND CRIMINAL LAW TO REDUCE PRISONER NUMBERS

Between 2003 and 2013 prison population rate dropped by almost 38 per cent.

Comprehensive criminal law amendments in force from April 2013 aimed at liberalising Latvia's penal policy and bringing down the prison population by an estimated 30 per cent. In this ambitious programme of reform:

1. Several offences were decriminalised;

2. Community-based sanctions were broadened for a wider range of crimes;

3. Thresholds for minimum and maximum sanctions were lowered for a wide range of crimes, and in some cases mandatory minimum sentences were abolished.

Alternatives to detention

Alternatives to detention

Decriminalization

Thank you for you attention

Alessio Scandurra

Supervising matters related to detention

Strasbourg, 23-24 June 2016

La gestion de la surpopulation carcérale en Belgique

ERA Strasbourg, juin 2016

Marie De Pauw – DGEPI Belgium

Co-financé par le programme
Justice pénale de l'Union Européenne 2014-2020

La Belgique a déjà été plusieurs fois condamnée par la *Cour européenne des droits de l'homme* pour ses conditions de détention qualifiées de traitements inhumains et dégradants. La Selon elle, le problème de la surpopulation carcérale, d'hygiène et de vétusté dans les établissements pénitentiaires y revêtent un **caractère structurel**, nécessitant des mesures générales pour garantir aux détenus des conditions de détention humaines et non-dégradantes

Le *Comité européen pour la prévention de la torture (CPT)* dénonce régulièrement les conditions de détention et les politiques pénitentiaires belges.

Quelques chiffres

- Capacité actuelle: **9.903 places**
- Population moyenne: 11.000 détenus
    - 4% de femmes
    - 10 % d'internés (sur base d'un internement par une juridiction pénale, ou condamnés internés sur base d'une décision ministérielle en raison de leur état mental)
    - 36% de prévenus (en attente d'une décision judiciaire définitive)
    - 40% d'étrangers (moyenne européenne= 21%) – 25% illégaux
    - Durée moyenne d'incarcération : 8,2 mois
    - Age moyen des détenus: 34 ans

Nombre de détenus **pour 100 places** disponibles

- $2013 \Longrightarrow 134$
- $2014 \Longrightarrow 129$
- $02/2016 \Longrightarrow 112$
- $06/2016 \Longrightarrow 106$

Moyenne européenne

91

Chiffres population

02/2016: 11.076 détenus

06/2016: 10.054 détenus

FACTEURS qui alimentent la **SURPOPULATION**

- ❖ Recours excessif à la détention préventive
- ❖ Allongement de la durée des détentions préventives
- ❖ Allongement des peines (et plus de difficultés pour obtenir une LC)
- ❖ Détenus étrangers (40%)

Objectif du Ministre de la Justice K. Genns

Résoudre le phénomène de surpopulation carcérale tout en respectant les principes et objectifs (**réinsertion, réparation, réhabilitation**)
→ réelle application du principe de subsidiarité : faire de la privation de liberté l'ultime remède.

population inférieure à 10.000 détenus

Jusqu’en 2013, une vingtaine de prisons
sur 31 dataient du 19ème siècle.

Diminuer la surpopulation?

Solutions

Augmentation de la capacité carcérale

→ construction de nouvelles prisons

Mise en surveillance électronique des très courtes peines de prison

Conséquences

Augmentation du nombre de détenus

La surveillance électronique a pallié à l'inexécution des courtes peines de prison

Diminuer la surpopulation

- MASTER PLANS
- Tilburg
- Réduire le recours à la détention préventive
- Promouvoir des peines alternatives
- soigner les personnes internées dans des structures hospitalières adéquates
- Extension de la surveillance électronique
- Politique de retour active

MASTER PLANS
Projets des bâtiments en 5 piliers

1. Programme de rénovation pour récupérer la capacité des cellules perdues

2. Augmentation de la capacité sur les sites existants

3. Nouveaux établissements – 2013/2014

4. Nouveaux établissements pour remplacer les vieilles prisons – 2016/2017 et au-delà

5. Programme de rattrapage pour la rénovation garantissant des conditions de vie plus humaines et plus sûres.

L'exécution du plan a démarré immédiatement après son approbation.

Nouvelles prisons / nouveaux bâtiments

- PPP: Partenariat Public Privé

→ pénalité en cas de surpopulation

- Meilleures conditions de détention (solo, douche, téléphone, PC)
- Bâtiments adaptés (Salle de classe, sport, ateliers, formation…)

▪ Maison de transition (projet pilote)
▪ Augmentation places en milieu ouvert
▪ Augmentation place en régime « Minimum Security »

Tilburg

Location de places de détention à Tilburg (Pays-Bas), dans l'attente de la construction de nouvelles prisons belges

- Collaboration unique entre la Belgique et les Pays-Bas:
  - La prison belge de Wortel gère les dossiers
  - Equipe de direction belge et personnel de surveillance néerlandais

- Transfert officiel de la prison de Tilburg aux autorités belges le 5 février 2010
- 500 places de détention à l'origine + 150 places supplémentaires depuis mars 2011 (650 places au total) dont 200 pour la partie sud (FR) et 450 pour le nord (NL).
- Contrat de location prévu jusqu'au 31/12/2014 - renouvelé jusqu'à fin 2016

⟹ Fin 2016, l'ensemble des détenus sera rapatrié et réparti dans les différentes prisons belges.

Objectifs qui ne peuvent pas être réalisés par le milieu pénitentiaire

- Réduire drastiquement le recours à la détention préventive

(délais limités, recours à la SE…)

- Promouvoir des peines alternatives dans une véritable perspective d'évitement du recours à la prison

Une meilleure gestion de l'internement

- Manque d'encadrement médical, formation personnel, activités, surpopulation +++….
- Environ 1000 internés
- Un établissements de Défense Sociale (EDS) de 200 places (+ projet de 250 places)
- Un nouveau Centre de Psychiatrie Légale (CPL) en Flandres (450 places)
- Projet d'avoir un CPL en Wallonie

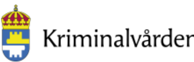
- Des annexes sont maintenues dans les prisons existantes:
  - prévenus qui sont mis en observation
  - personnes qui ont fait l'objet du prononcé d'une mesure d'internement en attendant leur transfert dans un établissement spécialisé
  - prévenus et/ou condamnés qui présentent une problématique psychiatrique justifiant un séjour dans de tels départements psychiatriques.

Une politique active de retour

- Augmentation du nombre de détenus non en ordre de séjour (25%)→ augmentation surpopulation
- Modification de la Loi: modalités de la peine plus autorisées pour les détenus illégaux (permission de Sortie, Congé Pénitentiaire, Surveillance Electronique)
- Accords avec pays européens + autres pays → détention « at home »
- Rapatriements vers le pays d'origine plus rapides (6 mois avant fin de peine)

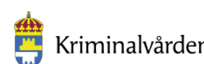
(2015: environ 1000 détenus rapatriés)

Co-funded by the Justice
Programme of the European Union 2014-2020



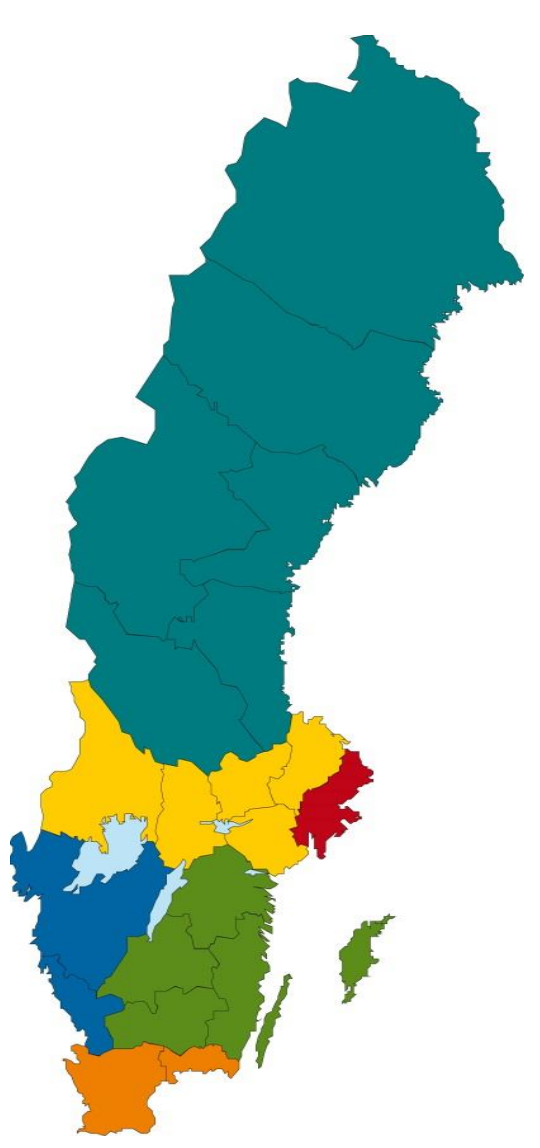
KRIM:
VÅRD
Foreign national prisoners –
the Swedish experience
Jennie von Alten, Governor
Kriminalvården

SWEDISH PRISON AND PROBATION SERVICE

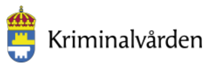


WE BREAK
THE VICIOUS CIRCLE
KRIM:
VÅRD
Kriminalvården

Swedish Prison and Probation Service



- 1 Governmental institution
- 1 Director General – Nils Öberg
- 1 headquarter, 6 regions
- 31 remand prisons
- 47 prisons
- 34 probation offices
- 9000 employees
- 11 500 non-custodial clients per day
- 4 000 prisoners per day
- 1 600 in remand prisons per day
- 5 % are women



Organisation

KRIM:VÅRD

Ministry of Justice

Transport Service

Head Office

National Parole Board
30 Probation Boards

Northern region

Stockholm region

Central region

Eastern region

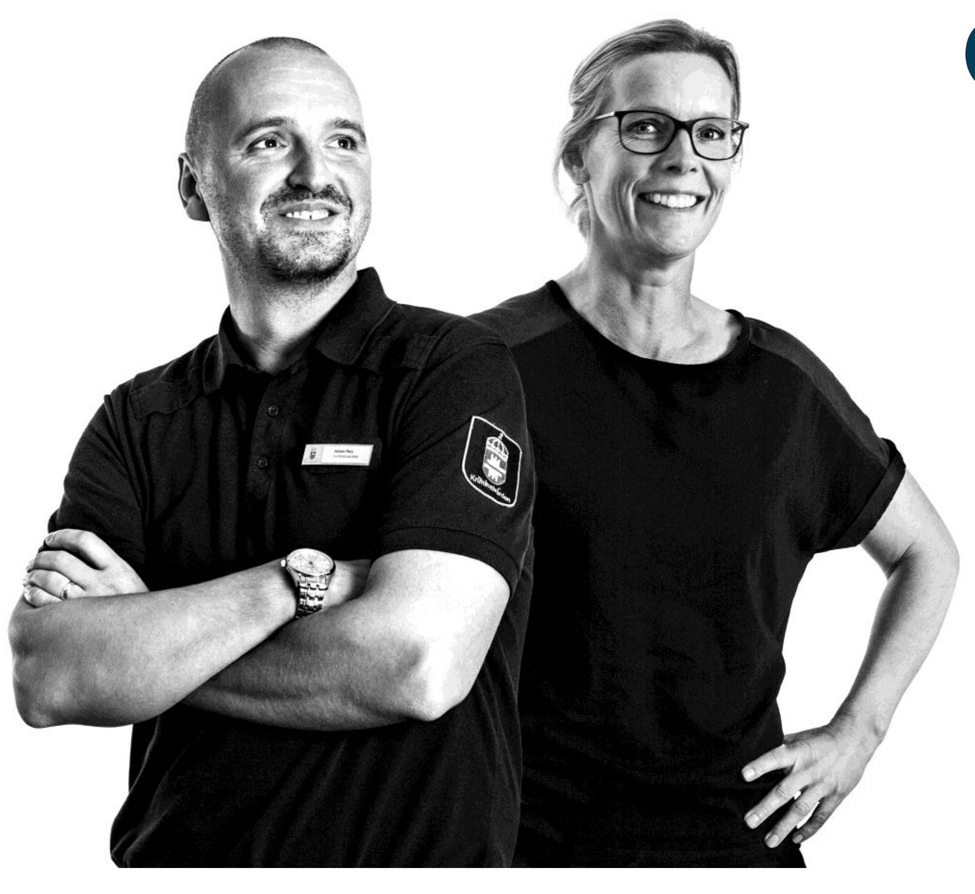
Western region

Southern region

31 Remand prisons

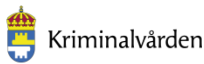
47 Prisons

34 Probation Offices



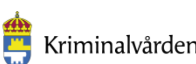
Our task

- Enforcing sentences
- Operating detention facilities
- Implement prison and probation sentences
- Performing personal investigations in criminal cases
- Give evidence based rehabiltation programs
- Carrying out transportation



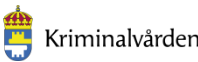
Values

- Client close
- Professional
- Legal certainty
- Reliable



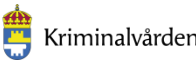
Vision

- ”Better out”
- No escapes
- No drugs
- No criminal activities
- No violence, threats or harassments



Employees

- About 11 000
- Over 500 managers
- Director general: Nils Öberg
- Over 70 different categories of work



About

PRISON

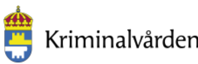
Most clients in Swedish prisons are men. Only about five percent are women. Just over half of those who are sent to prison have been in prison before. Inmates are people of all ages.

PROBATION

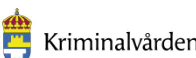
A basic concept of the Swedish sanctions system is to avoid imprisonment when possible. Our non-custodial clients are about 11 500 per day, compared with just over 4 000 prisoners per day.

REMAND

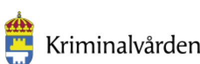
Being on remand means waiting for a police investigation to be completed, a trial, a place in prison or waiting for deportation.



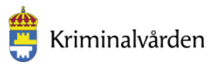
From 14 days to life.



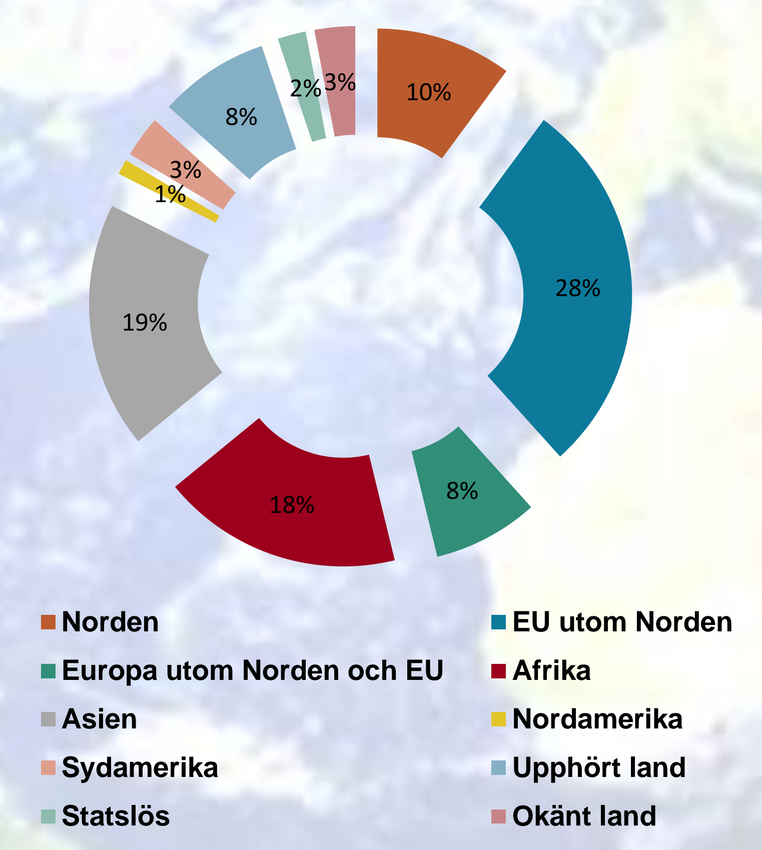
Probation takes place in society.



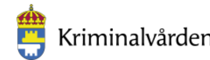
FNP`s – serving their sentence



Prison population regardning FNP



A total of1 352 prisoners without a swedish citizenship
Out of these 803 prisoners are sentenced to deportation

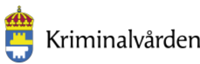


We have inmates from a total of 109 countries in our Swedish prisons.

Antal

90
80
70
60
50
40
30
20
10
0

FINLAND
RUMÄNIEN
POLEN
IRAK
LITAUEN
SERBIEN OCH…
UPPHÖRT LAND
SOMALIA
AFGHANISTAN
BOSNIEN OCH…
MAROCKO
NORGE
UTREDS
IRAN
NIGERIA
STATSLÖS
GAMBIA
CHILE
NEDERLÄNDERNA
UNGERN
ALGERIET
RYSSLAND
TURKIET
VIETNAM
ALBANIEN
SYRIEN
DANMARK
BULGARIEN
TUNISIEN
KOSOVO
ERITREA
SLOVAKIEN
TYSKLAND
LETTLAND
SPANIEN
BELGIEN

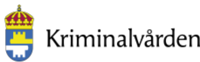


Sentenced to deportation/ citizenship

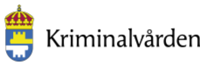
100%
80%
60%
40%
20%
0%

Nej
Ja

Norden
EU utom Norden
Europa utom Norden och EU
Afrika
Asien
Nordamerika
Sydamerika
Upphört land
Statslös
Okänt land



Planning the execution of sentence.



Risk, Need & Responsivity

Risk

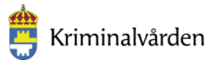
Clients with higher risk of recidivism needs more and more intensive efforts

Need

Focusing on the criminogenic need

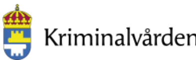
Responsivity

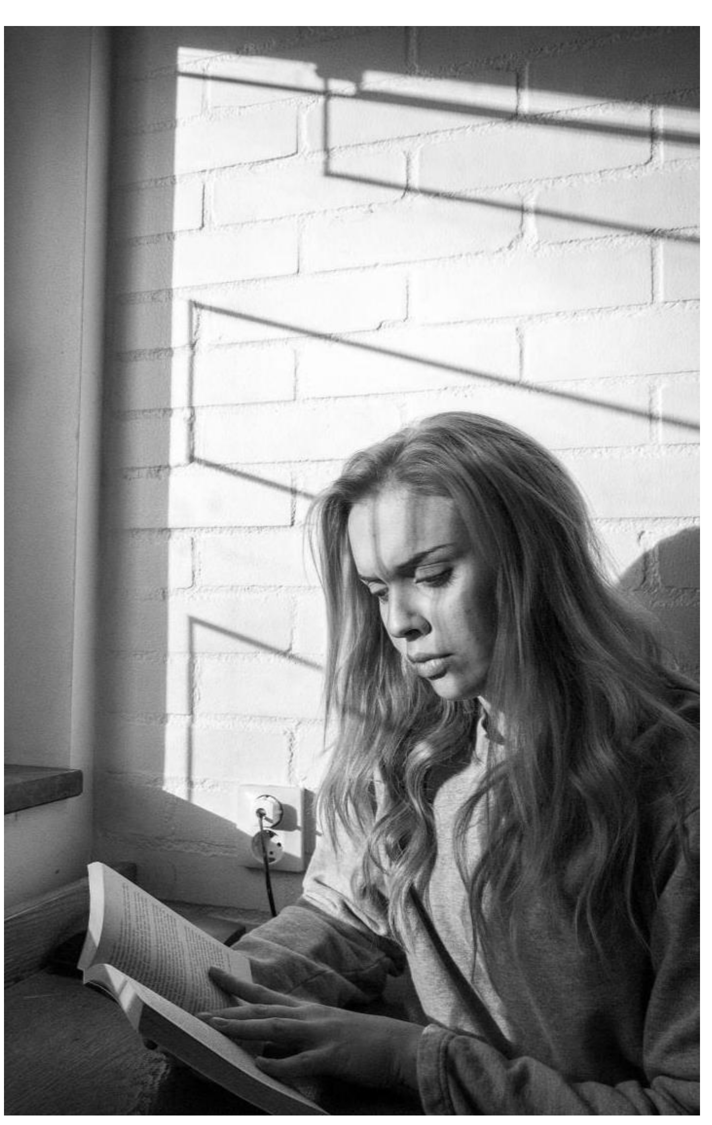
Use CBT techniques, adjust the intervention



Employment for inmates

- Work
- Studies
- Other structured activities
- Treatment program





No permissions

Higher risks – is taken in consideration when planning the sentence

HQ are handling the transfer in keeping with the convetions we have

No internet, only mail or telephone for contact.

Visits – also extended

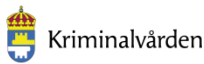
Education and information for the staff that works with the FNP´s beeing transferred

No special education for working with FNP´s in general, the attitude is to treat them like anybody in our care.

Treatment can make a huge diffrence.

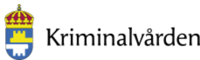
At the moment we are evaluating

- A projekt to make the treatment programs in other languages to be abel to give them also to our FNP´s with such needs.
- We have educated our programe teachers to handle the treatment programs in different languages and also in easy swedish.
- Another projekt is to extend the special release measures for all our prisoners including the FNP´s



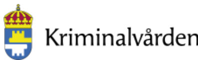
Specific release measures

- Permission parole
- Halfway house
- Residential care
- Extended parole



At the moment

- EuroPris Expertgroup FNP
- Best practise ”handbook”
- Workshop in Brussels in november



Thank you!

Ludwig Boltzmann Institute of Human Rights

Strengthening relationships between judges and NPMs

Gerrit Zach

Strasbourg, 24 June 2016

Co-funded by the Justice Programme of the European Union 2014-2020

- **Strengthening relationships between judiciary and NPMS – why and how?**
  - EU mutual recognition instruments related to detention and based on mutual trust →

    What is the relationship between mutual trust and human rights/prohibition of torture and ill-treatment?
  - Judiciary and NPMs → no contacts, no or “difficult” relationship in national contexts

Art. 3 (2) TEU: Area of Freedom, Security and Justice without internal borders, free movement across EU Member States

……With 28 different legal systems…how does this work?

Framework Decisions relating to Detention

- FD 2002/584/JHA on the **European Arrest Warrant**
- FD 2008/909/JHA on the ***Transfer of Prisoners***
- FD 2008/947/JHA on ***Probation and Alternative Sanctions***
- FD 2009/829/JHA on the **European Supervision Order** (ESO).

Mutual recognition and mutual trust

- Mutual Recognition

*mutual recognition is widely understood as being based on the thought that while another state may not deal with a certain matter in the same or even a similar way as one's own state, the results will be such that they **are accepted as equivalent to decisions by one's own state** […]. Based on this **idea of equivalence** and the trust it is based on, the results the other state has reached are allowed to take effect in one's own sphere of legal influence. On this basis, a decision taken by an authority in one state could be accepted as such in another state, even though a comparable authority may not even exist in that state, or could not take such decisions, or would have taken an entirely different decision in a comparable case […] **Recognising a foreign decision in criminal matters could be understood as giving it effect outside of the state in which it has been rendered."***

European Commission, Communication from the Commission to the Council and the European Parliament on mutual recognition of final decisions in criminal matters, COM (2000) 495 final, 26 July 2000

Mutual recognition and mutual trust

- Mutual Trust
  - Mutual trust is premised upon the acceptance that membership of the European Union means that all EU Member States are fully compliant with fundamental rights norms
  - *Raison d’etre* of the EU

Mutual recognition and mutual trust

Challenges

- Gap between theory and practice →
  - Does mutual trust mean blind trust?
  - Should judges take into account any potential fundamental rights implications when giving effect to a mutual recognition instrument?

CJEU: Aranyosi/Caldărăru

- **Case Number** C-404/15 and C-659/15 PPU
- **Name of the parties** Criminal proceedings against Pál Aranyosi and Robert Căldăraru
- **Date of the judgement** 5 April 2016
- **Court** Court of Justice (ECJ)
- **Link** http://curia.europa.eu/juris/liste.jsf?language=en&num=C-404/15

CJEU: Aranyosi/Caldăraru

- Two European Arrest Warrants (EAWs) issued
  - for Mr. Aranyosi – 4 November and 31 December 2014 by judge at the district court of Miskolc, Hungary
    - for accusation of crimes committed in Hungary:
      - forced entry into a dwelling house, theft
      - forced entry into a school, stealing equipment and cash, damage

    → arrest in Bremen, Germany in Jan. 2015
  - Lives in Bremerhaven (Germany), with his mother, unmarried, 8-month old child with his girlfriend
  - Denied offenses
  - Declined to consent to simplified surrender procedure

CJEU: Aranyosi/Caldăraru

- Public Prosecutor of Bremen
  - referring to detention conditions in a number of Hungarian prisons, asked district court of Miskolc to state in which prison Mr. Aranyosi would be held, in case surrendered
  - requested that surrender should be declared lawful, because of no specific evidence of torture, cruel, inhuman, degrading treatment
- Mr. Aranyosi's lawyer demanded rejection of surrender
- Decision by Higher Regional Court of Bremen
  - "probative evidence that, n the event of surrender to the Hungarian judicial authority, Mr Aranyosi might be subject to conditions of detention that are in breach of Article 3 ECHR and […] Art. 6 TEU"

  → not in a position to give a ruling due to restrictions in Art. 1 (3) EAW FD

CJEU: Aranyosi/Caldăraru

- EAW issued
  - for Mr. Caldăraru – 29 October 2015 by judge at the Court of first instance of Făgăraş, Romania
    - sentence of 1 year and 8 months imprisonment for the offence of driving without a driving license

→ arrest in Bremen, Germany in Nov. 2015

- Denied consent to simplified surrender procedure
- Public Prosecutor:
  - applied to court for Mr. Caldăraru to be detained pending extradition – granted
  - Applied to the court for the surrender to be declared lawful

CJEU: Aranyosi/Caldăraru

- Decision by Higher Regional Court of Bremen
  - “probative evidence that, n the event of surrender to the Hungarian judicial authority, Mr Aranyosi might be subject to conditions of detention that are in breach of Article 3 ECHR and […] Art. 6 TEU”
  - ECtHR judgements, CPT reports

    → not in a position to give a ruling due to restrictions in Art. 1 (3) EAW FD

CJEU: Aranyosi/Caldăraru

Legal basis for the judgement

European Arrest Warrant Framework Decision, Art. 1

- 1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.
- 2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.
- **3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.**

CJEU: Aranyosi/Caldăraru

Art. 6 TEU

The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.

[.....]

Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

- **Art. 4 CFREU = Art. 3 ECHR:** *No one shall be subjected to torture or to inhuman or degrading treatment or punishment*

CJEU: Aranyosi/Caldăraru

- The questions referred by the Higher Regional Court of Bremen to the CJEU were the following:

- Is Article 1(3) of the Council Framework Decision on the European arrest warrant (…) to be interpreted as meaning that **extradition for the purposes of prosecution is impermissible where there are strong indications that detention conditions in the issuing Member State infringe the fundamental rights of the person concerned** and the fundamental legal principles as enshrined in Article 6 of the Treaty on European Union, or is it to be interpreted as meaning that, in such circumstances, the executing Member State can or must make the decision on the permissibility of extradition conditional **upon an assurance that detention conditions are compliant**? To that end, can or must the executing Member State lay down specific **minimum requirements applicable to the detention conditions** in respect of which an assurance is sought?
- Are Articles 5 and 6(1) of the Council Framework Decision on the European arrest warrant (…) to be interpreted as meaning that the issuing **judicial authority is also entitled to give assurances that detention conditions are compliant, or do assurances in this regard remain subject to the domestic rules of competence in the issuing Member State**?

CJEU: Aranyosi/Caldăraru

So the third Chamber of the CJEU decided….

- Urgent procedure for Caldăraru case
- Joining of the two cases
- Grand Chamber

CJEU: Aranyosi/Caldăraru

- Mutual trust and mutual recognition are of fundamental importance

BUT

- But not absolute: limitations to mutual recognition and mutual trust in “exceptional circumstances”
- Execution of an EAW should not lead to a violation of the absolute prohibition of torture and ill-treatment (Art. 3 ECHR)

CJEU: Aranyosi/Caldăraru

How to proceed when a risk of torture and ill-treatment could exist in case of surrender in a EAW? Steps given by the CJEU:

1. Judges need to obtain general information about the situation in detention

2. Assessment of the individual case in the context of proven and general risks of ill-treatment: judges need specific information

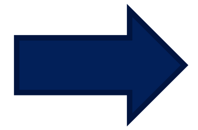
3. After surrender of the person under assurances he/she will be well treated: monitoring of the case

CJEU: Aranyosi/Caldăraru

How to proceed when a risk of torture and ill-treatment could exist in case of surrender?

1. Receipt of general information

- executing State needs to receive "*objective, reliable, specific and properly updated information*" about detention conditions to show "*systemic or general deficiencies*", or "*affecting certain groups of people, or certain places of detention*"
- The information needed to assess the situation can be provided by:
  - "Judgments of international courts, such as the ECtHR,
  - Judgments of national courts
  - decisions, reports and other documents by bodies of the Council of Europe or
  - under the aegis of the UN system."



CPT, SPT, NPMs

CJEU: Aranyosi/Caldăraru

1. Receipt of general information

- NPMs well placed to provide "*objective, reliable, specific and properly updated information*" about detention conditions to show "*systemic or general deficiencies*", or "*affecting certain groups of people, or certain places of detention*"

Challenges and questions

- Lack of time and awareness of judges about NPMs
- Lack of trust of judges
- NPM reporting requirements – quality reports that are publicly available

CJEU: Aranyosi/Caldăraru

2. Assessment of the individual case in the context of proven and general risks of ill-treatment

- judges must verify whether there are serious and proven reasons to believe that the individual concerned will him/herself be at threat
- Executing State must perform individual analysis – request further information
- Judges must inform the executing State about "*the existence, in the issuing Member State, of any **national or international procedures and mechanisms for monitoring detention conditions**, linked, for example, to visits to prisons, which make it possible to assess the current state of detention conditions in those prisons.* "

NPMs

CJEU: Aranyosi/Caldăraru

2. Assessment of the individual case in the context of proven and general risks of ill-treatment

- NPM well placed to assess the situation of one detainee or a specific place of detention: Mandate to visit all places of detention and constant presence in the State

Challenges and questions

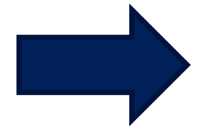
- Lack of awareness/trust of judges
- Extension of the NPM mandate
- Politicisation
- Modalities to be defined

CJEU: Aranyosi/Caldăraru

If the surrender happens, upon receipt of information stating the individual concerned will not be at treat, how to monitor it?

3. Question of assurances – monitoring the individual case

- CJEU did not pronounce itself on the question
- European Court of Human Rights (*Othman v. UK*):
  - *“assurances are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment. There is an obligation to examine whether assurances provide, in their practical application, a sufficient guarantee that the applicant will be protected against the risk of ill-treatment.”*
  - “*whether compliance with the assurances can be objectively verified through diplomatic or other monitoring mechanisms”*



NPMs?

CJEU: Aranyosi/Caldăraru

3. Question of assurances – monitoring the individual case

Challenges and questions

- Could NPM monitor the respect of assurances?
- Lack of awareness/trust executing State
- Extension of the mandate: resources? Time?
- Modalities: Who to report to? Frequency?
- Pressure? Politicisation? Rubber stamps of decisions?
- Other ways to carry out this monitoring?

National cooperation between NPMs and judiciary

- Status quo
  - 60% of NPMs: no relationship at all or almost no relationship
  - 18/22 NPMs: no form of institutionalised exchange

  - **Judges survey**
    - 10% of judges are very aware about NPMs and their mandate
    - 65% of judges are hardly aware or don't know what NPMs are

…but existing examples of cooperation do exist!

National cooperation between NPMs and judiciary

- Consultation of NPMs by judges/prosecutors
  - 6/22 NPMs were consulted by a judge or prosecutor who wanted to obtain information about detention conditions
- NPMs providing testimonials or expert opinions in court
  - National level: 7/22 have provided a testimonial or an expert opinion in a court case in their own country
  - EU level: 3/22 were requested by plaintiffs detained in another state/their lawyers to write an expert opinion;
- Use of NPM reports in court proceedings
  - 13/22 NPMs confirm that one of their reports, opinions or articles was used in a court proceeding – European and national level

National cooperation between NPMs and judiciary

- NPMs promoting their work vis-à-vis the judiciary
  - 9/22 NPMs disseminate their annual reports to the judiciary
  - 9/22 NPMs participate in joint events
  - 6/22 NPMs conduct personal meetings
  - 6/22 NPMs share their visiting reports with the judiciary
  - 5/22 are in email or phone exchange with judges
  - 3/22 NPMs disseminate press releases
  - 2/22: no promotion of work towards judiciary at all
- Training
  - 7/22 NPMs provide for or participate in trainings for the judiciary

National cooperation between NPMs and judiciary

- Mandate of the judiciary to visit places of detention
  - In 16/22 EU countries judges have a mandate to visit places of detention
  - 6/22 NPMs assessed that judges exercise this mandate often or quite often
  - No cooperation/coordination of visits with judges
- Addressing the role of the judiciary in the prevention of torture and ill-treatment and on conditions of detention
  - 7/22 NPMs addressed the role of the judiciary in the prevention of torture and ill-treatment
- Referral of individual cases
  - 11/22 NPMs refer individual cases to prosecution

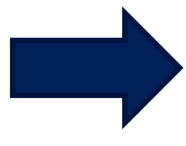
Conclusion

Status of cooperation

- Despite weak cooperation at the moment, some good practice examples do exist

Reasons and challenges

- lack of awareness
- perceived interference with judicial independence
- resources of NPMs, e.g. quality and availability of NPM reports



84% of judges consulted and 21 of 22 NPMs wish for an increase of cooperation

Outlook

What would be needed for better cooperation?

- NPMs
  - “awareness”
  - “channels of regular communication and exchange of information” “meetings, e.g. with judges in training”, “training”
  - “thematic contact points”
  - “joint participation in roundtables, etc.”
- Judges
  - “awareness of each other's roles, direct and personal contacts”
  - “better knowledge about their (NPM‘s) existence and work”
  - “identification of concrete cooperation goals”
  - “conferences, workshops”
  - “I think would be useful if the judges were to become acquainted with the NPM while still in training”
  - “To have an active NPM”, “”need for NPM to contact judges”