



EUROPEAN  
PRISON  
LITIGATION  
NETWORK

ANNUAL  
REPORT  
2017



## OUR MISSION

The European Prison Litigation Network (EPLN) is an international non-governmental organisation (INGO) granted participative status with the Council of Europe.

EPLN was founded in 2013 by a network of NGO jurists, lawyers and researchers active in the penitentiary field in different countries. The Network aims at heightening the judicial protection of prisoners' fundamental rights in Member States of the Council of Europe.

EPLN defines its orientations by combining a double approach:

- consultation among legal professionals on the main problems affecting the use of rights in prison, in order to identify the issues requiring a coordinated intervention at European level;
- dialogue and exchange between specialized NGOs and academic centers on major developments in penal and penitentiary policies in Europe in order to orient research and litigation on priority topics.

On this basis, PLN conducts its action in several forms:

- compared research in order to promote the circulation of most protective normative models in Europe on the concerned issues, and to show national convergences likely to justify a development of the jurisprudence of the European Court of Human Rights (ECtHR)
- research in law and social sciences, to analyze the actual conditions for the use of rights in detention and the real impact of legal developments;
- coordination at the European level of litigation action before national courts and the ECtHR, building, where appropriate, on the results of the produced research;

- advocacy towards national authorities and international bodies;
- capacity building between specialized NGOs;

In this context, the RCP develops its activities around four main priorities:

- reducing the obstacles for detained persons to access to the judge, through strengthening of the right to legal aid and legal assistance and, more generally, of mechanisms guaranteeing an effective protection of the fundamental rights in detention;
- strengthening of procedural and substantive safeguards for accessing to sentence adjustments, particularly with respect to prisoners with long-term sentences ;
- protection of detained persons against retaliation resulting from the use of remedies' mechanisms;
- litigation to take into account the development of control and neutralization mechanisms in contemporary penal and penitentiary policies.
- strategic litigation addressing the current development of mechanisms of control and neutralization in contemporary penal and penitentiary policies.

EPLN brings together 18 non-governmental organizations from 12 countries and develops partnerships with several European research centers: Universities of Florence, Paris 1-Sorbonne, Strasbourg, Dortmund, Madrid Complutense, Comillas, Utrecht, Leuven, Ghent...

## OUR ACTION IN 2017

### ***Capacity Building &***

### ***Dissemination of Legal Resources***

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#### **International Monitoring Mission of the trial of prisoners of Kopeysk, Russia**

The EPLN, upon being approached by human rights activists and lawyers in 2015, has monitored the trial of prisoners of the Penitentiary Colony No.6 of Kopeysk. 17 of them were on trial after they participated in a protest that took place in 2012 in response to systematic torture practices and extortion in the colony. After a trial that lasted two years and ten months, the Chelyabinsk Regional Court sentenced the seventeen participants in the protest to sentences ranging between 4 and 5 years for “mass riots”.

The EPLN international mission has been observing the hearings between 2015 and 2018. The observation team was composed of Aleksey Laptev, former jurist at the ECtHR, lawyer in Moscow and Ernest Mezak, expert with the Council of Europe and jurist in the Russian organisation Public Verdict. A steering committee composed of nine international experts from Russia, France, Denmark, US has supervised the observation.

In a [press-release](#) released after the delivery of the verdict in April 2018, EPLN has condemned the lack of fairness of the trial and the absence of legal proceedings against the perpetrators of acts of torture. The EPLN will publish a full report of the observation in September 2018.

EPLN intends to observe the appeal trial to be expected in autumn 2018 before the Supreme Court of the Russian Federation in Moscow. A dedicated website [www.kopeyskjustice.info](http://www.kopeyskjustice.info) will be launched in May 2018 to support the dissemination of the observation results.

#### **Cooperation with Ural Human Rights Schools, Yekaterinburg, Russia**

EPLN was partner of the organisation [Sutyajnik](#) for the organisation of the 9<sup>th</sup> Ural Human Rights School in Yekaterinburg on 30 March - 2 April 2017 on the topic of “Prisoners’ Rights under the European Convention of Human Rights”. EPLN was represented by Alexey Laptev (The right to reasonable duration of detention under paragraph 3 of Article 5 of the Convention, Right to a speedy review of the lawfulness of detention under paragraph 4 of article 5 of the Convention) and Hugues de Suremain (Role of the ECHR in developing prison law in France).

The EPLN also supported the NGO Sutyajnik for the organisation of the 10<sup>th</sup> Ural Human Rights School on 26-29 October 2017 on the topic «Freedom of Expression, Hate Speech and Discrimination under the European Convention of Human Rights».

#### **Contribution to a publication on the achievements and prospects of strategic litigation**

EPLN has joined the action led by the Yekaterinburg Human Rights School, which brought together practitioners and academics from around the world in a collection of texts on the effects and prospects of strategic litigation. The contribution of EPLN concerns the

conditions of possibilities of a recognition of a right to reintegration of detained persons on the basis of Article 8 of the ECHR. The book will be published in Russian in paper and electronic format in 2018.

### **Dissemination of the ECHR jurisprudence**

Thanks to the monitoring work of Béranger Dominici, Isabelle Mansuy, Pascal Décarpes, Helen Fair and in partnership with the [Institute for Criminal Policy Research](#) (London University) the EPLN keeps disseminating on a bimonthly basis a newsletter on the ECtHR case law with regards to prison.

In 2017, 6 newsletters were thus disseminated ([to be found here](#)), as well a [special issue](#) issued at the beginning of 2018 on most important decisions of the year 2017.

### **Conference on Prison Control in France & Russia**

EPLN participated in a conference organised by the French Embassy in Moscow on 23 November 2017 which brought together professionals involved in prison control and escorting the release from prison in France (General Controller of Prisons, OIP) (Emmaus), and in Russia (Committee against Torture, Public Verdict, Siberia Against Torture, Movement for Human Rights, Presidential Council for Human Rights).

## ***Research***

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### **Research-project on the fundamental rights of detained persons and the European arrest warrant.**

### **Research-project on access to legal aid and mechanisms for accessing courts for remand prisoners in Europe**

In September 2017 the EPLN, in coordination with the CNRS SAGE (University of Strasbourg) and CNRS CESDIP (University of Versailles Saint-Quentin-en-Yvelines), launched together with partner universities and NGOs from nine European countries a research project aiming at strengthening the judicial protection of fundamental rights of remand prisoners in the European Union and promoting harmonisation of national legislations in the field of access to rights and to court for remand prisoners.

Access to legal resources in detention and the external intermediaries for prisoners' complaints are critical factors in the judicial protection in detention, however the legal aid systems and the tools giving access to the law greatly differ depending on the country.

Thus, the project aims at mapping laws and practices in the EU as regard to legal aid with the aim of protecting the rights of prisoners in pretrial detention in nine countries of the EU (Czech Republic, Belgium, Bulgaria, France, Germany, Italy, Netherlands, Poland, Spain). The project will also analyse the conditions for the inclusion in European law of procedural obligations regarding legal aid for remand prisoners and intends to launch an advocacy campaign in this regard.

The project is supported with funds of the European Union's Justice Programme for eighteen months.

Alongside Paris 1 Pantheon Sorbonne University, and the universities of Paris-Nanterre, Coimbra (Portugal) and Athens, as well as the Bulgarian Helsinki Committee, EPLN has set up a research project on the conditions for apprehending structural prison

problems in the framework of the judicial review of the European arrest warrant. The project, which was not selected by the European Commission within the specific framework of the call for projects to which the consortium responded, will be presented again in another framework.

**Building of a research team on the limits of the recognition of rights in prison.**

EPLN is associated to an interdisciplinary research team on Prison Law that the University of Paris 1 Panthéon Sorbonne intends to set up. The project takes its origins in the contemporary sociology's critique of the development of rights in prison, namely that the recognition of rights in a total institution is a formal innovation : human rights would lag several steps behind the changes in prison management systems and would not be able to challenge the security

and disciplinary primacy. The project aims at analysing how the Law could produce emancipatory effects with regard to the most characteristic aspects of modern penitentiary policies (security and accepted architecture, developments in predictive justice, etc.).

**Contribution to a symposium organised by the University Paris 1 Panthéon-Sorbonne on the topic "Reverse of rights in prison "**

For the EPLN, Hugues de Suremain spoke at the symposium organized by the Panthéon-Sorbonne University on the theme "the reverse of rights in prison" in September 2017. The symposium marks the closing of a research seminar organized by the University Paris 1 for two years to which EPLN had been associated. This symposium will lead to a publication of acts, including the intervention of the EPLN on the theme "" the protection of the rights of prisoners to the test of new prisons.

## ***Litigation***

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EPLN has conducted litigation in 2017 into two directions. Firstly, third interventions before the European Court to try to guide European jurisprudence on strategic aspects of the defense of the rights of detainees, either because they relate to essential issues of daily life in prison that are not yet taken into account in European law, or because developments in the case-law of the Court are likely to intervene in the cases at issue, that could have a significant impact on the overall level of protection under the ECHR. In addition to these third-party interventions, EPLN has taken charge of individual cases, either because they are of strategic interest from a legal point of view, or because the applicants require special protection in relation to other actions conducted by the association.

### **Third party submissions**

EPLN has formed a third party intervention in the case of ***Ilmseher v. Germany***, pending before the Grand Chamber of the ECtHR. This case is of considerable importance. Not only is the Grand Chamber of the ECHR, for the first time, called upon to decide on the system of preventive detention, but also the guarantees resulting from the judgment *M. v. Germany* (notably, principles of legality and non-retroactivity of penalties), have recently been called into question by the case-law of the Court. Moreover, the assimilation of personality disturbances in the present case to a "disposition" that allows detention under Article 5 (1) (e) is likely to open up the use of preventive detention. In addition, the increasing involvement of the psychiatric health services in the fight against radicalization is likely

to lead ultimately to the instrumentalization of medicine for the benefit of the fight against terrorism.

Creating the conditions for the HRDC's clarification of care functions is therefore essential in this context. At this case EPLN worked with researchers from the Universities Paris 1 Pantheon Sorbonne, ULB (Brussels) and Aix-en-Provence, as well as a French psychiatrist, head of mental health service in prison. In addition, Mireille Delmas-Marty, professor at the Collège de France with high authority in France, has made observations in support of EPLN's memorandum.

The case of ***A.M. v. Russia*** has also given rise to collective mobilization. This case concerns the systematic ill-treatment of detainees at the bottom of the informal hierarchy in Russian prison. In the context of its third intervention, EPLN has set up a working group of penitentiary specialists in Russia with the aim of reporting on the forms taken by the prison subculture in the contemporary Russian prison system. EPLN has also consulted European NGOs on how to fight against prison violence. Through its third intervention, EPLN asks the ECHR to place on the authorities the obligation to ensure an independent control of the prisons, taking into account the fact that the prison administration is involved in the dissemination of the informal norms according to which disqualified inmates are mistreated.

EPLN also formed a third party intervention in the case of ***Viola v. Italy***, which addresses the issue of the inability of certain lifers to access parole if they do not collaborate with the judicial authorities. EPLN has taken a position in favour of strengthening the procedural safeguards applicable in this area. It also invited the Court to dedicate a right to social reintegration on the basis of Article 8 of the European Convention (right to respect for private life). The intervention of EPLN

in this case was combined with those of Altro Diritto and the University of Milan.

### **Individual cases**

EPLN has assisted a group of pre-trial detainees for the submission to the ECtHR of an application concerning the impossibility, under Russian law, of obtaining long-term family visits in remand detention centers. This case is based on the provisions of Articles 8 (right to respect for private and family life) and 14 (prohibition of discrimination) of the ECHR. This case follows, in particular, a decision of the Russian Constitutional Court (itself following the ECtHR's GC judgment *Khoroshenko v. Russia*) concerning the prohibition of long-term visits for lifers, to which EPLN had been associated.

EPLN took charge of two cases before the ECtHR concerning a measure of detention on remand in a criminal case concerning acts of protest against the practice of torture in the prison (Article 5-3). EPLN also submitted two motions concerning the conditions of

transport during the transfers, the material conditions of detention and the use of glazed boxes in court hearings.

Regarding applications submitted in 2016, on 10 March, on 9 May and on 28 November 2017 the European Court of Human Rights communicated two cases handled by EPLN concerning the conditions of transfer and detention (overcrowding, hygiene, cold) in a remand detention center in Russia and the lack of affective remedy in this regard, as well as the use of metal cage in courtrooms .

### **Relationship with the Council of Europe**

By decision of the Secretary General of the Council of Europe, EPLN has been granted in July 2017 the status of international non-governmental organization with participative status with the CoE. This status allows to participate in this statutory body, the Conference of INGOs. It also allows the EPLN to apply for accreditation to bring collective complaints before the European Committee of Social Rights.

## OUTLOOK IN 2018

### **Project “Replacing the prison in the city : including the detained persons in the digital society”**

As follow up on the Research Project on access to legal aid and mechanisms for accessing courts for remand prisoners in Europe, the EPLN will be developing under the Paris City “Label Paris Europe 2018” a European Forum on the issue of access to internet in prison, to take place during the spring 2019 in Paris. The Forum will build on the results of the study on digital resources available to prisoners carried out in the 9 countries of the research, and on lessons learnt from the pilot development of a digital law library for the use of European prisoners and their defenders.

This project which aims at breaking the isolation of the detained persons from the digital world and providing them with necessary digital resources for the exercise of their citizens’s rights is coordinated by the EPLN in partnership with the Association “[La Quadrature du Net](#)” and a network of partners from European cities such as London, Florence, Madrid, Moscow, Ghent, Brussels, Kharkiv, Kiyv, Sofia, Dortmund, Tilburg, Warsaw.

### **Submission of a proposal on “Strengthening of prison oversight mechanisms and Judicial protection of detained persons in Russia”**

The general aim of the project is to enhance judicial protection of prisoners’ rights and prevent torture and ill-treatment in detention facilities in Russia. More specifically the project aims at setting up and

support an alternative prison monitoring mechanism, which can guarantee an independent and effective monitoring of conditions of detention and prevention of torture in Russian prisons ; developing strategic prison litigation at national and European level in order to initiate a reform of the Russian prison law ; providing judicial protection of detained persons subject to retaliation for having used public or legal remedies mechanism

The project will target three areas of Russia (Ural, Siberia and Moscow), where human rights defenders are in particular demand for support due to situation of isolation of certain places of detention. The action will be realised in partnership with international and Russians NGOs such as Ural Human Rights Group (Chelyabinsk), Legal Basis (Ekaterinburg), Ural Human Rights School (Ekaterinburg), Siberia Against Torture (Irkutsk), Stichting Russian Justice Initiative (Netherlands), Public Verdict (Moscow).

### **Submission of a proposal on life sentences and reintegration of detained persons in Ukraine**

The project aims at strengthening the application of requirements of the Council of Europe in the context of social reintegration of detained persons in Ukraine. The action articulates around two main events : a conference in Kiev and a seminar in Kharkiv to take place in September 2018 on the topic of strengthening the legislation on reduced sentences, required from Ukraine by the European Court of Human Rights and the Council of Europe. The project will be organised by the EPLN and the [Kharkiv Human Rights Protection group](#), in partnership with the National School of Judges of Ukraine.

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# IMPRINT

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