

COE COMMITTEE OF MINISTERS' DECISIONS ON PRISON OVERCROWDING

This technical brief provides an overview and analysis of the recommendations made by the Committee of Ministers of the Council of Europe and its Secretariat in the context of the supervision of the execution of judgments concerning prison overcrowding handed down by the European Court of Human Rights. It aims to support legal practitioners and civil society organisations working in the prison field in their advocacy and litigation actions before Council of Europe bodies.

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Introduction

This document aims to **provide an overview of the position of the Committee of Ministers of the Council of Europe (CM) and its Secretariat on the structural problem of prison overcrowding.**

To this end, it analyses the recommendations of the CM and its Secretariat in **13 selected countries:** Belgium, Bulgaria, France, Greece, Hungary, Italy, Moldova, Poland, Portugal, Romania, Russia, Slovenia, Ukraine.¹ Only notes and decisions adopted up to September 2023 have been analysed. More recent documents have not been taken into account.

In the cases selected, some of which are **pilot or quasi-pilot judgments**,² the European Court of Human Rights (ECtHR) found that prison overcrowding was a **structural or complex problem**, which needed to be resolved by the adoption of substantial measures.

The European Court of Human Rights has sometimes given guidance on how to address this problem. Such guidance may range from targeted measures to be adopted within a specific timeframe (for example, in the case of pilot judgments, the provision of effective remedies available to detainees wishing to complain about their conditions of detention, see *Torreggiani and Others v. Italy*, no. [43517/09](#), 2013, §§ 96-99), to broader considerations about States' penal policies (see in particular *Orchowski v. Poland*, in which the ECtHR held that "[i]f the State is unable to ensure that conditions of detention comply with the requirements of Article 3 of the Convention, it must abandon its strict penal policy in order to reduce the number of persons imprisoned or introduce a system of alternative penalties", *Orchowski v. Poland*, no. [17885/04](#), 2009, § 153; see also *Torreggiani*, § 95). Despite these indications, the ECtHR has repeatedly stressed that the CM is "better placed" to give guidance on how a State should organise its penal system or carry out prison reforms (*Sukachov v. Ukraine*, no. [14057/17](#), 2020, § 145; see also *Torreggiani*, §§ 94-95).

The CM meets at deputy level four times a year to review progress in implementing a number of cases ("DH Meetings"). The review is based on progress reports prepared by the Government ("Action plans", "Action report"), and submissions by non-governmental organisations (NGOs) and national human rights institutions (NHRIs).

A distinction should be made between **two main sources**. Firstly, the **decisions taken by the CM** ("CM decisions"), which are the reference documents for understanding the Committee's position. Secondly, the **notes prepared by the CM Secretariat** ("Notes") prior to the DH meeting, based on documentation received from governments, NGOs and NHRIs. These notes provide a description and analysis of the situation in the country under consideration, as well as the measures taken or envisaged by the national authorities. They also contain a number of proposals for the attention of the CM. These notes are not binding, but may be used to interpret the Committee's decision.³

¹ The countries and the corresponding cases are: **Belgium:** *Vasilescu v. Belgium*, no. 64682/12, 25 April 2014; **Bulgaria:** *Neshkov v. Bulgaria*, no. 36925/10, 27 January 2015 & *Keyahov v. Bulgaria*, no. 41035/98, 18 January 2005; **France:** *J.M.B. and others v. France*, no. 9671/15, 30 January 2020; **Greece:** *Nisiotis v. Greece*, no. 34704/08, 10 February 2011; **Hungary:** *Varga and others v. Hungary*, no. 14097/12; **Italy:** *Torreggiani v. Italy*, no. 43517/09, 8 January 2013 & *Sulejmanovic v. Italy*, no. 22635/03, 16 July 2009; **Moldova:** *Ciorap v. Moldova*, no. 12066/02, 19 June 2007 & *I.D. v. Moldova*, no. 47203/06, 30 November 2010; **Poland:** *Orchowski v. Poland*, no. 17885/04, 22 October 2009 & *Norbert Sikorski v. Poland*, no. 17599/05, 22 October 2009; **Portugal:** *Petrescu v. Portugal*, no. 23190/17, 3 December 2019; **Romania:** *Rezmiveş v. Romania*, no. 61467/12, 25 April 2017 & *Bragadireanu v. Romania*, no. 22088/04, 6 December 2007; **Russia:** *Ananyev v. Russia*, no. 42525/07, 1 October 2012; **Slovenia:** *Mandic v. Slovenia*, no. 5774/10, 20 January 2012; **Ukraine:** *Sukachov v. Ukraine*, no. 14057/17, 30 January 2020. See Annexes for more details on the cases.

² Pilot judgments are adopted when the issue at stake, as a result of its structural or systemic nature, gives rise to an important number of similar applications. In these judgments, the Court may give indications as to the measures to be adopted by the respondent State within a specific time limit. The pilot judgment procedure enables the European Court of Human Rights (ECtHR) to adjourn the examination of the related applications. See the [Factsheet on pilot judgments](#) prepared by the ECtHR.

³ For more details, see [iGuide: Committee of Ministers Procedures and working methods](#), part III. 5: "The [meeting's] documentation includes basic documents required for discussion and Notes on the agenda setting out the draft decisions. The Secretariat prepares Notes on the agenda only when they give added value to the Deputies' discussions and/or when they are necessary for preparing the Deputies' decision"; see also European Implementation Network, [Implementation of Judgments of the European Court of Human Rights. A Handbook for NGOs, injured parties and their legal advisers](#), p. 14: "These notes contain summaries of the cases and any issues arising, together with draft CM decisions on each case".

In these sources, only elements relating to prison overcrowding have been selected (elements relating to the material conditions of detention, or details of remedies put in place that were not related to overcrowding, have not been taken into consideration).

1. Reference to the work of the coe and national human rights institutions

The CM promotes solutions put forward in other Council of Europe (CoE) work in matters of prison overcrowding and prison policies, such as **recommendations** ([Recommendation Rec\(99\)22 concerning prison overcrowding and prison population inflation](#), [Recommendation Rec\(2000\)22 on improving the implementation of the European rules on community sanctions and measures](#), [Recommendation Rec\(2003\)22 on conditional release \(parole\)](#) and [Recommendation Rec\(2006\)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse](#) – see e.g. in respect of [Slovenia, 1259th meeting, Notes, 2016](#)), a **White paper** (European Committee on Crime Problems, [White Paper on Prison Overcrowding](#), 2016, see e.g. in respect of [Romania, 1362th meeting, Notes, 2019](#); [1398th meeting, Notes, 2021](#); [1468th meeting, Notes, 2023](#)), **CPT positions** (either country-specific, or of a broader relevance – e.g. the [CPT Annual report for 2021](#) promoting the use of “a binding legal system of prison regulation” to tackle prison overcrowding, see in respect of [Portugal, 1475th meeting, Notes, 2023](#)), or CoE-provided **technical assistance** (e.g. the Council of Europe Action Plan for the Republic of Moldova 2021 – 2024, funded by the Human Rights Trust Fund Project (HRTF) No. 18 Programme – see, in respect of [Moldova: 1265th meeting, CM decision, 2016](#); in respect of [Russia: 1157th meeting, Notes, 2012](#)).

NHRIs reports are also mentioned as useful sources of inspiration complementing CoE sources (see in respect of [Bulgaria: 1172nd meeting, CM decision, 2013](#), in which the CM invites the authorities to “take due account [...] of the relevant recommendations made by monitoring bodies at national and international level, including the CPT **and the Ombudsman**”; in respect of [Portugal: 1475th meeting, CM decision, 2023](#), in which the CM invites the authorities to draw “fully on the relevant Council of Europe expertise, work and instruments **and recommendations of the National Preventive Mechanism**”).

2. Promotion of a comprehensive strategy involving all relevant stakeholders

The CM clearly states that fighting prison overcrowding requires the **implementation of a comprehensive strategy**, involving all relevant actors, and aiming at addressing several aspects of the phenomenon, through policy changes, awareness-raising activities towards relevant actors, organisational measures impacting on detention regimes, and interventions on the prison estate.

While the judiciary is particularly singled out as being “the only actor who can **order release or adjustments of sentence** and thus, be able to **act on the ‘sources’ of violations of Article 3**” (quote with respect to [France, 1411st meeting, Notes, 2021](#)), **all relevant stakeholders of the penal field** are to be involved (see in respect in [Belgium: “prosecutors, investigating and enforcement judges, prison administration and probation services”, 1436th meeting, Notes, 2022](#); in respect of [Greece: 1288th meeting, Notes, 2017](#) in which the Secretariat calls for a “reconsideration of the penal system and the **interaction between the legislature (penalty system), the judiciary (sentences) and the correctional system (conditions of detention)**”; in respect of [Portugal: 1475th meeting, Notes, 2023](#), in which the Secretariat underlines the “clear added value in consulting all stakeholders” in the process, and makes direct reference to the input provided by “**civil society actors**, which provides solid insights into the root causes of the problems and the type of action which can address these”).

Such strategy is often lacking in the countries under consideration by the Committee of Ministers, and is often reminded of as a **required step to address the problem of prison overcrowding** (see for instance, in respect of [France: 1451st meeting, Notes, 2022](#) and [CM decision](#); in respect of [Ukraine: 1475th meeting, Notes, 2023](#) and [CM decision](#); in respect of [Portugal: 1475th meeting, Notes, 2023](#) and [CM decision](#)). Examples reviewed show that such strategy must address prison overcrowding through measures impacting penal law (to limit the use of imprisonment), procedural law (to guarantee prisoners’ access to effective remedies), and the prison estate (to improve material conditions of detention).

An example of the implementation of such strategies can be found in [Russia](#), at the early stages of the implementation of the judgment *Ananyev and others v. Russia* (no. [42525/07](#), 2012), when the CM

“noted with satisfaction that the action plan is based on a comprehensive and long-term strategy for the resolution of the structural problem identified by the Court” ([1157th meeting, Notes, 2012](#) and [CM decision](#)). This action plan covered at the same time “measures aimed at a wider recourse to alternative measures to detention; [m]easures aimed at further improvement of material conditions of detention; [and] [m]easures aimed at the setting up of domestic compensatory and preventive remedies and at further improvement of the existing ones” (idem). In spite of its initial “satisfaction” with the measures taken by the authorities during its latest examination of the case seven year later, the CM noted “with concern that the [ECtHR] continues to deliver judgments finding overcrowding in a number of detention facilities and invited the authorities to provide information on the measure taken to address this problem” ([1348th meeting, CM decision, 2019](#)).

Similarly, the measures adopted by the Italian authorities in the implementation of the *Torreggiani* pilot judgment (closed in 2016) are at times mentioned as a “source of inspiration” for other countries by the Secretariat (see for instance in respect of [Hungary: 1250th meeting, Notes, 2016](#); in respect of [Slovenia: 1259th meeting, Notes, 2016](#)).

As highlighted by the Secretariat, the [Italian](#) authorities adopted measures in three lines of actions: penal policy measures to increase use of alternatives to imprisonment and limit the use of detention and detention on remand for minor offences, organizational measures to improve prisoners’ living conditions, and renovation of prisons ([1214th meeting, Notes, 2014](#)).

The CM makes perfectly clear that **measures aiming at increasing prison places, taken alone, are unable to solve the issue of overcrowding** (see in respect of [France: 1451st meeting, Notes, 2022](#); in respect of [Belgium: 1475th meeting, Notes, 2023](#) and [CM decision](#)) – though can be part of the solution, when taken in parallel with other policy initiatives (see in respect of [Greece: 1172nd meeting, Notes, 2013](#); in respect of [Romania: 1122nd meeting, Notes, 2015](#)).

3. Strategies focusing on pre-trial detention, short sentences and admission flows

In a number of Secretariat Notes and CM decisions, the emphasis is put on “policies designed to **limit or moderate the number of persons sent to prisons**”, which, in some cases, is seen as the “only viable way to control overcrowding” (quotes in respect of [Hungary: 1250th meeting, Notes, 2016](#), the Secretariat quotes the [CPT visit report published in 2014](#), § 39).

Alternatives to detention and to pre-trial detention (using alternative sanctions or alternative measures of constraint) are therefore often promoted. This is e.g. the main focus of the CM’s intervention with respect to [Hungary](#), in which alternatives to detention are found to be “underused” ([1377th bis meeting, Notes, 2020](#); [1310th meeting, Notes, 2018](#)). It has also been mentioned as part of the problem in other countries, such as [Ukraine](#) ([1390th meeting, Notes, 2020](#) and [CM decision, 2020](#)), [France](#) ([1451st meeting, Notes, 2022](#) and [CM decision](#)), [Moldova](#) ([1186th meeting, Note, 2013](#) and [CM decision](#)), [Slovenia](#) ([1259th meeting, Notes, 2016](#) and [CM decision](#)), among others. The recommendation to make wider use of alternatives to detention is also made in respect of [Portugal](#), even though the country has one of the lowest admission rates in CoE countries – which suggests that its overcrowding problem has different causes ([1475th meeting, CM decision, 2023](#)).

Alternatives to pre-trial detention were specifically recommended or analysed in countries where the **frequency and duration of pre-trial detention** was found to be a serious problem – see in particular the cases of [Poland](#) ([1164th meeting, Notes, 2013](#) and [CM decision](#)), [Greece](#) ([1390th meeting, Notes, 2020](#)) or [Russia](#) ([1288th meeting, Notes, 2017](#)).

Among the measures implemented by the countries reviewed or recommended by the CM or the Secretariat, one can find an increased use of **electronic monitoring** as an alternative to detention “on remand, as an autonomous sentence or a means of enforcing a sentence” (quote in respect of [Belgium](#), the wider use of this measure was noted “with interest” by both the Secretariat and the CM: [1475th meeting, Notes, 2023](#) and [CM decision](#)).

No critical analysis of the use of this measure is noticeable in the documents reviewed. In two closed cases ([Poland, Italy](#)), the increased use of electronic monitoring for short sentences has been implemented and **was mentioned as part of a wider set of measures** having achieved some results in the area of overcrowding (see in respect of [Poland: 1265th meeting, Resolution, 2016](#), the resolution

mentions the latest action plan submitted which indicates that electronic monitoring can be ordered as an alternative to custodial sentences of up to one year; in respect of [Italy: 1201st meeting, Notes, 2014](#)). In other pending cases, the **implementation of a wider use of electronic monitoring is recommended as a means to decrease overcrowding** (see in respect of [Belgium: 1475th meeting, CM decision, 2023](#), mentioned above – the extended use of alternatives to detention, including electronic monitoring was expected to “contribute to reducing the prison population” six years earlier already, see [1302nd meeting, Notes, 2017](#) ; in respect of [Romania: 1310th meeting, CM decision, 2018](#)). It comes together with a **recommendation to reinforce the probation service** (see in respect of [Belgium: 1475th meeting, CM decision, 2023](#); in respect of [Romania: 1362nd meeting, Notes, 2019](#), in which the Secretariat regrets that the probation service remains “remains severely understaffed despite its fundamental contribution to diverting more than 100,000 people from the prison system, which makes its effective functioning vital to the short- and long-term success of Romania’s strategy against overcrowding”; see also the case of [Slovenia](#) where one of the measures taken was the creation of a probation service: [1294th meeting, Notes, 2017](#)).

Other measures include **targeted interventions on criminal law** to ensure that “imprisonment is a measure of last resort” (quote in respect of [Moldova: 1406th meeting, Notes, 2021](#)). This has been done in respect of petty offences e.g. by [Italy \(1150th meeting, Notes, 2012 and CM decision\)](#) or [Poland \(1265th meeting, Resolution, 2016](#) mentioning the latest action plan), was envisaged by [Greece](#) in 2020 in the frame of a reform “aiming at enforcing a more moderate criminal policy” ([1390th meeting, Note, 2020](#) and [CM decision](#)), and was found to be necessary in the first examination of Hungary’s implementation of the pilot judgment *Varga and Others v. Hungary* (no. [14097/12](#), 2015; see [1236th meeting, Notes, 2015](#): the Secretariat said developing alternatives to detention is required in view of the fact that petty offences are often punished by custodial measures). In respect of [Belgium](#), the CM used an alternative wording, suggesting to “reduce the number of cases of imprisonment provided for by law” ([1475th meeting, CM decision, 2023](#)).

Another measure that seems to have gained in importance in more recent decisions is the establishment of a **legally binding control of the prison population**. This was noted as a measure taken by the [Slovenian](#) authorities in their “multi-faceted national strategy to combat the problem of overcrowding” ([1294th meeting, Notes, September 2017](#): prisoners of Ljubljana prison were to be automatically transferred to other prisons when the facility reaches its maximum capacity) and was recommended in respect of [France \(1451st meeting, CM decision, 2022](#): the CM invited the authorities to “consider new legislative measures that would regulate the prison population in a more binding nature”) and [Belgium \(1475th meeting, CM decision, 2023](#): the CM invited the authorities to “consider without delay binding measures to regulate the prison population”).

A similar measure was also envisaged by the Secretariat for [Portugal](#), but it does not appear in the CM decision (1475th meeting, 19-21 September 2023: compare the Notes suggesting to introduce a “binding legal system of prison regulation, to be activated as soon as overcrowding situations occur [...] for example by introducing an absolute upper limit for the number of prisoners for every prison”, and the CM decision simply calling upon the authorities to make “use of all means available under the current legislation to limit the entries in the prison system”).

4. Less attention devoted to length of detention and early release

States’ reforms to reduce the length of sentences concern primarily **minor offences**, as illustrated by the reform adopted by [Italy](#), introducing “more lenient penalties for minor drug-related offences” ([1201st meeting, Notes, 2014](#)) or [Greece](#), which has abolished “petty offences” ([1390th meeting, Notes, 2020](#)). The issue of **long sentences** is rarely addressed.

On two occasions, they are briefly mentioned as a factor of overcrowding. In respect of [France](#), after having underlined the impact of short-term sentences on overcrowding, the Secretariat added that longer sentences contribute to the “over-occupation of prison places over time” ([1451st meeting, Notes, 2022](#)). In respect of [Romania](#), the Secretariat fears that “longer sentences for reoffenders and tougher conditions of access to conditional release” might cancel the positive impact of a wider use of electronic monitoring ([1310th meeting, Notes, 2018](#)).

The issue is addressed in greater details in respect of [Greece](#): reacting to a penal law reform rendering more severe sentences for a number of serious criminal offenses, the Secretariat stated that “**the increase in punitiveness at the upper level of the penal scale cannot be compensated by the more modest decrease at the lower end**” and that such policy “usually results in increasing

imprisonment rates and, consequently cannot tackle the prison overcrowding consistently” ([1428th meeting, Notes, 2022](#)).

Examples of **improvements to sentence adjustment mechanisms** are more frequent, either as recommendations to put in place (see in respect of [Belgium: 1355th meeting, CM decision, 2019](#); in respect of [Moldova: 1406th meeting, CM decision, 2021](#); in respect of [Portugal: 1475th meeting, CM decision, 2023](#)), or as positive assessment of measures adopted by the authorities (see in respect of [Bulgaria: 1411th meeting, Notes, September 2021](#), following a reform allowing prisoners to request conditional release directly with the competent court and relaxing conditions to access to conditional release of reoffenders; in respect of [Italy: 1214th meeting, Notes, 2014](#), concerning a reform that increased possibilities for prisoners to benefit from early release under supervision by increasing the number of days of imprisonment per semester for a prisoner to become entitled to early release; in respect of [Romania: 1348th meeting, Notes, 2019](#) and [CM decision](#), concerning a reform related to release on parole which contributed to reducing the number of prisoners; in respect of [Greece: 1230th meeting, Notes, 2015](#), in which the Secretariat suggests to complement existing measures aiming at “limiting the number of persons sent to prison to execute a sentence (alternatives to imprisonment) and on ensuring a reduction of the population of convicted inmates by means of suspension of prison terms or early release schemes” with alternatives to pre-trial detention).

Recommendations were also made to make the temporary **measures adopted during the COVID-19 pandemic** permanent. These measures often resulted in a decrease of the prison population following the implementation of sentence adjustment schemes (see in respect of [Portugal: 1398th meeting, Notes, 2021](#) and [CM decision](#) with the CM recommending to make permanent to “more flexible enforcement of sentences”, described by the Secretariat in its notes as “partial pardon of prison sentences, granting of extraordinary administrative leave, remissions of sentence and early release on parole” – this recommendation was not reiterated in the 2023 examination of the case). In respect of [Belgium](#) (which implemented similar measures in the form of interruption of sentences and early release, the Secretariat merely noted that “the opportunity presented during the first wave of COVID-19 has been taken but its **effects** were not maintained over time”, which cannot be interpreted as a recommendation to prolong the measures ([1398th meeting, Notes, 2021](#), emphasis added: the measures are mentioned in the NHRI submission quoted in footnote 15 of the Secretariat’s Notes).

The question of overcrowding as a demographic phenomenon, and the question of prisoners’ procedural rights overlap with the question of the compensatory remedies authorities shall put in place: on numerous occasions, the CM suggested to put in place remedies that would award **compensations in the form of reduction of sentences** for prisoners held in poor detention conditions (the example cited in this respect is the remedy put in place in [Italy](#) analysed by the ECtHR in its decision *Stella v. Italy* (no. [49169/09](#), 2014) decision as having “the undeniable advantage of helping to resolve the problem of overcrowding by speeding up detainees’ release from prison”, see also [1201st meeting, CM decision, 2014](#); see in respect of [Russia: 1288th meeting, CM decision, 2017](#); in respect of [Romania: 1362nd meeting, CM decision, 2019](#) in which the CM regrets “abolition of the remedy introduced to provide compensation in the form of reductions of sentence to persons” detained in poor conditions).