

RECOMMENDATION No. R (99) 22 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES CONCERNING PRISON OVERCROWDING AND PRISON POPULATION INFLATION

(Adopted by the Committee of Ministers on 30 September 1999

at the 681st meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that prison overcrowding and prison population growth represent a major challenge to prison administrations and the criminal justice system as a whole, both in terms of human rights and of the efficient management of penal institutions;

Considering that the efficient management of the prison population is contingent on such matters as the overall crime situation, priorities in crime control, the range of penalties available on the law books, the severity of the sentences imposed, the frequency of use of community sanctions and measures, the use of pre-trial detention, the effectiveness and efficiency of criminal justice agencies and not least public attitudes towards crime and punishment;

Affirming that measures aimed at combating prison overcrowding and reducing the size of the prison population need to be embedded in a coherent and rational crime policy directed towards the prevention of crime and criminal behaviour, effective law enforcement, public safety and protection, the individualisation of sanctions and measures and the social reintegration of offenders;

Considering that such measures should conform to the basic principles of democratic States governed by the rule of law and subject to the paramount aim of guaranteeing human rights, in conformity with the European Convention on Human Rights and the case-law of the organs entrusted with its application;

Recognising moreover that such measures require support by political and administrative leaders, judges, prosecutors and the general public, as well as the provision of balanced information on the functions of punishment, on the relative effectiveness of custodial and non-custodial sanctions and measures and on the reality of prisons;

Bearing in mind the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

Recognising the importance of Recommendation No. R (80) 11 concerning custody pending trial, Recommendation No. R (87) 3 on the European Prison Rules, Recommendation No. R (87) 18 concerning the simplification of criminal justice, Recommendation No. R (92) 16 on the European Rules on community sanctions and measures and Recommendation No. R (92) 17 concerning consistency in sentencing,

Recommends that governments of member states:

- take all appropriate measures, when reviewing their legislation and practice in relation to prison overcrowding and prison population inflation, to apply the principles set out in the Appendix to this Recommendation;
- encourage the widest possible dissemination of the Recommendation and the report on prison overcrowding and prison population inflation elaborated by the European Committee on Crime Problems.

Appendix to Recommendation No. R (99) 22

I. Basic principles

1. Deprivation of liberty should be regarded as a sanction or measure of last resort and should therefore be provided for only, where the seriousness of the offence would make any other sanction or measure clearly inadequate.

2. The extension of the prison estate should rather be an exceptional measure, as it is generally unlikely to offer a lasting solution to the problem of overcrowding. Countries whose prison capacity may be sufficient in overall terms but poorly adapted to local needs should try to achieve a more rational distribution of prison capacity.

3. Provision should be made for an appropriate array of community sanctions and measures, possibly graded in terms of relative severity; prosecutors and judges should be prompted to use them as widely as possible.

4. Member states should consider the possibility of decriminalising certain types of offence or reclassifying them so that they do not attract penalties entailing the deprivation of liberty.

5. In order to devise a coherent strategy against prison overcrowding and prison population inflation a detailed analysis of the main contributing factors should be carried out, addressing in particular such matters as the types of offence which carry long prison sentences, priorities in crime control, public attitudes and concerns and existing sentencing practices.

II. Coping with a shortage of prison places

6. In order to avoid excessive levels of overcrowding a maximum capacity for penal institutions should be set.

7. Where conditions of overcrowding occur, special emphasis should be placed on the precepts of human dignity, the commitment of prison administrations to apply humane and positive treatment, the full recognition of staff roles and effective modern management approaches. In conformity with the European Prison Rules, particular attention should be paid to the amount of space available to prisoners, to hygiene and sanitation, to the provision of sufficient and suitably prepared and presented food, to prisoners' health care and to the opportunity for outdoor exercise.

8. In order to counteract some of the negative consequences of prison overcrowding, contacts of inmates with their families should be facilitated to the extent possible and maximum use of support from the community should be made.

9. Specific modalities for the enforcement of custodial sentences, such as semi-liberty, open regimes, prison leave or extra-mural placements, should be used as much as possible with a view to contributing to the treatment and resettlement of prisoners, to maintaining their family and other community ties and to reducing the tension in penal institutions.

III. Measures relating to the pre-trial stage

Avoiding criminal proceedings – Reducing recourse to pre-trial detention

10. Appropriate measures should be taken with a view to fully implementing the principles laid down in Recommendation No R (87) 18 concerning the simplification of criminal justice; this would involve in particular that member states, while taking into account their own constitutional principles or legal tradition, resort to the principle of discretionary prosecution (or measures having the same purpose) and make use of simplified procedures and out-of-court settlements as alternatives to prosecution in suitable cases, in order to avoid full criminal proceedings.

11. The application of pre-trial detention and its length should be reduced to the minimum compatible with the interests of justice. To this effect, member states should ensure that their law and practice are in conformity with the relevant provisions of the European Convention on Human Rights and the case-law of its control organs, and be guided by the principles set out in Recommendation No. R (80) 11 concerning custody pending trial, in particular as regards the grounds on which pre-trial detention can be ordered.

12. The widest possible use should be made of alternatives to pre-trial detention, such as the requirement of the suspected offender to reside at a specified address, a restriction on leaving or entering a specified place without authorisation, the provision of bail or supervision

and assistance by an agency specified by the judicial authority. In this connection attention should be paid to the possibilities for supervising a requirement to remain in a specified place through electronic surveillance devices.

13. In order to assist the efficient and humane use of pre-trial detention, adequate financial and human resources should be made available and appropriate procedural means and managerial techniques be developed, as necessary.

IV. Measures relating to the trial stage

The system of sanctions/measures – The length of the sentence

14. Efforts should be made to reduce recourse to sentences involving long imprisonment, which place a heavy burden on the prison system, and to substitute community sanctions and measures for short custodial sentences.

15. In providing for community sanctions and measures which could be used instead of deprivation of liberty, consideration should be given to the following:

- suspension of the enforcement of a sentence to imprisonment with imposed conditions,
- probation as an independent sanction imposed without the pronouncement of a sentence to imprisonment,
- high intensity supervision,
- community service (i.e. unpaid work on behalf of the community),
- treatment orders / contract treatment for specific categories of offenders,
- victim-offender mediation / victim compensation,
- restrictions of the liberty of movement by means of, for example, curfew orders or electronic monitoring.

16. Community sanctions and measures should only be imposed in conformity with the guarantees and conditions laid down in the European Rules on Community Sanctions and Measures.

17. Combinations of custodial and non-custodial sanctions and measures should be introduced into legislation and practice, such as unsuspended custodial sentences, followed by community service, (intensive) supervision in the community, electronically monitored house arrest or, in appropriate cases, by an obligation to undergo treatment.

Sentencing and the role of prosecutors and judges

18. When applying the law prosecutors and judges should endeavour to bear in mind the resources available, in particular in terms of prison capacity. In this connection, continued attention should be paid to assessing the impact which existing sentencing structures and planned sentencing policies have on the evolution of the prison population.

19. Prosecutors and judges should be involved in the process of devising penal policies in relation to prison overcrowding and prison population inflation, with a view to engaging their support and to avoiding counterproductive sentencing practices.

20. Rationales for sentencing should be set by the legislator or other competent authorities, with a view to, inter alia, reducing the use of imprisonment, expanding the use of community sanctions and measures, and to using measures of diversion such as mediation or the compensation of the victim.

21. Particular attention should be paid to the role aggravating and mitigating factors as well as previous convictions play in determining the appropriate quantum of the sentence.

V. Measures relating to the post-trial stage

The implementation of community sanctions and measures – The enforcement of custodial sentences

22. In order to make community sanctions and measures credible alternatives to short terms of imprisonment, their effective implementation should be ensured, in particular through:

- the provision of the infrastructure for the execution and monitoring of such community sanctions, not least in order to give judges and prosecutors confidence in their effectiveness; and
- the development and use of reliable risk-prediction and risk-assessment techniques as well as supervision strategies, with a view to identifying the offender's risk to relapse and to ensuring public protection and safety.

23. The development of measures should be promoted which reduce the actual length of the sentence served, by giving preference to individualised measures, such as early conditional release (parole), over collective measures for the management of prison overcrowding (amnesties, collective pardons).

24. Parole should be regarded as one of the most effective and constructive measures, which not only reduces the length of imprisonment but also contributes substantially to a planned return of the offender to the community.

25. In order to promote and expand the use of parole, best conditions for offender support, assistance and supervision in the community have to be created, not least with a view to prompting the competent judicial or administrative authorities to consider this measure as a valuable and responsible option.

26. Effective programmes for treatment during detention and for supervision and treatment after release should be devised and implemented so as to facilitate the resettlement of offenders, to reduce recidivism, to provide public safety and protection and to give judges and prosecutors the confidence that measures aimed at reducing the actual length of the sentence to be served and community sanctions and measures are constructive and responsible options.