Recommendation 1245 (1994)[1]

Detention of persons pending trial

Parliamentary Assembly

1. Despite the fact that the detention of persons pending trial may be described as provisional, it can give rise to irreversible or even irreparable damage, especially for prisoners who, having been tried, are found to be innocent or are discharged. These consequences may include:

1.1. loss of reputation of the unconvicted prisoner and sometimes even of persons closely connected to him or her;

1.2. the severing of family ties;

1.3. the loss of work, company insolvency or the jeopardising of a career;

1.4. the undermining of the prisoner's health and mental balance.

2. Moreover, one should take into consideration that this measure, which is, by its very nature, compelling and damaging, is taken in respect of a person who should be considered innocent at this stage of the procedure, as is laid down clearly in Article 6, Section 2, of the European Convention on Human Rights.

3. Over the last few years conditions of detention have deteriorated and problems linked to detention pending trial have increased owing to a considerable rise in the number of prisoners, especially persons awaiting trial, who, in some countries, may make up 50% of all prisoners.

4. Attention should be drawn to Committee of Ministers' Recommendation No. R (80) 11 concerning custody pending trial, which contains principles which the member states are invited to apply, especially the principle that such a measure shall be regarded as exceptional.

5. Since the adoption of this recommendation, eleven states have joined the Council of Europe.

6. As custody pending trial cannot be abolished entirely, given the fact that in some cases it is indispensable or even inevitable for the carriage of justice, it is highly advisable to submit its application to appropriate and efficient guarantees. It is with this in mind that the Assembly recommends that the Committee of Ministers:

6.1. supplement Recommendation No. R (80) 11 with the following principles:

a. custody pending trial, which must always be optional and exceptional, should be ordered only when the minimum sentence in question is substantial;

b. minors may not be placed in custody unless it is absolutely necessary, and separate detention for minors should be established and used;

c. no court may order detention on remand unless it has first held proceedings involving the participation of the public prosecutor and the person in question (accused or defendant) who must, in this case, be assisted by a legal representative who has had access to the entire file and who has talked freely to him or her;

d. non-residents and aliens must under no circumstances be discriminated against;

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1. Assembly debate on 30 June 1994 (22nd Sitting) (see Doc. 7094, report of the Committee on Legal Affairs and Human Rights, Rapporteur: Mr Rokofyllos). Text adopted by the Assembly on 30 June 1994 (22nd Sitting).

e. a distinction must be drawn between imprisonment and custody pending trial; in particular untried prisoners must be detained in separate sections of prisons in accordance with the prison rules contained in Committee of Ministers' Recommendation No. R (87) 3, so that they have all the necessary facilities for preparing their defence and are not totally deprived of social and occupational contacts;

f. the law must establish an upper limit on the duration of custody pending trial, which must not exceed six months for minor offences and eighteen months for serious offences; these periods may not be extended for any reason whatsoever; as a result of this measure, cases in which one or more accused persons have been remanded in custody will have to be given priority and investigated rapidly;

g. whenever it comes to light retroactively through a final decision (dismissal of charges or acquittal) that custody pending trial was wrongful, full compensation must be awarded for the material and non-material damage; a state founded on the rule of law which deserves this epithet thus honours its most elementary obligations to human beings who have been unjustly imprisoned;

6.2. invite member states to scrupulously ensure the application of the principles contained in Recommendation No. R (80) 11, thus supplemented.