Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1938 (2013)[1]
Final version

Promoting alternatives to imprisonment

Parliamentary Assembly

1. The Parliamentary Assembly, referring to its Recommendation 1257 (1995) on conditions of detention in Council of Europe member States, reaffirms the principle that imprisonment should be a measure of last resort. It concurs with the Committee of Ministers, which noted already in its Resolution (76) 10 on certain alternative penal measures to imprisonment, the tendency to avoid imposing prison sentences as far as possible, on account of their many drawbacks as well as out of respect for individual liberty, believing that this process could be taken further without endangering public safety. Community sanctions should be the punishment of choice, except when the seriousness of the crime prohibits any penalty other than a prison sentence.

2. It takes note with particular interest of the following comparative data, published in the Council of Europe's Annual Penal Statistics (SPACE I – 2010):

2.1. prison populations in Europe vary considerably from one country to another. Azerbaijan, Georgia, Latvia, the Russian Federation and Ukraine have more than double the Council of Europe average of 149 prisoners per 100 000 inhabitants, whereas Andorra, Bosnia and Herzegovina, Denmark, Finland, Iceland, Liechtenstein, Monaco, the Netherlands, Norway, San Marino, Slovenia, Sweden and Switzerland have imprisonment rates around half the European average or less. Trends over the past decade are generally on the rise in most European countries;

2.2. a number of Council of Europe member States have serious problems of prison overcrowding. Some 21 member States have more than 100 prisoners per 100 places of detention. According to the Council of Europe's Annual Penal Statistics, the six countries where the situation is the worst are: Serbia at 172, Italy at 153, Cyprus at 151, Greece at 123, Turkey at 115 and France at 108 prisoners per 100 places;

2.3. the cost of imprisonment to European taxpayers is considerable. The average cost among Council of Europe member States is the equivalent of nearly €100 per inmate per day.

3. The Assembly considers prison overcrowding unacceptable, both as a matter of human rights principle, in particular protection against inhuman and degrading treatment (Article 3 of the European Convention on Human Rights (ETS No. 5)) and because of the negative practical consequences of overcrowding for the persons concerned and society as a whole; society stands to suffer from high rates of recidivism and lost contributions to economic and social life of persons whose rehabilitation is hampered by overcrowding in prison.

4. In view of the high cost of building and maintaining new prisons, the Assembly recommends concentrating scarce budgetary funds on improving conditions of detention in existing prisons rather than on expanding prison capacity.

5. The Assembly notes with satisfaction that the United Kingdom has in recent years successfully phased in and promoted new types of non-custodial sentences as alternatives to imprisonment, whilst safeguarding the legitimate security needs of society.

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1. *Text adopted by the Standing Committee*, acting on behalf of the Assembly, on 31 May 2013 (see Doc. 13174, report of the Committee on Legal Affairs and Human Rights, rapporteur: Ms Vučković). See also Recommendation 2018 (2013).

6. In view of the above, the Assembly invites all member States to vigorously promote the use of non-custodial sentences, in particular for first-time and non-violent offenders, young offenders and women. It also invites member States to promote the use of monitoring measures other than pre-trial detention.

7. It stresses that non-custodial sentences should be imposed as a replacement for prison sentences and not as a way of further widening the scope of criminal punishment. Thus, minor offences which have hitherto not given rise to any criminal sanctions should not be punished by non-custodial sentences.

8. The Assembly recalls that non-custodial sentences, whilst clearly preferable to prison sentences in all but the most serious cases, must fulfil basic human rights requirements, as specified in the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules, 1990) and the Council of Europe's European Rules on Community Sanctions and Measures (Committee of Ministers Recommendation No. R(92)16), including:

8.1. the principle of legality, namely that the measures to be applied, the conditions for their application and the authorities responsible for their implementation must be prescribed by law;

8.2. the prohibition of discrimination in the application of non-custodial measures;

8.3. the respect for the principle of proportionality between the seriousness of the offence and the intensity of the afflictive character and the interference of the measure applied with the rights of the offender;

8.4. the requirement of consent, where non-custodial measures are applied before or instead of formal proceedings or trial;

8.5. the right to review such measures, namely judicial guarantees and complaint procedures;

8.6. the respect for offenders' rights to privacy and human dignity;

8.7. the protection from undue risk of physical or mental injury.

9. The following non-custodial sentences deserve particular attention, in light of the experience in countries successfully maintaining law and order with a comparatively low rate of imprisonment:

9.1. fines, which should be calculated in proportion to the offender's disposable income in a manner which permits a comparison with prison terms;

9.2. suspended prison sentences, be they completely suspended sentences or suspension of the final portion of a custodial sentence;

9.3. early release of a prisoner on compassionate grounds, in the presence of unforeseen developments concerning a prisoner's personal life or health;

9.4. intermittent/weekend sentences, allowing an offender to maintain his or her professional and family life, whilst being deprived of liberty during his or her free time;

9.5. assistance and supervision by probation officers, including participation in "offending behaviour programmes" (drinking and driving, anger management, domestic violence);

9.6. drug detoxification/rehabilitation measures (drug treatment and testing orders);

9.7. community service obligations and "community payback" measures;

9.8. restorative justice measures actively involving victims of crime;

9.9. innovative offender rehabilitation programmes involving civil society, such as the "circles of support" programme in the United Kingdom;

9.10. curfews, house arrests and restraining or exclusion orders enforced by technological means.

10. The Assembly notes that recent technological advances have expanded the potential uses of electronic monitoring devices, such as electronic bracelets or GPS, and made them more cost-effective. It considers that such devices, in particular when associated with other, more traditional measures, can expand the scope of non-custodial sanctions to include more serious offences that have hitherto been sanctioned by prison sentences.

11. The Assembly therefore encourages all member States of the Council of Europe to:

11.1. complete their legislation in the penal field, as necessary, to make available to their judicial authorities the full panoply of non-custodial sanctions providing viable alternatives to imprisonment in all cases where this would be appropriate;

11.2. develop and test new types and combinations of non-custodial sentences and community sanctions, whilst respecting the human rights requirements outlined in paragraph 8;

11.3. exchange information both on successes and difficulties encountered, making use of the Council of Europe's instruments for co-operation in the field of criminal law.