



Doc. 14020

18 April 2016

Abuse of pretrial detention in States Parties to the European Convention on Human Rights

Reply to Recommendation¹: Recommendation 2081 (2015)
Committee of Ministers

1. The Committee of Ministers has carefully examined Parliamentary Assembly Recommendation 2081 (2015) on “Abuse of pre-trial detention in States Parties to the European Convention on Human Rights”, which it has transmitted to the Steering Committee for Human Rights (CDDH) and the European Committee on Crime Problems (CDPC), for information and possible comments and to the Council of Europe Commissioner for Human Rights for information.

2. The Committee of Ministers draws attention to paragraph 1 of Article 5 of the European Convention on Human Rights, which guarantees the right to liberty and security of person. It recalls that the purpose of this article is to prevent arbitrary or unjustified deprivations of liberty and that the right to liberty and security is of the highest importance in a democratic society. Although possible limitations to this right are set out in paragraph 1, the Committee recalls Article 18 of the Convention, which prohibits the restrictions permitted to the Convention’s rights and freedoms from being applied for any purpose other than those for which they have been prescribed.

3. The Committee of Ministers also draws attention to paragraph 3 of Article 5 of the European Convention on Human Rights, which states that “everyone arrested or detained ... shall be entitled to trial within a reasonable time or to release pending trial”. Pre-trial detention in States Parties to the European Convention on Human Rights must therefore meet this standard, interpreted in the light of the case law of the European Court of Human Rights. Furthermore, everyone detained has the right, under paragraph 4 of Article 5, to take proceedings by which the lawfulness of his/her detention shall be decided speedily by a court and his release ordered if the detention is not lawful. In particular, persons detained pending trial must be presumed innocent until such time as they are convicted and any pre-trial detention must not exceed a reasonable time.

4. Based on well-established case law, numerous judgments of the European Court of Human Rights have revealed violations of these requirements of the Convention. Following these judgments, reforms are in progress in several member States under the supervision of the Committee of Ministers. The Committee of Ministers also recalls that based on the Court’s judgments, several member States have undertaken successful reforms to tackle systemic issues identified by the Court in respect of the detention on remand, which have resulted in the Committee of Ministers closing the supervision of execution of judgments in respect of those States.

5. Furthermore, the Committee of Ministers recalls its Recommendation [Rec\(2006\)13](#) to member States on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, and its Recommendation [Rec\(2006\)2](#) to member States on the European Prison Rules, the appendix

1. Adopted at the 1253rd meeting of the Ministers’ Deputies (13 April 2016).



to the latter providing detailed information on the minimum standards for the treatment of all prisoners. It notes that the Council of Europe Annual Penal Statistics (SPACE Statistics) are also an important tool in monitoring pre-trial detention, in particular regarding the representation of foreign nationals.

6. The Committee of Ministers recalls that continued consideration of the conformity of national systems with the requirements of the Convention generally, and through the process of execution of judgments in particular, provides important opportunities to integrate European standards with national law and practice. On this issue, it refers to its Recommendation [Rec\(2004\)5](#) to member States on the verification on the compatibility of draft laws, existing laws and administrative practice with standards laid down in the European Convention on Human Rights.

7. The Committee of Ministers welcomes the recent research report regarding pre-trial detention in the European Union, co-authored by a member of the CPT. In line with the Assembly recommendation, it encourages the relevant bodies of the Council of Europe to co-operate with the European Union on these and related issues on the basis of the standards laid down in the European Convention on Human Rights.

8. The Committee finally notes that the CDPC is currently in the process of finalising a White Paper on prison overcrowding which will reflect the actual situation in Europe, including regarding the excessive use of pre-trial detention. It includes proposals for action and measures to be taken by national authorities.