Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 2472 (2022)[1]

The impact of the Covid-19 pandemic on prison population in Europe

Parliamentary Assembly

1. The Parliamentary Assembly recalls its work carried out in response to the Covid-19 pandemic and its concerns about the impact of restrictive measures on the human rights and fundamental freedoms of persons deprived of their liberty, including its Resolution 2329 (2020) "Lessons for the future from an effective and rights-based response to the Covid-19 pandemic", Resolution 2338 (2020) "The impact of the Covid-19 pandemic on human rights and the rule of law" and Resolution 2424 (2022) "Beating Covid-19 with public health measures". Notably, in Resolution 2338 (2020), the Assembly called on member States to "ensure that the health and safety of persons deprived of their liberty are protected and they are not subjected to inhuman or degrading treatment or punishment, taking full account of the expert guidance given by bodies such as the CPT [European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment]".

2. The Assembly notes that during the Covid-19 pandemic Council of Europe member States imposed various preventive health measures as well as measures restricting the rights, freedoms and well-being of prisoners, and sometimes prison staff, in order to control the spread of the pandemic within the prison population.

3. Some countries took active steps to reduce the number of prisoners, given the clear links between prison overcrowding and the spread of coronavirus in prisons. Some countries prioritised vaccination for prisoners and prison staff, given the risks of contamination in a closed environment.

4. Social distancing measures, while often necessary, arguably had the greatest impact on the well-being of prisoners. These included restrictions on contact with the outside world as well as restricting contact and activities within prisons. The necessity and justification of these measures was not always clearly communicated to prisoners. Some compensatory measures were put in place, such as improved opportunities for telecommunication in order to contact family, but the impact on the well-being of prisoners was still significant, with a likely corresponding increase in self-harm and suicide attempts.

5. The Assembly recalls that, in accordance with the European Convention on Human Rights (ETS No. 5, "the Convention"), States Parties to the Convention have a positive obligation to take appropriate measures to protect the human rights of those within their jurisdiction, especially under Article 2 of the Convention, enshrining the right to life, and Article 8, enshrining the right to respect for private life. These positive obligations are particularly pronounced for those in detention facilities who are reliant upon State action to secure their well-being.

6. In relation to the restrictions introduced as a result of the Covid-19 pandemic, the Assembly recalls that protecting public health may constitute a legitimate purpose for justifying restrictions on the rights to respect for private life (Article 8) and freedom of assembly and association (Article 11), provided such restrictions are "prescribed by law", "necessary in a democratic society" and proportionate to the legitimate aim pursued.

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1. *Text adopted by the Standing Committee*, acting on behalf of the Assembly, on 25 November 2022 (see Doc. 15652, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Givi Mikanadze).
See also Recommendation 2242 (2022).

7. However, the Assembly notes that the prohibition on torture or inhuman or degrading treatment or punishment (Article 3) is absolute. Therefore, any measures that cross this threshold cannot be justified. The Assembly similarly notes the statements as well as the informative and authoritative reports of the CPT in relation to standards in places of detention, and in particular as concerns the challenges posed by Covid-19 in detention facilities.

8. The Assembly notes that sanitary conditions in prisons were key to preventing the spread of Covid-19 into, and within, prisons. Prison health should be an integral part of public health and adequate health treatment must be available in all places of detention. Given the specific risks for the spread of disease for those within closed environments such as prisons, and the responsibility of the State towards detainees, prison health must be given the priority that it deserves. In particular, vaccines and boosters should be offered to prisoners and prison staff – with appropriate information campaigns – so that prisoners are fully informed of medical information relating to the vaccines.

9. The Assembly notes that problems of overcrowding in certain prisons existed before the pandemic, as noted by the CPT in a number of reports as well as by the European Court of Human Rights in several judgments. Such overcrowded conditions meant that it was difficult to adequately separate people infected with Covid-19 from the rest of the prison population in order to stop the uncontrolled spread of the virus. As a result, efforts to reduce the prison population have been seen as one of the most effective and sustainable measures for preventing and controlling Covid-19 in prisons by providing space for physical distancing between prisoners. The Council of Europe's Annual Penal Statistics project concluded, among other things, that because of Covid-19, the prison population in Europe was significantly reduced between January 2020 and 2021. This decrease was mainly attributed to: the reduction in certain types of crimes in the context of the restrictions on movement during the pandemic; the slowing down of judicial systems; and the release schemes used in some countries to prevent or reduce the spread of the pandemic.

10. Discussions around the importance of alternatives to detention in helping to reduce the risks of prison overcrowding were already commonplace before the pandemic. The increased risks of Covid-19 due to prison overcrowding provided States with an opportunity to put in place alternatives to detention, such as home detention or community service orders. Some States decreased the use and length of pretrial detention, while others released, or temporarily released, prisoners considered to present a low level of risk to the public. Other States (for example Georgia and Portugal) adopted amnesty laws. As Europe emerges from the pandemic, useful lessons can be drawn from this experience so as to continue to use alternatives to detention to reduce the prison population to a minimum and to help ease the risk of overcrowding within prisons.

11. The Assembly is also aware that different conditions and models exist within prisons in Council of Europe member States, necessitating a Covid-19 response that best responds to the risks presented in that specific setting. Similarly, the design of some prison structures facilitates efforts to separate prisoners from intermingling, which can help to contain the spread of the virus within a facility. It is therefore important to ensure that the practices adopted in a given prison are adequately adapted to the challenges present in those facilities, to best protect both prisoners and prison staff while also enabling prisoners to benefit from social and other activities to the maximum extent possible in the circumstances.

12. The Assembly notes that restrictions on visits from friends and family or even lawyers, as well as restrictions on social engagement and activities within the prison setting, can have a profound effect on a prisoner's well-being. Such situations risk leading to an increase in self-harm and suicide attempts. States and prison authorities should find creative options to fill the void created by such restrictions. The Assembly therefore welcomes the fact that in many prisons visiting restrictions were accompanied by significant improvements in telecommunication to enable prisoners to contact family members through phone and video calls. Phone and video calls should not be seen as an adequate long-term alternative to meaningful in-person visits and contact with family, but they can be a useful and important addition, enabling prisoners to retain important family and community links to better enable their successful reintegration into the community at the end of their prison sentence.

13. The Assembly equally recognises the significant impact that the Covid-19 pandemic and the measures taken to prevent the spread of Covid-19 within prison facilities has had on prison staff. In order to limit the spread of Covid-19, prison staff were sometimes required to spend lengthy periods of time living in the prison environment and to undergo significant quarantine periods in order to prevent the virus being introduced from exposure in the outside community. Such measures had a significant impact on the quality of life, especially the family life, of staff and on their health and morale, with consequent repercussions for all those in a prison environment.

14. In the Assembly's view, there have been some useful practices and experiences across member States in managing disease outbreaks within a closed prison environment and in facilitating alternatives to detention. Nevertheless, overcrowding and other factors continue to pose a risk to the containment of the virus. In imposing restrictions on prisoners' freedoms, the right balance must be struck between preventing the uncontrolled spread of the virus and limiting prisoners' freedoms only to the extent necessary. The pandemic is not yet over. Best practices should therefore be shared and implemented to prevent the spread of Covid-19 and other similar communicable diseases, while ensuring that restrictions are only imposed to the extent and for the duration strictly necessary.

15. The Assembly calls on Council of Europe member States to:

15.1. develop emergency response plans for each country and for each prison, tailored to the particular specificity and needs of each place of detention;

15.2. take all reasonable steps to ultimately eliminate overcrowding in prisons, in particular with regard to the options that States have deployed during the Covid-19 pandemic, including establishing systems for alternatives to detention and putting in place systems to allow for early release or release for the most vulnerable prisoners;

15.3. ensure that robust healthcare provision, including mental healthcare provision, is available to all those in detention facilities;

15.4. strengthen the epidemiological oversight for prisons (and all detention facilities) in close collaboration with the public health agencies, including by ensuring that adequate medical screening processes are in place in detention facilities;

15.5. ensure that quarantine or isolation is only used where strictly necessary and that all prisoners in quarantine or otherwise in isolation are offered access to outdoor exercise as well as meaningful human contact, including phone calls;

15.6. ensure that prisoners and prison staff are offered vaccinations and boosters, while ensuring appropriate prioritisation, having regard to the particular risks posed to those in detention and to vulnerable prisoners;

15.7. ensure that special measures are taken to identify those at higher risk of catching or becoming seriously ill from Covid-19 and then to take steps to protect vulnerable groups within the prison population, for example through temporary release, specific medical care or shielding from the wider prison population;

15.8. ensure that any restrictions on the rights and freedoms usually available to prisoners are only introduced to the extent and duration necessary and interfere as little as possible with their overall well-being;

15.9. in particular, ensure that access to prisons by those providing legal services or by monitoring bodies is not restricted – in closed environments such as prisons, external monitoring is essential to ensure that prisoners' rights are respected;

15.10. reflect on alternative means for compensating prisoners for restrictions that may be necessary due to the Covid-19 crisis, such as through improving access to telecommunication to maintain family relationships;

15.11. ensure that improvements in access to telecommunication for contact with family are maintained after the pandemic as a useful means of enabling more successful rehabilitation at the end of a prison sentence, while bearing in mind that such contact should not replace meaningful face-to-face contact;

15.12. ensure that when physical access to a court is restricted on public health grounds, online hearings are available (where appropriate), along with the necessary means of telecommunication to support such online hearings, to ensure that prisoners have adequate and timely access to a court and to court hearings;

15.13. ensure good communication and co-ordination between the various agencies and bodies responsible for responding to a crisis affecting the prison population, such as health ministries, health advisers, justice ministries, prison authorities and probation authorities;

15.14. undertake information and communication campaigns to ensure that prison staff receive all the relevant information and training on the best practices for identifying and stopping the spread of Covid-19;

15.15. carry out information and communication campaigns to inform prisoners about the risks of Covid-19 and other communicable diseases and the best practice for combating such risks, and to provide detainees with useful information about vaccination options;

15.16. ensure that adequate data are maintained on the prison and probation populations, to support penal and criminological research into how best to reduce recidivism and to encourage the successful reintegration of offenders into the community;

15.17. establish procedures that take full account of the dangers and risks faced by prison staff in the context of the Covid-19 pandemic as well as of the impact on their welfare caused by the various measures introduced, such as additional quarantine requirements, and put in place adequate measures to compensate prison staff for such impacts, including leave, financial compensation, rest and respite, and rehabilitation activities such as psychological support;

15.18. take all necessary steps to implement, as swiftly as possible, the recommendations of the CPT in this area, including the 10 principles set out in its “Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (Covid-19) pandemic”;

15.19. ensure that the rising costs of living in Europe, including energy and food prices, do not disproportionally affect living conditions in prisons.