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Managing prison overcrowding: A European perspective

Andrew Coyle¹

I am honoured to have been invited to be with you today and to make this presentation.

Each of you has a unique knowledge and experience of your own prison system. I have been asked to provide an overview of prison administrations in the wider Europe covered by the 47 member states of the Council of Europe.

My work in the International Centre for Prison Studies in London University gives me an opportunity to be in touch with prison systems throughout the world and to observe the challenges which they face and the manner in which they respond to them.

In many ways prisons are very culturally sensitive institutions, which respond directly to the social norms within which they exist. To that extent, prisons in South Africa are different from those in China, just as prisons in India are different from those in Brazil. Within this context, for example, it is an interesting commentary on human attitudes to note that what may be absolutely out of the question in one country is taken as the norm in another. I remember being questioned by a prison director in a Latin American country about visiting arrangements in the United Kingdom. I explained in great detail about the large visiting rooms in which prisoners sat across

¹ Andrew Coyle is professor at the International Centre for Prison Studies, King's College, University of London

the table from their visitors. The director listened politely and then said, "Yes, yes, but what about the family visits, what are the arrangements for partners to spend some time in privacy." I told him that there were no such visits, that the rules did not permit it and that public attitudes would not allow it. He did not believe me. "What, even for prisoners serving long sentences? They can not have time with their partners?" "No", I said, "not even for long term prisoners." He was aghast. "But that really is torture he said. "We would never be as inhumane as that."

Similarly, I remember speaking to a man who had spent many years in strict regime Russian labour colonies at the height of the Russian Gulag. He had just come back from the United States, where he had visited a number of maximum security prisons. He commented on the cleanliness and the good order. But what he noticed most of all was the total isolation of prisoners; that they rarely spoke to each other or to staff. "That," he said, "was real inhumanity. At least in the Gulag we could talk to each other; however harsh the conditions, we had human contact. I would prefer the labour colony to the American prison." So, the differences are there.

In other respects, however, prisons are the broadly the same the world over. They consist of one group of human beings, the prisoners, being looked after by another group of human beings, the staff, within buildings that are called prisons. And in many instances the root problems faced by those who manage the prisons are the same. They are to do with poor conditions, often overcrowding; they are to do with caring for people who are at the margins of society, who have a multitude of personal and health problems; they are to do with lack of resources; they are to do with staff who are not properly trained for the difficult work they have to do, who are not paid sufficiently and who do not have a great deal of respect among their fellow citizens.

And what is to be said about the greater European region? One of the reasons I have been asked to speak here today is because I had the privilege of being one of the principal drafters of the European Prison Rules 2006. The first set of European Prison Rules were approved in 1973, when the Council of Europe consisted of about 15 member states, all in western Europe. By the beginning of 1987 the Council had expanded to 21 states and the Council adopted a revised set of European Prison Rules. In the decade or so following 1987 the membership of the Council of Europe expanded to borders undreamed of by its founding members. From the late 1980s it began the process of taking into membership states in Central Europe and thereafter ever further east and south, so that by 2006 its membership stretched from the Atlantic to the Pacific Ocean and from the Arctic to the Caucasus.

Since 1987 there have been significant changes in the use of imprisonment in many European countries, in both the founding and the newer accession states. In addition, since 1990 the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the CPT, has visited every member state several times and has published detailed reports on prison conditions in individual states, as well as making recommendations on a series of broader issues in its general reports. The European Court of Human Rights has admitted an increasing number of applications by or on behalf of individuals in a wide range of member states concerning breaches of the Convention on Human Rights in respect of their treatment in prison.

For all of these reasons the Committee of Ministers decided that the time had come for a further revision of the Rules and throughout 2004 and 2005 I had the privilege of being one of the three experts invited by the Council to help with drafting the revision of the Rules. From the outset we were aware that in addition to the technical issues which needed to be dealt with we also faced with a sensitive diplomatic task. The challenge which faced us in revising the European Prison Rules was to take account of the different traditions in the new accession states and also to be aware of a new political attitude within a number of the original member states which might be much less sympathetic to rules based on human rights standards.

We recognised that the sticking points might well be in the detail and that there would be differences between member states when it came to considering many of the rules individually. It seemed to us that one way of dealing with that problem would be to place at the beginning of the Rules a set of Basic Principles on which everyone could agree. This was a high risk strategy. If the Basic Principles were not to be accepted, then there would undoubtedly be many arguments with the detailed rules which followed and the possibility that the ensuing rules would not reflect the fundamental principles. In the end, our fears were not justified and in the EPRs of 2006 the first nine rules set out the basic principles on which a decent and humane prison system should be founded.

Permit me to remind you what they are:

1. All persons deprived of their liberty shall be treated with respect for their human rights.
2. Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.
- 3 Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.
4. Prison conditions that infringe prisoners' human rights are not justified by lack of resources.
5. Life in prison shall approximate as closely as possible the positive aspects of life in the community.
6. All detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty.
7. Co-operation with outside social services and as far as possible the involvement of civil society in prison life shall be encouraged.
8. Prison staff carry out an important public service and their recruitment, training and conditions of work shall enable them to maintain high standards in their care of prisoners.
- 9 All prisons shall be subject to regular government inspection and independent monitoring.

This achievement should not be underestimated. From now on, all persons involved in prisons in whatever capacity in any of the 47 member states of the Council of Europe should be aware that their government has signed up to these principles.

The reaction of various jurisdictions to the European Prison Rules has been an interesting one. Some states take the view that they already have binding national

legislation and they do not regard the European Rules as being particularly relevant. Other countries, particularly some of the new accession states, find them extremely useful as they set about the task of reviewing their own legislation to ensure that it meets international standards. Some jurisdictions have taken the opportunity of the new European Rules to embark on a national development programme for staff; they have used the Rules as a training tool to ensure that staff are conscious of the need to incorporate these standards into their daily work. In this respect, I would like to pay tribute especially to the approach adopted by Claude d'Harcourt and his colleagues to make the European prison Rules a living set of standards in the French prison administration. His work is indeed a model for other jurisdictions.

The truth is that individual jurisdictions cannot afford to ignore the European Prison Rules. Every system represented here will have been visited several times by the Committee for the Prevention of Torture, the CPT, which is increasingly using the EPRs as a tool against which to measure standards. In the same way, the European Court of Human Rights has begun to refer to the Rules in a number of its judgements on prison conditions, judgements which have affected most of the countries represented here.

In the course of drafting the Rules we identified a number of key themes which were common in most prison systems in the greater European region and they are dealt with in the Contextual report which has been published by the Council of Europe alongside the Rules and the accompanying Commentary. They included:

Increasing prison population levels and resultant overcrowding

The number of people in prison has increased in many, but not all, European countries. In most of these jurisdictions prison building has not kept pace with the increasing numbers and as a result overcrowding has also increased. There is, of course, a question about how to define overcrowding. In most countries in Western Europe, where the tradition has been that each prisoner should be kept in a single cell, overcrowding generally means having two or three prisoners living in a cell that was originally constructed to hold one person. In some countries in Eastern Europe throughout the 1990s overcrowding meant three prisoners having to share one bed, sleeping in turns. The size of living accommodation is, of course, only one element to be taken into account when considering whether a prison is overcrowded. Other features include the capacity of the kitchens, of sanitary arrangements and sewers, as well as provision for visiting and facilities for work and education and outdoor exercise.

Prison administration and staff

One of the issues which we looked at was the parent government department for the prison administration in each country. The Council of Europe made it a requirement for each new accession state that the responsibility for prison administration should be transferred from the Ministry of the Interior to the Ministry of Justice. Since this responsibility in England and Wales was transferred to the newly created Ministry of Justice last year, Spain is now the only country in which the parent government department for the prison service is the Ministry of the Interior.

We also looked at what the various jurisdictions considered to be the key roles of prison staff. We found that they included public safety, the maintenance of good order and providing assistance to prisoners for their reintegration into society. We were told that achieving a proper balance between these three sets of responsibilities presented the greatest professional challenge to prison staff. The best way of maintaining this balance was for senior management to ensure that there was a sound ethical context for everything that was done inside the prison. This principle was identified as the foundation stone of good prison management.

The relationship between prisoners and first line prison staff was identified as the key to a well managed prison. In this respect, the recruitment, training and continuous support of staff needed to be given a high priority. There was a wide variation in each of these elements in different jurisdictions. There were different standards of recruitment. Initial training provided for staff varied from a few weeks to several years and in some cases development training did not exist.

Living conditions for prisoners

These varied significantly from country to country. One example was the Western European tradition of attempting to provide single cell sleeping accommodation for each prisoner, in contrast to the tradition in Eastern Europe of dormitory accommodation. One of the difficulties in making a judgement about the appropriateness of these arrangements was a consideration of the amount of time prisoners spent in their sleeping accommodation. In some jurisdictions most prisoners would spend the majority of each 24 hours locked in this accommodation, while in others there would be full programme of daily activities, with cell or dormitory accommodation reserved mainly for sleeping. A disturbing development we found was that even in some of the original member states of the Council of Europe some standards which had previously been regarded as non derogable were no longer universally observed. One example was the obligation to provide each prisoner with the opportunity to have at least one hour each day in the open air.

Activities and regimes for prisoners

All prison administrations acknowledge the need to provide prisoners with a programme of work, education and other activities, both as a means of passing their time in prison usefully and as a preparation for life after release. We found that many systems were having increasing difficulty in meeting their recognised obligations in this regard.

Family and other contacts

Anyone who has knowledge of prisons understands that prisoners place a high importance on contact with their families and close friends and the need for these relationships to be maintained and developed is recognised in all member states. However, the method of achieving this varies considerably within and between countries. In a number of member states, contacts between pre-trial prisoners and their families and friends still have to be approved by the prosecuting or judicial authorities. Such decisions are often based on factors to do with the investigation of the case rather than on the right of prisoners to make contact with their families. In all

states where pre-trial prisoners are allowed to have visits these usually take place under direct staff supervision and are of short duration. The CPT has expressed continuing concern at the restriction on visits for pre-trial prisoners in a number of Western countries.

In all countries sentenced prisoners are allowed to have contact with their families and friends, although the conditions in which visits take place vary enormously, from situations where visits are held in a general visiting room where staff can see, but not necessarily hear, everything that is going on and prisoners are required to wear a distinctive piece of clothing which identifies them as prisoners. In other countries, prisoners who are not entitled to home leave may receive a family or intimate visit on a regular basis and of varying lengths. The most humane type of visits for prisoners and family members are to be found in a number of Eastern European countries, where sentenced prisoners may receive private visits from their spouses, partners and families, at regular intervals, for up to three days.

In a number of countries severe restrictions are increasingly imposed on high security prisoners when they meet family or friends, with no physical contact allowed and prisoners separated from their visitors by a glass screen.

Health care

The health profile of prisoners compared to the community as a whole is very poor and health care is a major concern. In the course of its regular visits the CPT pays particular attention to the provision of medical services and evaluates these against the international human rights standards on prison health care. In its Eleventh General Report it noted:

The CPT is aware that in periods of economic difficulties... sacrifices have to be made, including in penitentiary establishments. However, regardless of the difficulties faced at any given time, the act of depriving a person of his liberty always entails a duty of care which calls for effective methods of prevention, screening, and treatment. Compliance with this duty by public authorities is all the more important when it is a question of care required to treat life-threatening diseases.

In our research we identified particular problems in relation to infectious diseases, including tuberculosis, HIV and Aids, as well as with suicide and self harm by prisoners. The mental health of prisoners is a major problem in every country. The World Health Organisation and the Council of Europe have strongly recommended that there should be close links between prison and public health services and severally of the jurisdictions represented here have been at the forefront of initiatives in this regard.

Sentence lengths and life imprisonment

For a number of years European Ministers of Justice have noted that the increasing number and length of long-term prison sentences has contributed to the overall

increase in the number of prisoners in many European countries². There are various possible explanations for this trend. I shall not go into them further at this point, but we may wish to return to this matter in later discussion.

Prison discipline

In the course of our work we examined the various methods used for maintaining discipline and imposing disciplinary sanctions. One matter about which the CPT has expressed concern in a number of its recent reports has been the conditions of solitary confinement in a number of countries and the increasing use of solitary confinement.

Linked with this has been the introduction in a number of jurisdictions of special maximum security conditions for some prisoners who are thought to present a special risk to the state or to other prisoners. In many cases this amounts either to individual solitary confinement or to confinement in very small numbers. The Committee of Ministers has made a specific recommendation about the management of so-called dangerous prisoners and has urged that as a general rule prisoners should only be confined in conditions of close confinement if their behaviour shows that they pose such a threat to safety and security that they cannot be held in any other manner. The European Court of Human Rights and the CPT, as well as the UN Committee against Torture, have criticised a number of the countries represented here in this regard.

Other themes

In the interest of time, I shall only mention a number of the other themes to which our attention was drawn as we drafted the revised Rules. They included Pre-trial detention, the situation with Children and young people and with women, and the treatment of mentally ill prisoners. There were also new problems, for example, with the increasing number of older prisoners; the increasing number of foreign national prisoners, with Belgium having over 40% of its total, Italy over 35%; Spain almost the same proportion and The Netherlands with almost 30%; and finally the management of prisoners accused or convicted of terrorist offences.

Factors influencing the increase in the use of imprisonment

Let me turn finally and very briefly to the main theme of this roundtable and say a word about the factors influencing the increase in the use of imprisonment in a number of countries. There is little evidence that increases in prison populations bear any relation to changes in crime rates. Instead, they appear to be influenced by other factors. Let me remind you of what your predecessors said at the 12th conference of European Heads of Prison Administration in November 2002:

In the course of this conference we have been reminded several times that the way prisons are managed in individual countries is linked closely to the social structures within each state. Prisons do not exist in a vacuum. To a large extent, they reflect the values to which each society adheres. One example of

² 24th Conference of European Ministers of Justice 4-5 October 2001, Moscow (Russian Federation) Resolution No 2 on the implementation of long-term sentences. Available online at [http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Conferences_and_high-level_meetings/European_Ministers_of_Justice/2001\(Moscow\)Resolution2.asp](http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Conferences_and_high-level_meetings/European_Ministers_of_Justice/2001(Moscow)Resolution2.asp)

this is the use which society makes of imprisonment... A society can choose to have a high or low rate of imprisonment and this choice is reflected in the sentencing patterns adopted by individual judges. In recent years a number of European countries, especially in the West, have decided, either consciously or by default, to have higher rates of imprisonment. They have done this through the introduction of more punitive legislation or as a result of politicians and the media encouraging judicial authorities to send more people to prison for longer periods of time.

Reductions in rates of imprisonment are often influenced by wider political decisions and by changes in criminal justice administration. An example which is frequently referred to in this respect is what has occurred in Finland over the last thirty or so years. The most dramatic reduction in prison numbers in any member state of the Council of Europe over the last decade occurred in Russia, where the prison population stood at over one million in 1998 and had fallen to 763,000 by the beginning of 2005. Speaking in 2002, Yuri Kalinin, the Head of the Russian Prison Service, commented:

the penal system cannot change on its own, separately from society as a whole. Its reform is possible only as part of a wider range of measures aimed at creating a democratic state and at the introduction of legal and judicial reforms.

In a wide ranging analysis of the developments which were taking place in Russia, Kalinin explained how they involved political will, legislative change, the involvement of key areas of the criminal justice process, especially the judiciary and the prosecution service, and the need to re-assure the public and the media that the changes in the prison system would not threaten public safety. Interestingly and sadly, as some of these key areas identified by Kalinin have changed in more recent years in Russia, the prison population there has begin to rise again and now stands just below 900,000.

These issues identified by Kalinin: political will, legislative change, involvement of the judiciary and the prosecution service, the influence of the media and the need to reassure the public are, I think, the issues that the organisers of this roundtable are asking us to grapple with today. They are very difficult issues, sometime they will be uncomfortable issues. How for example, are we to explain the fact that in Spain in 1992 the rate of imprisonment was 90 and in France it was 84 per 100,000 (not very dissimilar), while in 2008 the rate in Spain had risen to 154, while that in France had only gone up to 91 per 100,000? Similarly, in 1992 the rate in The Netherlands was 49, well below its neighbour Denmark which stood at 66, while by 2004 the rate in The Netherlands had risen to 123, while that in Denmark remained at 66 per 100,000? And more immediately, why has the rate in the Netherlands fallen so dramatically in the last year?

Conclusions

Heads of prison administration such as yourselves have to cope with these wide variations. They are the reality of the challenges you face on a daily basis. There is great value in meetings such as this, where you have the opportunity to come together

on a personal basis. It is important that there should be meetings such as this so that you, who are heads of national prison administrations, can share experiences and learn from each other. However, we need to be aware of the danger that we will pick up some messages and ignore others. To return to my opening remarks, in some respects prisons are the same in every country but in other regards they are very cultural institutions and sometimes we can damage local traditions by selectively adopting traditions from other jurisdictions.

I remember that ten or twelve years the Council of Europe had a meeting to discuss the management of dangerous prisoners. A number of Western European countries talked very enthusiastically about the development of special units to deal with this small group of prisoners. The head of one of the prison administrations in Central Europe was very impressed by all this talk. In his country there were no such units and he concluded that he had better establish one. He decided that thirty places would be about the right size. I saw him again a few years later and he told me that this was the worst decision he had made. As soon as he set up a unit for prisoners labelled as dangerous, the staff began to identify more and more of this group which had not previously existed. Within a year or so he had to open five of these units for over one hundred “dangerous” prisoners.

In a number of European countries, governments and public commentators are now ascribing objectives to prisons which go far beyond the traditional ones of denunciation and public protection. It has been suggested, for example, that the prison should be a place which can make an important contribution to a reduction of crime in society and to a reduction in offending rates. Concepts such as these are not in the mainstream of continental European jurisprudence and I would suggest that you should be very careful before you go too far down that alien path.

I hope that over the rest of today we can stand back a bit from the daily grind in order to discuss the extent to which you are able or can be expected to lead discussion in your own jurisdictions of the themes which have been presented to us by the organisers of this roundtable.

Thank you for listening to me. I look forward to taking part in the discussion.