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Excessive use of pre-trial detention runs against human rights

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Twenty-five per cent of the individuals kept in prison in Europe today are in pre-trial detention, “detained on remand”. They have not been tried at all or are waiting for the review of an earlier sentence. As their guilt is not established, they are in principle to be regarded as innocent.

The only justification for locking them up could be to ensure effective investigation - secure all available evidence, prevent collusion and interference with witnesses - or to ensure that they do not abscond.

There is an obvious human rights dilemma here. Pre-trial detention must therefore be seen as a measure of an exceptional nature. It should be applied only when all other options are judged to be insufficient. The European Convention on Human Rights states that prolonged pre-trial detention must be regularly reviewed and will only be justifiable in exceptional circumstances (Article 5).

Used systematically and poorly justified

However, the use of pre-trial detention is virtually systematic in a number of European countries. This has created a situation in which roughly one in every four prisoners in Europe is detained on remand - that is before final conviction. This is an average

estimate; the figures vary significantly between the countries – from 11 per cent in the Czech Republic to 42 per cent in Italy.

Pre-trial detention should be ordered by a judicial authority after a critical assessment of the absolute need for such a decision – and the reasons should be spelled out. However, the European Court of Human Rights has for instance found that court decisions in Turkey did not provide sufficient information as to the reasons justifying the detention.

In these cases, only identical, stereotyped wordings were used by the courts - such as “having regard to the nature of the offence, the state of the evidence and the content of the file”. In Georgia as well, decisions to impose pre-trial detention tend to lack individualised reasoning based on each case.

Excessively long periods of pre-trial detention

Another concern is the duration of pre-trial detention. Some states have not established a legal maximum length of pre-trial detention. Others allow such detention for excessive periods such as up to four years.

As a result, a person can spend years in prison without being tried, or can even be found not guilty after that. Examples of cases brought to the Strasbourg Court where pre-trial detention has lasted between four and six years are not uncommon.

I have witnessed first-hand that conditions in remand prisons in many cases are sub-standard. Over-crowding is common and often even the basic rule that pre-trial detainees should be kept separate from convicts is not respected. The situation of these detainees is further aggravated by the indeterminate duration of their detention and uncertainty about the outcome of the proceedings.

Serious consequences

There are other harsh consequences for the individuals concerned. A recent [study](#) underlined the socio-economic impact of pre-trial detention: pre-trial detainees may lose their jobs, be forced to sell their possessions, and be evicted from their homes. Even if the detainee in the end is found innocent, the mere fact that he or she has been in prison tends to be stigmatising.

It is surprising that governments have not done more to prevent these problems in spite of the fact that the prison system is both expensive and overburdened in many European countries. There are more humane and effective alternatives to pre-trial detention which would be suitable in many cases. Too little use has been made of non-custodial supervision measures, such as house arrest or release on bail.

Pre-trial detention should only be applied when it is absolutely necessary

To encourage a discussion on minimum standards in this area, the European Commission recently published a so-called [Green Paper](#). The process will involve a detailed review of the alternatives to pre-trial detention and what can be done to promote these and to end excessively long pre-trial detention.

That discussion could benefit from standards developed by the Council of Europe Committee of Ministers. In its [Recommendation \(2006\)13](#) on the use of remand in custody, it stressed the importance of the principles of both the presumption of innocence and the presumption in favour of liberty. The pre-trial detention of persons

suspected of an offence shall therefore be the exception rather than the norm.

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