

SUPPLEMENTARY HUMAN DIMENSION MEETING PRISON REFORM

FINAL REPORT

Vienna, 8-9 July, 2002

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I. EXECUTIVE SUMMARY

The OSCE held the second Supplementary Human Dimension Meeting for 2002 in Vienna on 8 – 9 July. The Meeting was dedicated to the topic of “Prison Reform”. It gathered 136 participants from OSCE participating states, and more than 44 representatives of 38 NGOs.

The meeting was organized by the Portuguese Chairmanship with the assistance of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR).

The aim of the meeting was the following:

- To discuss the steps that have been taken to reform prison systems in the OSCE region, including those related to the structural reform of the prison system and staff training.
- To focus on measures that participating States can take to improve the prison systems, including measures to improve the physical conditions of the prisons, alternative sentencing measures to reduce prison populations and measures to rehabilitate prisoners.
- To discuss the role that NGOs can play in the monitoring of prisons and detention facilities in cooperation with the State.

The meeting succeeded to produce concrete recommendations for national programs to implement the provisions in international law and OSCE commitments, and to reflect best practices related to the reform of penitentiary systems including pre-trial detention facilities. These recommendations are included in this report, and they are addressed to the OSCE as a whole, its institutions including the Office for Democratic Institutions and Human Rights, its field offices, or the participating States.

II. RECOMMENDATIONS

This report, just as the Meeting itself, focuses on concrete recommendations arising from the three Working Sessions. These recommendations – from delegations of OSCE participating States and partners for co-operation, international organizations and non-governmental organizations (NGOs) – are wide-ranging and aimed at various actors (OSCE institutions and field missions, governments, NGOs).

It is emphasized that the OSCE cannot implement all of these recommendations. The recommendations have no official status, are not based on consensus, and the inclusion of a recommendation in this report does not suggest that it reflects the views or policy of the OSCE. Nevertheless, the recommendations are a useful indicator for the OSCE in deciding priorities and possible new initiatives in promoting prison reform initiatives.

Outcome of Working Session I

Structural Reform of the Prison System – where are we and where are we going

Moderator:

Mr. Miroslav Nowak, Deputy Director of the Control and Inspection Bureau,
Polish Central Prison Administration

Introducer:

Mr. Nikolay Arustamyan, Head of Department for Structural Reforms, Ministry of Justice, Armenia

Discussions in Working Group 1 focused on the structural reform underway in various OSCE participating States at the present stage. Participants shared their experiences and perspectives. In particular, they stressed the need for continuing the process of transferring the authority over the penitentiary system from a Ministry of Interior to a Ministry of Justice structure.

However, many speakers stressed that the reform could not be considered as a purely formal change of authority, i.e. as a goal in itself, but as a conceptual change leading to the demilitarisation of the penitentiary service. Participants discussed in particular the scope and modalities of such a transfer as well as issues relating to reform processes. A wide range of different experiences and challenges were presented. Numerous participants also commented on the continuous character of penitentiary reform in a democratic state and on the process and issues involved in penitentiary reform.

The following recommendations were made during Working Session 1:

Recommendations to the OSCE Participating States

- OSCE participating States that have not yet transferred their penitentiary system from the Ministry of Interior to the Ministry of Justice should consider doing so as a matter of urgency.
- Those OSCE participating States that are presently in the process of transferring authority should continue their efforts in order to change the nature, mentality and culture of their prison service.
- OSCE participating States should in particular transfer the authority over pre-trial facilities, since the separation of powers between those holding prisoners and the investigative branch is particularly critical at this stage of the criminal process.
- It is recommended that the transfer of authority should not lead to a split of authority over pre-trial detention places and prisons. The creation of two different bureaucracies should be avoided as it carries the inherent risk of slowing down the overall criminal justice reform process.
- The structural reform is not a goal in itself, but a means to demilitarize and democratize the penitentiary service. OSCE participating States need to approach it in a comprehensive way that should include issues beyond a broad range of legislative changes such as a modification of punishment policies, a truly effective system of more effective remedies, a functioning monitoring system, increased access to the outside world and a proper training concept for the professionalization of staff.
- In order to be successful, political will and leadership needs to be generated and co-operation with the media should be sought to ensure more knowledge and support for the reform process.
- The transfer of authority over facilities needs to include transfer over property, assets, training facilities and alike. The OSCE participating States should also ensure that the allocated budgetary means are also fully transferred to the new authorities.

- Structural reform should go hand in hand with a review of punishment policies. The introduction of alternatives to imprisonment should be considered a priority. Measures should be taken to prevent pre-trial detention from being the rule rather than the exception for those awaiting trial. Frequent amnesties are not a solution to overcrowding, but reflect the need for a substantial reform of punishment policies in a given country.
- The reform of the penitentiary service should generally be based on an inter-disciplinary approach and should be based on a broad public platform discussing the reform of the criminal justice system. Relevant authorities should seek dialogue with Civil Society and a broad range of actors within the criminal justice system.
- The role of independent national human rights institutions such as Ombudsman should be strengthened with regard to penitentiary reform. The ODIHR should work with these institutions in order to increase their monitoring capacity.
- OSCE participating States should establish an effective structure for monitoring the implementation of human rights within the penitentiary service. Within the penitentiary service, sufficient weight should be placed on the conceptualization of reforms that includes all relevant human rights protection aspects and functioning of the system.
- OSCE participating States should govern their penitentiary service with transparency and accountability as critical elements of a public service in a democratic society. Efforts should be made to increase those elements, in particular by a clearer regulatory framework, in order to prevent corruption within the system.
- OSCE participating States should increase their efforts to establish Public Monitoring bodies.
- OSCE participating States should consider the appropriateness of enabling Prisoners Associations to be created.
- OSCE participating States should give the judiciary control over the penitentiary service and decrease the influence of the Prosecutors Office with regard to the oversight over the penitentiary service.
- OSCE participating States should keep under review their policies with regard to high security prisons and prisoners. Rigorous regimes should be avoided as a general scheme for most prisoners.
- The penitentiary service needs to have an efficient set of complaint mechanisms. They need to be independent, confidential and expedient. An effective set of legal remedies should include access to courts. Due process considerations also need to be reflected in disciplinary procedures.
- OSCE participating States should provide the prisoners with effective avenues for complaints both within and outside the prison system and ensure confidential access to the appropriate authorities.
- Those OSCE participating States that are party to Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment should increase their efforts to implement and follow-up on recommendations made by the Committee for the Prevention of

Torture (CPT) and should engage in an open dialogue on the implementation of such recommendations - once the confidentiality has been lifted.

Recommendations to the OSCE Institutions and field operations

- OSCE/ODIHR should continue to provide assistance to OSCE participating States with regard to the transfer of authority to the Ministry of Justice in order to ensure the demilitarization of the penitentiary service.
- Where necessary, OSCE/ODIHR and field operations should facilitate the dialogue on penitentiary reform as part of democratic reforms.
- OSCE/ODIHR and field operations should provide assistance to the conceptualization of penitentiary reforms and intensify their efforts in providing comparative experience on penitentiary reform.
- OSCE should elaborate projects on exchanging experience among officials – employees of penitentiary institutions of the OSCE Participating States with a view to facilitating the training or new formation of personnel in accordance with international standards related to the treatment of prisoners, as well as an exchange of best practices in the humanization of the penitentiary systems.
- Participating States should seek the assistance of the ODIHR or other intergovernmental or non-governmental bodies in the elaboration of effective remedies and complaint mechanisms.

Outcome of Working Session II

Human dimensions of prison reform – staff and inmate issues

Moderator:

Dr. Andrew Coyle, Director of the International Centre for Prison Studies, King's College, London

Introducer:

Mrs. Vesna Babic, Treatment Service Director, Croatian Prison Service, Ministry of Justice of the Republic of Croatia

Discussions in Session 2 focused on human dimension issues of prison reform, with a particular emphasis on the role of, and relationship between, prison staff and inmates. In general introductory statements, participants presented the status of reform in their relative countries sharing their experiences and voicing their expectations and the perspectives for the future process of prison reform. Specifically in the human dimension participants brought forward to attention of the plenary both positive and negative aspects relating to all issues of the human dimension in prison life. Particular attention was given to the relationship between inmates and prison staff, with an emphasis on, and a call for, increasing training and education efforts to be undertaken both by the OSCE Participating States and the international community to support the efforts of the reforming countries.

In more general terms, the plenary agreed that the main purpose of prisons was to execute the sentence of the court, i.e. to deprive prisoners of their liberty. However, it cannot, and must not, be the function of the prison to impose any additional punishment through poor conditions or

arbitrary and ill treatment. This fundamental principle should always be kept in mind when talking about the improvements in the human dimension field of prison reform.

With a call for increased attention to be given to the importance of alternative sanctions, the session also agreed that imprisonment should only be used when no other sanction is appropriate, i.e. only for the most serious crimes and for those presenting a real threat to public safety.

In addition, the following points were stressed in interventions by the participants:

- management of prisons within the context of international and regional human rights standards;
- importance of rehabilitation through involvement in learning new skills, vocational training, education and overcoming alcohol and drug addiction;
- the prisoners to be helped and supported in maintaining and developing contacts with their families;
- regular contacts between prisons and the outside world through regular prison visits of community volunteers and NGOs;
- staff should be recognized and respected by the public as professional public servants, reflecting both the importance and complexity of prison work for society.

The aspect of demilitarization of prison services was also stressed in the interventions during Session 2, showing that this issue is not a purely structural problem but rather an interdisciplinary issue influencing the relationship and interaction between staff and inmates. Since prisons are part of civil society rather than an element of military structure - as already stressed in Session 1- one way of confirming this is to place the responsibility for the administration of prisons within the Ministry of Justice (with other models, for instance independent prison structures within state administrations, to be included in future discussions). Linked with the aspect of *demilitarization* is the need for staffing structures to be civilian rather than military, which is not necessarily equating to a loss of discipline or other advantages that usually are linked with a military structure and organization. Moreover, the staff should still wear uniforms and keep their benefits.

The session concluded with the agreement that the most important feature of any prison system was the need for a positive relationship between prisoners and prison staff, which calls for increasing staff professionalism and should not be misunderstood as weak management or lack of discipline within the prison. On the contrary, it would require staff to be professionally trained, thus confident and experienced in their daily work and to be given firm leadership by senior management.

The following recommendations were made in Working Session II:

Recommendations to the OSCE participating States

- OSCE participating States should ensure that imprisonment is used *only* when there is no other reasonable alternative. This implies increased efforts of the legislator for establishing legislative frameworks providing for the possibility for courts to impose alternative sanctions.
- OSCE participating States, in interaction with the respective civil societies, should emphasize the importance of deprivation of liberty as the *main* task of the prison, meaning that there should be *no additional punishment* as a result of prison conditions or ill-treatment.
- OSCE participating States should require prison authorities to make every effort to rehabilitate and help prisoners to reform themselves through learning new skills, improving education and overcoming addictions.
- OSCE participating States should support prisoners and inmates in all relevant aspects to maintain and develop contacts with their families and friends.
- OSCE participating States should pay special attention to the rights of vulnerable groups in prisons, in particular women, juveniles and minorities.
- OSCE participating States should observe the particular importance of rehabilitation and education, especially for juveniles.
- OSCE participating States should ensure that prisoners serving long-term sentences, including life sentences, are given opportunities to take part in a full range of activities in prisons and that they are not held in isolation.
- OSCE participating States should make every effort through the media and by other means to portray prison staff as professional public servants who deserve to be respected for their difficult public service. The same means should be used to re-educate public opinion to create a better understanding of the relationship between public protection and the incarceration function of penal institutions.
- OSCE participating States should establish prison administrations in a civil framework rather than a military structure.
- OSCE participating States should have proper arrangements for the recruitment of staff and their professional training as well as continuing education.
- OSCE participating States should establish training centres for prison staff and effectively support existing ones. The curricula need to ensure that respect for human rights and professionalism are at the forefront of the staff's training program.
- OSCE participating States should ensure that prison staff are paid a proper salary for their difficult work and do not suffer financially or in any other way as a result of their civilian status.

- OSCE participating States are encouraged to look for effective solutions that will address overcrowding in prison and detention facilities which creates the risk of prisoners being held in inhuman and/or degrading conditions; these solutions cannot be limited to only providing additional accommodation, which in itself does not provide a lasting solution to the problem.
- Instead OSCE participating States should increasingly concentrate on establishing policies that limit the number of persons sentenced to prison terms. To that end, participating States should review their current laws and practices in relation to custody pending trial and sentencing as well as the full range of non-custodial sentences available; this should reflect a coherent strategy for reducing custodial sentences.
- OSCE participating States should increasingly include the principle of proportionality in to the practice of custodial management and establish their internal security system based on individual risk assessments rather than following general regime categories where set regimes automatically apply to certain sentences.
- With the abolishment of, in some countries, the introduction of a moratorium on death penalty, a growing number of participating States are confronted with increasing numbers of life sentence prisoners without parole. The OSCE participating States are called to address the specific problems arising thereof, especially the issue of life sentence prisoners being held in conditions akin to solitary confinement.

Recommendations to the OSCE institutions and field operations

- OSCE ODIHR and its field operations should continue to provide assistance and support to OSCE participating States with regard to prison staff training.
- OSCE through a process of continuing dialogue with participating States should elaborate projects that address the need for non custodial sanctions and provide the exchange of experiences and best practices in the sphere of implementing such alternatives to imprisonment.
- Participating States should seek the assistance of the OSCE/ODIHR or other intergovernmental or non-governmental bodies in implementation of these recommendations.

Outcome of Working Session III

Different Approaches to Monitoring of Prisons and Detention Facilities

Moderator:

Mr. JB Weinstein, Director of the OSCE Department, Ministry of Foreign Affairs of Portugal

Introducer:

Mr. Krassimir Kanev, Chair of the Bulgarian Helsinki Committee

Discussions in Working Group 3 focused on the role of Civil Society in the penitentiary reform in the OSCE region. The participants discussed in particular the important role of NGOs and Civil Society actors in monitoring places of custody. The discussions pointed to the advantages and disadvantages of non-governmental and state actors in monitoring prison conditions. They tried to identify best practices and engaged in a lively discussion about the practicability of civil society

monitoring. A wide range of state and NGO representatives shared their experience about establishing effective prison monitoring.

Participants discussed the role of State institutions, State actors and National Human Rights institutions such as Ombudsman and NGO representatives in the methods, the aim and the framework of prison monitoring.

The following recommendations were made in Working Session III:

Recommendations to the OSCE participating States

- OSCE participating States are encouraged to allow for comprehensive civil society monitoring of all places of custody.
- OSCE participating States should consider providing for a firm legal basis for NGO monitoring of places of custody, including pre-trial facilities and police detention facilities. In the absence of a clear legal basis authorities should use their discretionary powers to allow for civil society monitoring.
- OSCE participating States should ensure effective access to legal counsel in places of custody.
- OSCE participating States should fully co-operate with international prison visiting procedures, such as the Committee for the Prevention of Torture (CPT) and other international governmental or non-governmental actors.
- OSCE participating States should support the adoption by the UN ECOSOC of the new additional protocol to the UN Convention against Torture. Once adopted they should consider the early ratification of the Draft Optional Protocol (DOP) to the UN Convention against Torture of April 2002.
- OSCE participating States should consider establishing national visiting procedures as foreseen in the optional protocol and seek international assistance for doing so; for example with the OSCE/ODIHR.
- OSCE participating States should consider establishment of an institutional framework such as a public commission with the right and also obligation to monitor on a permanent and systematic basis.
- National human rights institutions should increase their efforts to visit places of custody, including in particular police stations and pre-trial facilities.
- OSCE participating States should engage in an open and transparent dialogue on the results of public monitoring of places of custody.
- OSCE participating States should equally work to improve their state inspection systems in parallel to civil society monitoring.

- NGOs should seek to increase their professional capacity for sustainable monitoring. They should be aware of their obligation and responsibility in doing so. At the same time, they should be trained by specialists on this field.

Recommendations to the OSCE Institutions and field operations

- OSCE/ODIHR should consider providing for a comparative overview or a study of monitoring mechanisms in OSCE participating States in order to identify best practice in the OSCE area.
- ODIHR should take the lead in providing information to OSCE participating States on the nature of the Draft Optional Protocol to the UN Convention against Torture and render technical assistance to the OSCE participating States.
- OSCE should continue its efforts to strengthen the capacity of NGOs and other actors to monitor and report about prison conditions.
- OSCE/ODIHR should work with National Human Rights Institutions on their capacity to monitor police and penitentiary facilities.