

Rights Behind Bars During Covid-19

JUSTICIA recently [called](#) for action to address the unjustified and excessive use of pre-trial detention which remains all too common in the EU. In the grip of COVID-19, the need to address overcrowding and systemic rights abuses in Europe's prisons (unjustified detention and inhumane conditions) has taken on new urgency. Incarcerated people are some of the most vulnerable to infectious disease leading to risks to the life and health of prison residents and staff. This paper sets out *JUSTICIA's* views on the priorities for protecting human rights in places of detention during the Covid-19 crisis, as well as long-term lessons for imprisonment in Europe. This paper focuses on detention in the criminal justice context but many of the same issues apply equally to the thousands of people held in other forms of detention in Europe, including immigration detention.

Take people out of detention

1. We congratulate the many Member States that have taken action to reduce prisoner numbers by, for example: early releases of certain categories of prisoners (Netherlands, Ireland and France); increased use of house arrest (Spain and Italy); and delaying the commencement of prison sentences (Germany and Czech Republic). This has resulted in prisoner numbers falling by thousands of people (e.g. Italy 7k and France 10k). There are, however, problems with some of these approaches such as a requirement for electronic tagging (and shortage of equipment) limiting releases (Netherlands), and concerns about handling a spike in numbers if delayed sentences are re-activated. Some countries, like Hungary, Romania, Bulgaria and Sweden, have taken no steps towards reducing the use of imprisonment and others, like Greece, appear to be waiting for COVID-19 to spread through prisons before acting.
2. Most Member States have made a selection of prisoners who may benefit from early release, which raises issues of unequal treatment. In particular, Member States have excluded pre-trial detainees from prisoner release schemes. Despite being presumed innocent, this group (which makes up a third and more of the prison population in many countries) remains in detention. In fact, delays to trials due to court closures mean pre-trial detention is likely to be lasting for longer and some countries (France) have passed new laws to make extensions easier. While detention hearings are generally continuing, limitations on access to a lawyer in prisons make it harder for defendants to prepare, and reliance on remote technology may be detrimental to defendants. We welcome the efforts of lawyers, prosecutors and courts to reduce recourse to pre-trial detention.

Urgent recommendations:

- Member States that have not acted to reduce prisoner numbers, should do so and powers to release prisoners should be used, focusing first on detainees with underlying health conditions.
- Police, prosecutors and judges should be encouraged to reduce the use of arrest and detention pre-trial and act to release people in pre-trial detention wherever possible.

Long-term lessons:

- The experience of reducing detainee populations during COVID-19 provide valuable long-term lessons for addressing systemic overcrowding in Europe's prisons.
- The need to invest in alternative measures to detention has taken a new urgency.

Protecting the right to life and health in places of detention

3. States are under the obligation to protect physical well-being of inmates by, among other, providing them with the requisite medical care. State should not only treat detainees inside or outside prison systems, but also guarantee preventive medicine and adequate sanitary conditions. Many European countries suffered systemic overcrowding, poor conditions in overcrowded cells and unsatisfactory health services when the pandemic struck. Reducing prisoner numbers is therefore crucial to be able to put in place social distancing and other preventive measures needed to protect the right to life and to health of prisoners and prison staff such as COVID-19 testing, access to water and hygiene products. Evidence from a number of countries (US, UK and France) demonstrate the risk of COVID-19 spreading in prisons, creating considerable anxiety for inmates and their families. There is however a lack of transparency in many Member States about the safeguarding measures being taken within individual prisons, i.e., whether protective equipment is available and how it is being used. In most Member States, (on-site) prison monitoring has ceased (Belgium, Austria) meaning that there is no independent oversight of places of detention.

Urgent recommendations:

- National human rights institutions (and civil society) should review whether prisons are protecting the right to life and health of prisoners and prison staff and should be given the access, information and resources to facilitate this.
- Prison monitors should have unfettered access to detention facilities (including quarantine units) with appropriate precautions taken to avoid exposing people to further risks.
- Prisoners should be able to contact monitoring bodies by telephone.
- Prisoners' access to other legal remedies for the protection of their rights, as established by national law, should be guaranteed and facilitated by the authorities.

Long-term lessons:

- There should be thorough, independent and public inquiries in relation to deaths in custody related to COVID-19.
- Systemic failures of prisons in Europe to protect the health of detainees must be addressed, with resilience built in to survive future surges in COVID-19 or other pandemics.

Isolation

4. The levels of isolation being experienced by detainees during the pandemic is of huge concern. This can have a severe impact on the psychological welfare of prisoners, their ability to prepare for trial or release, and their ability to access independent legal advice and complaint mechanisms. One of the first steps taken by many Member States to address the risk of COVID-19 in prisons was to prohibit prison visits (Belgium, Croatia, Sweden, Bulgaria, Slovenia), which has caused great anxiety to prisoners and their families and has resulted in prison riots in some countries. Many prisoners are also unable to access external support from therapists and faith representatives and concerns have been raised about new detainees being placed into preventive isolation (Belgium, Ireland, Austria). Despite these challenges, we are pleased to see some tentative efforts to introduce remote technologies to allow for virtual visits (Belgium, Austria and Sweden) and to distribute free mobile phones to detainees (Spain). Some countries have already started to relax restrictions on visits (Austria).

Urgent recommendations:

- If non-essential visits have to be suspended on health grounds, alternative mechanisms for prisoners to communicate with the outside world (free of charge) should be provided.
- In-person access to a lawyer, medical and social support services and independent complaint mechanisms should be maintained with the provision of appropriate personal protective equipment and facilities for social distancing.
- Detainees shall be informed in an accessible manner and without delay about the reasons for all restrictions, such as limitations on family visits, and provided with information on steps taken against COVID-19.
- Detainees should be afforded the right to one hour daily (or more if stated in national law) in the open air.

Long-term lessons:

- Without prejudice to face-to-face visits in prison, the use of new technologies tested during the pandemic in order to provide video calls with families or distance learning must be not only preserved but also extended to guarantee the right to information for prisoners.