Quaker Council for European Affairs

QCEA Background Paper

Pre-trial detention

A challenge for the new Justice Commissioner and for EU Member States

In brief

This QCEA background paper explores the human impact of widespread pre-trial detention in the European Union. Studies indicate that pre-trial detention both causes harm to individuals and is unlikely to contribute to reducing crime. Pre-trial detainees are less likely than sentenced prisoners to receive support services or to have contact with family members and the community. Major differences in the use of pre-trial detention between EU countries suggest that many people are detained unnecessarily and without having been convicted of a crime. EU Member States have agreed to cooperate on mechanisms such as European Arrest Warrant, that allow their citizens to be transferred to another EU country to await trial abroad. However, this kind of EU cooperation is undermined by poor treatment of pre-trial suspects, including those who have been transferred. The EU and its Member States must implement alternatives to pre-trial detention, as its misuse is both expensive and damaging.

What is Pre-trial detention?

Pre-trial detainees are suspects imprisoned whilst the case against them is at one of the following five stages:

- Investigation: In police custody whilst investigators determine whether a criminal case should be brought against them
- Awaiting trial: After the investigation has been completed and a decision has been taken to prosecute the suspect in court
- During the trial
- Convicted by the court but awaiting sentencing
- Awaiting final sentence: after an initial sentence decision has been taken, but whilst awaiting the result of an appeal process.

Introduction

Approximately one quarter of the people incarcerated in the Europe Union (EU) have not had a trial to establish their guilt or innocence. EU Member States' criminal justice systems unnecessarily subject too many citizens to pre-trial detention, without giving sufficient regard to the harm prison can cause to individuals, families, and the wider society. The length of pre-trial detention is usually many months, but it can stretch to years. Whilst conditions vary, pre-trial detainees often spend almost all of their day locked up in a cell with little access to support services.

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The detention of those whose legal status is innocent is a severe infringement of the fundamental right to liberty and should not happen unless absolutely necessary. Data compiled in June 2014 reveals the surprising extent of pre-trial detention in the EU's 28 Member States.[1] In the EU, 120,000 people are currently confined to pre-trial detention or other forms of remand imprisonment. Each is suspected of a crime but not convicted: the evidence against them has not been tested in a court.

The number of suspects in pre-trial detention varies widely between countries. For example, despite their similar populations, Latvia has more than ten times as many people in pre-trial detention than Slovenia (2,242 compared with 219).[2] This QCEA Background Paper considers why EU-level action is necessary, and secondly, how support for pre-trial detainees in the EU can be improved.

European action is needed

Addressing arbitrary pre-trial detention should be a priority for EU-level policy makers. It impacts upon cooperation by EU Member States on criminal justice issues. For example, the European Arrest Warrant allows a suspect to be detained and transferred to another EU Member State where she or he will be subject to criminal proceedings. This kind of cooperation requires Member States to trust the human rights standards in the other Member States' criminal justice systems.

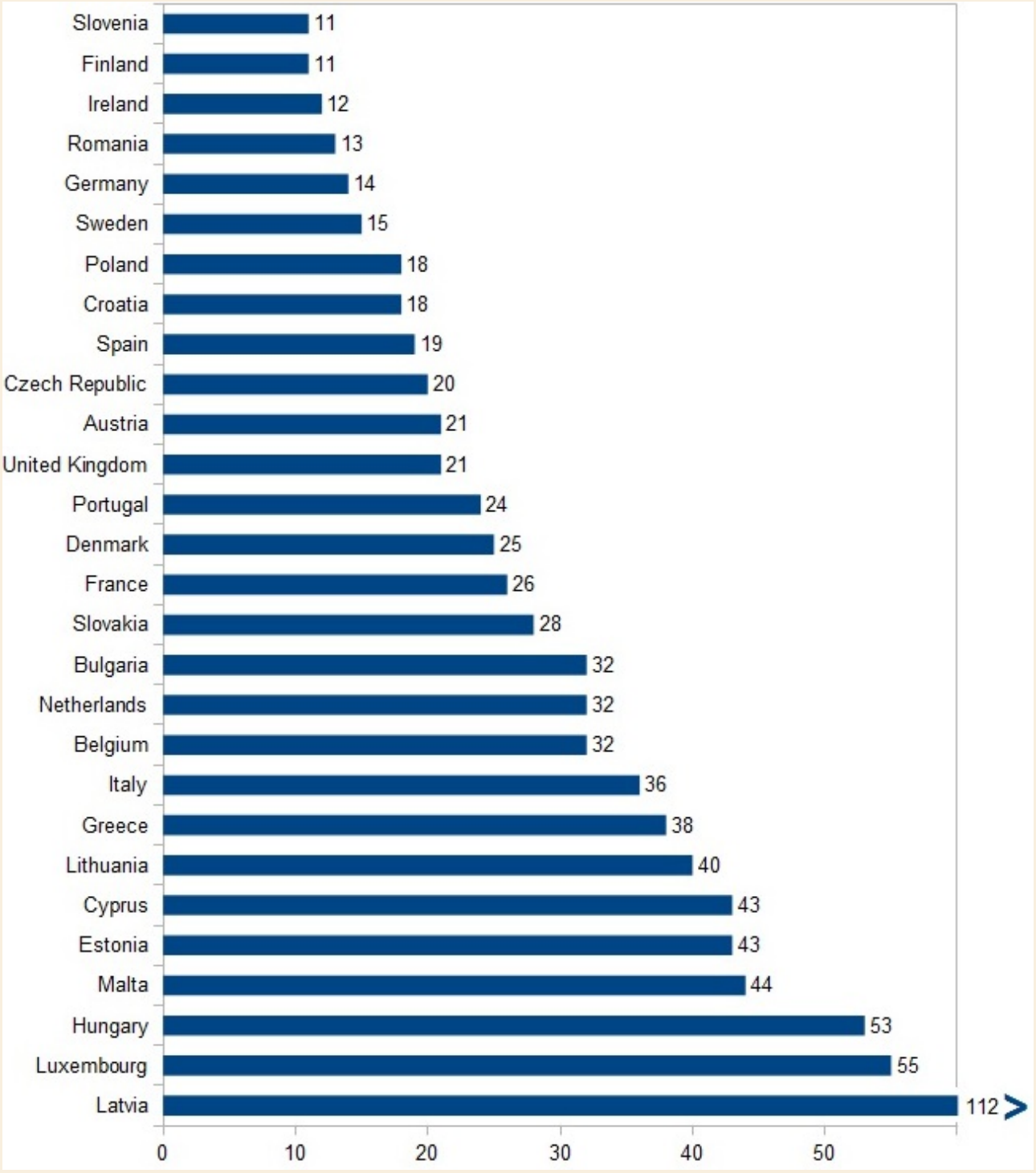
When an EU Member State's judiciary imprisons suspects for long periods whilst they wait for their trial to start, other Member States may develop a reluctance to transfer their citizens to foreign prisons.[3] Indeed, EU Member States discussed excessive pre-trial detention as early as 2009. In their 'Resolution on the Procedural Rights Roadmap', the Council of the European Union, made up of representatives of EU Member States' governments, stated that 'excessively long periods of pre-trial detention are detrimental to the individual, can prejudice cooperation between Member States, and do not represent the values for which the European Union stands'.[4]

Growing consensus for action

In addition to worries raised by EU Member States, concern has also been noted by the European Commission (where EU policy is developed) and the European Parliament (751 directly-elected politicians representing EU citizens). Beyond the EU institutions, human rights and justice groups in many parts of Europe have also strongly advocated reform.

In September 2013, twenty-two civil society organisations, including QCEA, wrote to Viviane Reding, who at the time was the European Commissioner responsible for justice and fundamental rights. The letter repeated earlier calls for minimum standards for pre-trial detention.[5] In February 2014 the European Commission published a report criticising EU Member States' poor implementation of the common rules on detention, although this was not accompanied by a commitment to the development of minimum standards.[6]

Widely varying use of pre-trial detention suggests tens of thousands are imprisoned unnecessarily



This chart shows the number of people in pre-trial detention (per 100,000 population) in each of the 28 EU Member States. (Most recently available data as of May 2014).[9] If all EU Member States were to use pre-trial detention at the same rate as Ireland, approximately 60,000 people would not be in prison waiting for trial.

Slovenia, Finland, and Ireland have the lowest proportion of their population imprisoned whilst awaiting trial. Hungary, Luxembourg, and Latvia have the highest proportion of pre-trial detainees.

Italy has 21,659 pre-trial detainees, the largest number held in any EU Member State and 18 per cent of the EU total (while it has only 11% of the EU population). Second is France with 16,759 (14%) and third the United Kingdom with 13,745 (11%).

During 2014, the European Parliament has also called for change. In March 2014, the Parliament resolved that pre-trial detention in some EU Member States fell short of international human rights standards.[7] This motion called upon the European Commission to initiate binding and enforceable legislation on pre-trial detention. In January 2014, a motion on the European Arrest Warrant[8] said current pre-trial detention arrangements disproportionately infringed the rights of suspects and pointed to a failure to consider alternatives to detention.[10]

Photo Credit: Martin, Creative Commons.

A new European Commissioner for Justice

This month (November 2014) Věra Jourová, the new European Commissioner for Justice, Consumers and Gender Equality, has taken office. She will lead the European Commission's efforts to meet the challenges posed by an increasingly interconnected Europe. As a growing number of citizens live and travel in other EU Member States, citizens deserve to have confidence that they will be treated fairly by the criminal justice system of any Member State. The Lisbon Treaty between EU Member States entered into force in 2009. The treaty increased the European Commission's role in criminal justice policy, enabling it to introduce directives that all Member States must follow.

The case for minimum standards of pre-trial detention has built momentum in recent years, so it is important for the new Justice Commissioner to act. Pre-trial detention can be both harmful to citizens and unnecessary. The new Commissioner should work with EU Member States to ensure that Europe becomes a continent where fewer and fewer citizens are incarcerated arbitrarily.

A Quaker perspective

Quakers recognise that there is something good in everyone and therefore understand that offenders are human beings who deserve dignity and rights. Crime is a phenomenon which calls for both forgiveness and justice. It is important to care for prisoners regardless of the harm they are accused of causing. Quaker engagement with social and political problems means that we are conscious of the root causes of crime. The Quaker Council for European Affairs believes that alternatives to detention are increasingly robust and that there should be a stronger presumption against imprisonment for many persons awaiting trial. Research by QCEA, such as our 2007 report on Women in Prison,[11] has pointed to the social cost of prison for prisoners and their families.

Our Quaker values lead us to consider the human impact of pre-trial detention on the suspect, their family, and wider society. We stand for the possibilities of rehabilitation rather than punishment. The second part of this paper makes specific recommendations as to how the EU might reduce pre-trial detention and improve the well-being of its citizens, including those accused of crimes.

Improving support for pre-trial detainees

Prioritise criminal investigations which involve people who are being detained prior to trial

The length of pre-trial detention varies between EU Member States. In some cases there is a maximum detention period in proportion to the seriousness of the alleged crime, and in other states pre-trial detention can be automatic.[12] For example, Bulgaria allows detention for up to two months for crimes punishable by less than five years, one year of pre-trial detention for crimes punishable for more than 5 years' imprisonment, and two years for crimes punishable by more than 15 years' imprisonment.[13] By contrast, Lithuanian judges are not permitted to refuse detention if prosecutors ask for it. In Lithuania, the suspect's defence lawyer and the prosecuting authority must agree that detention is not needed.

Long periods of pre-trial detention worsen the impact of imprisonment. One way to alleviate the impact, is to prioritise criminal investigations which involve people who are being detained in prison. The heavy workload of investigators and judicial staff can cause suspects to have to wait in prison for longer than might reasonably be expected for prosecutors to prepare their case. However, investigations and administrative procedures can be prioritised in cases where a suspect has been remanded in pre-trial detention. This policy is known as 'special diligence'. If EU Member States only imprisoned those people assessed as a danger to public safety, only a small proportion of cases would need to be prioritised, making special diligence policies realistic and practical.

Minimise pre-trial detention: it wastes money that could be used for the public good

Imprisonment costs money. The overuse of prisons in Europe wastes public resources. In 2011, the approximate annual financial cost of pre-trial detention for an EU Member State was 4.8 billion euro (equal to 3,000 euro per pre-trial detainee per month).[14] If Italy were to use pre-trial detention only to the same extent as Finland or Slovenia, it would need 15,041 fewer prison places.[15] These additional Italian pre-trial prison places cost hundreds of millions of euro, which could be used more effectively for the public good.

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Policies that focus on reducing the likelihood that a suspect will offend in the future, are more likely to reduce crime than those which focus on punishment. They are often also more cost-effective. In Belgium the cost of one day under supervision with electronic monitoring is 39 euro. Although electronic monitoring is one of the more expensive alternatives to pre-trial detention, it is only one-third of the 126 euro cost of each prison detainee per day in Belgium.[16]

Despite this, in 2009 only seven of the 28 EU Member States were using electronic monitoring as an alternative to pre-trial detention.[17] Research undertaken by QCEA in the same year found that, of these seven states, only Luxembourg was specifically recording the rate of re-offending by those being electronically monitored (recording it at 8% of monitored offenders re-offending within a determined period).[18]

There will sometimes be evidence that, despite being arrested and entering the criminal justice process, the suspect is likely to commit further offences if awaiting trial in the community. QCEA recognises the important need for alternatives to detention that effectively reduce the opportunity for crime to be committed or harm to done by the suspect.

Ineffective policies fail to reduce re-offending, and therefore lead to additional costs from higher levels of crime. Many Member States' prison populations are decreasing as they implement more modern criminal justice practices. States may limit the extent of their reform ambitions due to the costs of change (see for example the development of Croatia's probation service).[19] However, every year that Member State governments delay reform is additional money wasted on unnecessary pre-trial prison places.

Detention conditions may impair a person's ability to prepare for trial

Harms caused by long periods of pre-trial detention impact upon how well suspects can give evidence during their trial. Research from the Netherlands suggests that once people are placed in pre-trial detention, their risk of being sentenced to imprisonment increases significantly.[20] For example, incarceration can contribute toward a detainee's poor mental health, sometimes affecting how well a detainee can prepare for and cope with a trial. Detention also limits or prevents access to family support in advance of a trial.

Photo Credit: DES, Creative Commons

Criminal justice policies should support detainees in overcoming challenges in their life that can contribute toward offending behaviour

The public deserves criminal justice policy which reduces crime and harm in society. This includes helping and not harming those accused of crimes. Policy makers should recognise the human needs of detainees and, as a minimum, seek to address those needs which, if unaddressed, are likely to encourage offending. It is important that alternatives to imprisonment allow persons facing trial to maintain employment and access support services that may not be available in prison. Detainees often return to crime because they are unable to rebuild these elements of their lives after release from prison.[21]

Photo Credit: Still Burning, Creative Commons

QCEA believes that analysing pre-trial detention through the lens of the individual person shows that there is much that can be done to prevent new offending behaviour. Where criminal justice is concerned, we should ask not, what can be done to a person but what she or he is able to do and how the necessary support can be provided. The nature of the support needed will vary, but includes addressing domestic abuse and relationships, substance misuse, self-esteem, parenting, budgeting and gaining employment.

Programmes which treat offenders for drug dependency in the community are more successful than prison programmes. Use of prison to punish drug addiction is ineffective and results in higher re-offending and more victims of crime.[22] If a criminal justice system concludes that a person is a risk to the public and needs to be incarcerated, then it would be a missed opportunity not to provide support to address the underlying causes of that risk. However, some Member States' pre-trial detainees spend almost all of their day locked in a cell.[23]

Addressing the needs of detainees promotes their rehabilitation and reduces crime, thereby reducing the likelihood of citizens becoming victims of crime

For European criminal justice systems to have integrity, they should be based upon policies that will reduce crime and harm in society. Significant evidence regarding the causes of crime points to underlying causes including; childhood trauma, alcohol misuse, drug dependency, and unmet mental health needs.[24]
Research conducted by the UK prison inspectorate found that, compared with other prisoners, pre-trial detainees were:

- less likely to have been encouraged to maintain contact with friends and family than the rest of the prison population;
- mostly unaware of social security, housing and alcohol, drug or mental health services available to them, and
- less likely to have access to rehabilitation courses.[25]

Policy makers are often under pressure to be seen to have 'tough' criminal justice policies. However, we are condemning more of our fellow citizens to becoming victims of crime if we use retributive policies, such as short prison sentences, which research shows are less effective in rehabilitation and thereby reduction of crime.

Pre-trial detainees are often unfairly denied access to rehabilitative services

Conditions for detainees preparing for trial can be worse than for prisoners who have been convicted and sentenced. This is damaging to the individual and their ability to prepare for trial, and contributes to the likelihood that they will re-offend. For example, the Chief Inspector of Prisons for England and Wales has said:

"We found that remand [pre-trial] prisoners enter custody with multiple and complex needs, that are equally, if not more, pervasive than among sentenced prisoners. However, despite a long established principle that remand prisoners, who have not been convicted or sentenced by a court, have rights and entitlements not available to sentenced prisoners, we found that many had a poorer regime, less support and less preparation for release".[26]

The same report found that pre-trial detainees were at an increased risk of suicide and self harm.[27]

A detainee's status as innocent should not be a barrier to them taking courses for rehabilitation. For example, it is possible to recognise that a suspect is dependent on alcohol or drugs without attributing guilt for the crime for which they are accused. Where there are drug, alcohol, or mental health needs, support should be offered in a way that would complement services available within the community, so that if a detainee is found not-guilty they can continue to receive support when they are released.

Pre-trial detainees should be able to complete education courses after trial

Detainees with lower educational attainment have fewer opportunities after prison and are more likely to re-offend. Prison education can raise the skill levels of detainees so that they are more likely to find employment after prison and thus avoid further offending.[28] Pre-trial detainees who go on to be convicted and sentenced to prison, often serve their sentence in a different prison. Standardisation of prison education courses would:

- allow detainees who are transferred to a different prison to complete their courses,
- increase the perceived value of education for pre-trial detainees, and
- foster a positive attitude toward education amongst detainees themselves.

Many Member States already offer prison courses which can be completed in the community, but the realities of financial, family, and work pressures facing former detainees in the months after release mean that some courses are not completed.

The principle of compatibility with community services should be equally true in other aspects of rehabilitation. Prison alcohol, drug and mental health services should complement services available in the community, so that pre-trial detainees who are released may continue treatment.

The attitudes of convicted prisoners toward activities for rehabilitation may be shaped by their experiences as pre-trial detainees

Detainees can develop habits during the first year of prison life that form the basis of behaviour in the longer term. Prisons should not consider that providing services to pre-trial detainees is of less value due to the uncertain length of their incarceration. Further research should be undertaken to increase our understanding of the impact of attitudes toward prison formed during pre-trial detention.

In some Member States pre-trial detainees are denied family contact without good cause

The role of family and friends in supporting the reintegration of someone released from pre-trial detention is important as they can provide a source of stability at a difficult time of transition, finding new work and rebuilding their life. Many needs of a former detainee will be practical and met more often by family than by any public service. Maintaining family contact in prison should be encouraged.[29] Detainees may have unstable accommodation or poor housing conditions prior to arrest, and they may return to similar or worse circumstances on release. Maintaining good relationships with family members can be one way of finding stable accommodation following release.

Arrangements for family contact during pre-trial detention vary. In some EU Member States, contact may only be by phone or letter. For example, individual visits to pre-trial detainees are prohibited in Slovenia and the Czech Republic when family contact is thought to risk undermining legal proceedings. Similarly, restrictions in Germany

may be imposed by the court to prevent a suspect from absconding, tampering with evidence, or committing further offences.[30]

The needs of a suspect's partner and family should also be a consideration for judicial decision-makers. Austrian research with offenders' partners indicates that they find electronic monitoring a significant improvement on imprisonment. Many said that having their partner at home rather than in prison meant they could enjoy time together and that this benefited their relationship. Many also named additional advantages such as having someone to share responsibility for children and household tasks.[31]

Society has an important role in supporting pre-trial detainees, both whilst they are in prison and after their release

QCEA believes that there is a need to mitigate the harm to people which may be aggravated by pre-trial detention. The complete separation of society and people imprisoned prior to a trial, is counter-productive. Greater community involvement within prisons would help reduce some negative impacts of prison on the detainee. For example, prison-visiting schemes enable detainees to interact with local community volunteers. Regular and non-judgemental contact with an unpaid, non-uniformed person from "the outside" can impact positively on a detainee's mental health, moral reasoning, and other factors which discourage offending. One way to do this is through the provision of independent support for detainees to help them cope with pre-trial detention. This may be particularly important when a detainee is considered to be vulnerable, and some detainees may need professional support. Legal counsel often have access to prisons to meet confidentially with detainees awaiting trial, but the remit and time available for these meetings is limited. During this pivotal moment in their lives, pre-trial detainees need other forms of emotional support, such as listening.

Independent schemes are also a useful means of monitoring detention conditions more generally. These schemes can use independent volunteers from the local population to visit prisons and report on the conditions they find.[32] Society must not be allowed to forget the human story of detainees. After time in prison, former suspects face challenges of finding employment and rebuilding their lives. Prejudice within society can limit the volunteering, employment and accommodation opportunities available to them after release.

Criminal justice agencies should be more open and positive about their purpose of providing rehabilitative services. This would improve the support and confidence of citizens

QCEA recommends that Member States' criminal justice systems be more open and positive about their purpose of facilitating rehabilitation. Where there is political pressure to be 'tough on crime', public authorities should ensure sufficient information is in the public domain about the underlying causes of crime and the value of rehabilitation, at least allowing others to make the case for more effective policy.

At the EU level, the European Statistical Programme should include the collection and dissemination of pre-trial detention statistics. EU Member States would benefit from pro-actively sharing data on the effectiveness of alternatives to pre-trial detention.

The implementation of minimum standards will only be the start of the process

It is important that Member States develop, implement, and monitor policies to enforce the rights of detainees. In the UK, research found that some pre-trial detainees lost ownership of their business as a result of their detention, despite legal protection against this. Interviews with prison resettlement managers found that many are unaware of this right and that people had lost livelihoods as a result.[33] This kind of punitive impact on pre-trial detainees undermines the concept of the presumption of innocence.

Finding alternatives to pre-trial detention

A failure to consider alternatives to prison means that suspects are detained arbitrarily

In 2013 another international organisation, the Council of Europe,[34] produced a report and recommendation on alternatives to imprisonment.[35] Article 9 and 10 highlighted the alternatives to imprisonment that it recommended be encouraged throughout the 47 Council of Europe Member States. The most important non-custodial sentences in relation to pre-trial detention were curfews, house arrests, and restraining or exclusion orders enforced by technological means. Staying in a prescribed hostel, or being excluded from the location where the crime was committed, are also common conditions applied to suspects awaiting trial in the community. These can be aided through similar electronic monitoring technology.

Public sector spending reductions are driving change across the criminal justice sector. In Austria the use of detention by curfew, rather than prison, has increased in recent years. It aims to reduce the negative effects of prison, particularly loss of employment. It is dependent on a number of factors including the suspect being in employment. It is used primarily as an alternative to post-trial detention; very few pre-trial suspects are monitored in this way.[36] This is an example of pre-trial detainees being denied access to initiatives available to convicted offenders.

Alternatives to pre-trial detention are rarely used in Hungary, despite prisons being almost 40 percent over capacity. Prosecutors and police often resist use of house arrest due to the perceived resources needed for effective enforcement, and this affects the attitude of courts.[37] However, Hungary has now begun an evaluation of electronic monitoring as an alternative to pre-trial detention.

Photo: Italian Prison. Credit: Lendog, Creative Commons

Defence lawyers should follow the recommendation of Fair Trials International by using Article 7(1) of the Right to Information Directive (May 2012) as a basis for requesting access to materials pertaining to the necessity of pre-trial detention in relevant cases. This will make it possible for a lawyer to challenge the decision regarding pre-trial detention.

Foreign nationals are more likely to be arbitrarily imprisoned whilst awaiting trial. They face additional challenges and deserve particular support and independent oversight

Foreign nationals often face the additional hurdle of being automatically considered to be a flight risk, even when they have ties to the country. The percentage of foreign nationals in pre-trial detention varies considerably between Member States, with the lowest percentages found in Romania, Poland, and Slovakia and those with over 25% of the pre-trial prison population as foreign nationals in Greece, Italy, and the Netherlands.

In response to requests for information by QCEA, a number of countries offered reassurance that detainees are provided with information about their arrest as soon as practicable and that arrangements are made quickly to do this in a language they can understand. For example, the Hungarian Ministry of Justice told QCEA that it “strives for translating and interpreting the general information and rules into a spoken language of the pre-trial detainees”.[38]

Robust procedural rights and independent monitoring of pre-trial detention are particularly important when a person is detained outside their home country. In addition to language difficulties, the detainee is less likely to be aware of procedural rights in the particular criminal justice system where they are detained.

The increasing robustness of detention alternatives should cause Member States to consider a radical reduction in pre-trial detention

There are occasions when pre-trial detention is necessary for the protection of the community, but these cases are far less frequent than would justify the current numbers of people in pre-trial detention in the EU. There will also be cases where specific individuals may be at risk if suspects are not detained before a trial, such as cases of domestic abuse or stalking. Even less frequently, there will be cases where the impact of a crime on the community is so great that if a person is not detained the public would lose confidence in the rule of law. However, beyond these cases, there is much that can be done to reduce pre-trial detention in the EU. The European Commission's Green Paper on Detention (2011) described pre-trial detention as an option that "should only apply after the court determines that defendants pose a substantial risk of flight, a threat to the safety of the community, victims or witnesses, or a risk of hindering investigations".[39] Alternatives to pre-trial detention, although more limited than alternatives to post-sentence imprisonment, are becoming increasingly robust.

Justifications used for pre-trial detention

The October 2011 Fair Trials report 'Detention without Trial' called for EU legislation to ensure that there is a 'right to release' in pre-trial detention decision-making processes unless there is evidence that:

- suspects will abscond and fail to appear at the trial,
- suspects will interfere with witnesses or evidence,
- suspects will commit further offences, or
- suspects will be at risk of physical harm by self or others.

Even these justifications are being increasingly undermined by advances in non-custodial monitoring of suspects in the community. Prosecuting authorities in Member States should review decision-making processes to ensure their recommendations for pre-trial detention are only made when they are believed to be necessary.

Opportunities arising from technological advances in electronic monitoring should be subject to legal limitations, public scrutiny, and independent oversight

The pace of technological advances in electronic monitoring is likely to transform the debate on alternatives to detention over the next decade. Electronic monitoring using Global Positioning Systems (GPS) makes it possible to mitigate the risk of absconding without holding a person in detention.[40] Until recently electronic monitoring systems have not used GPS technology; they have been linked to proximity sensors attached to domestic telephone lines. Traditional systems have been used to enforce house arrest or curfews. Their varying degrees of reliability and high profile failures have damaged the public's confidence in this alternative to prison.[41] However, GPS electronic monitoring may be sufficiently reliable to provide a less punitive alternative to pre-trial detention for thousands of people currently imprisoned in Europe.

GPS electronic monitoring has the potential to support repeat offenders in moving away from crime. A large proportion of crimes are committed by a small proportion of offenders, often described as repeat offenders. Alcohol or drug dependency is an underlying driver for many repeat offenders who steal to support their habit. GPS monitoring should provide the assurance that a repeat offender does not need to be incarcerated, as the risk of their offending would be reduced by the deterrent that their GPS location could be matched to any recorded crime. A pilot study in the UK found GPS monitoring greatly reduced the number of crimes linked to the offenders being monitored. A group of offenders connected with 459 crimes in the period before GPS electronic monitoring were linked to only three offences whilst being monitored by GPS electronic tags.[42] Offenders taking part in this UK study also benefited from intensive support that was helpful in reducing alcohol and drug use and with finding housing.[43] Where electronic monitoring is used as an alternative to prison, suspects must be provided with the support needed regarding alcohol, drugs, mental health, housing or education.

From today's widespread incarceration, it is easy to envisage significant numbers of prisoners being released for more effective community rehabilitation with GPS monitoring as a less draconian alternative. However, we must be careful that we do not normalise a policy of widespread surveillance. The risk of a rapid expansion of electronic monitoring is that Member States may use it as a more punitive alternative to non-custodial sentences, rather than a less punitive alternative to prison. Its use should be limited by legislation and subject to formal scrutiny, including by civil society organisations.

The author of this paper trying on an electronic monitoring device. Photo Credit: Andrew Lane

In February 2014 the Committee of Ministers of the Council of Europe (comprised of 47 Member States) formally adopted recommendations on the use of electronic monitoring, recognising that its use "can help reduce resorting to deprivation of liberty, while ensuring effective supervision of suspects and offenders in the community, and thus helping prevent crime".[44] The recommendation aimed to set basic ethical standards for the use of electronic monitoring in all Member States. Electronic monitoring was recommended during the pre-trial phase of criminal proceedings, but that special care was needed in order to prevent the extension of its use to persons who would not otherwise be in pre-trial detention. It was specifically agreed that, "The modalities of execution and level of intrusiveness of electronic monitoring at the pre-trial stage shall be proportionate to the alleged offence and shall be based on the properly assessed risk of the person absconding, interfering with the course of justice, posing a serious threat to public order or committing a new crime".[45] All EU Member States are also members of the (larger) Council of Europe and should implement these recommendations.

If a pre-trial detainee is found guilty and sentenced to a term in prison, courts usually discount time already served during the pre-trial period from the total sentence. The level of intrusion involved in GPS electronic monitoring suggests that, where it is used in the pre-trial phase, courts should discount the period from any subsequent prison sentence in the same way.

Conclusion

One of the most worrying aspects of widespread incarceration within the European Union is the extent of pre-trial detention. Much more compassionate and evidence-led work is needed at European, national, and local community levels.

Pre-trial detention is important both as a human rights issue and because it is an ineffectual instrument for crime reduction. The European Union should be commended for considering minimum standards for pre-trial detention. However, alternatives to pre-trial detention should be implemented more often. The case of technological advances in electronic monitoring demonstrates that many of the justifications given for pre-trial detention are losing their legitimacy. There should be a presumption against custody for those suspected but not convicted of committing a crime.

Human rights must be at the heart of EU criminal justice policy. In order for this to become a reality, implementation of the EU roadmap on procedural rights by every EU Member State is imperative, and statistics concerning Member States' use of pre-trial detention must also be compiled.

QCEA supports calls for EU legislation to end the arbitrary use of pre-trial detention. In December 2014 the Justice and Home Affairs Council (relevant ministers from the 28 EU Member State governments) will meet, and their agenda will include a draft text of a Directive on the Presumption of Innocence.[46] Given the connection between the presumption of innocence and the misuse of pre-trial detention, Member States should use this opportunity to begin to address issues raised within this paper.

Detainees are people like ourselves. They may be suspected of having harmed people, and they may have weaknesses, but there is something of these weaknesses reflected in all of humanity. All people should be treated with dignity and supported in meeting their human needs regardless of their status as innocent or guilty of committing a crime.

Summary of recommendations

The European Commission and EU Member States should consider and urgently implement alternatives to pre-trial detention. Presumption of detention should be replaced with policies that may help to lessen the harm of incarceration, decrease the need for expensive prison places, and be more effective at reducing crime. These include:

- Prioritising criminal investigations related to people who are being detained in prison, through policies known as 'special diligence';
- Introducing a 'right of release' principle for pre-trial suspects to re-balance the presumption of detention which operates in some EU Member States;
- Ending the use of 'fear of flight' as a justification for pre-trial detention through the wider use of existing alternatives. This should include use of the European Supervision Order and opportunities arising from technological advances in electronic monitoring. All electronic monitoring should be subject to legal limitations, public scrutiny, and independent oversight;
- Ensuring that the roadmap on procedural rights is implemented by every EU Member State, and ensuring that best practice and comparable data on Member States' use of pre-trial detention is compiled and published;
- Ending discrimination against pre-trial detainees by providing access to support services that can help them overcome challenges in their life that have the potential to contribute toward offending behaviour, such as drug dependency or unaddressed childhood trauma;
- Ensuring that pre-trial detainees have contact with their family, other informal networks, and the wider community (except in circumstances where this would put others at undue risk or harm, or interfere with the course of justice);
- Encouraging criminal justice agencies to promote their purpose of facilitating rehabilitation, and to take steps to improve the public's understanding and confidence in these functions;
- Providing particular support for and independent oversight of decisions involving foreign nationals in pre-trial detention, who often face additional challenges.

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6 European Commission, Report from the European Commission to the Parliament and the Council on the implementation by the Member States of the Framework Decisions 2008/909/JHA, 2008/947/JHA and 2009/829/JHA on the mutual recognition of judicial decisions on custodial sentences or measures involving deprivation of liberty, on probation decisions and alternative sanctions and on supervision measures as an alternative to provisional detention (Failure of EU Member States to implement common rules on detention). [Accessed online 7 March 2014 at http://ec.europa.eu/justice/criminal/files/com_2014_57_en.pdf].

7 European Parliament. 'Motion for a European Parliament Resolution on the mid-term review of the Stockholm Programme (2013/2024(INI)). [Accessed online 28 August 2014 at http://www.europarl.europa.eu/sides/getdoc.do?pubRef=-//ep//text+report+a7-2014-0153+0+doc+xml+v0//en].

8 The European Arrest Warrant speeds up the transfer of a suspect wanted for trial in one EU Member State from another Member State where they reside at that time. It replaces the extradition system. It was agreed by all EU Member States in 2002, and entered into force in 2004. Member States remain free to apply additional bilateral or multilateral agreements insofar as these agreements also facilitate the transfer of suspects.

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34 The Council of Europe is an international body of 47 Member States, and not part of the European Union. The Council of Europe Report also makes reference to fact-finding visits to the UK where Restorative Justice and Circles of Support and Accountability were highlighted as important and influential alternatives to imprisonment, after trial. They are both Quaker initiatives and highlighted in, Quaker Council for European Affairs (2010). Investigating Alternatives to Imprisonment. QCEA: Brussels.

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"To do away with punishment is not to abandon safety and control or to move towards disintegration, disorder and lawlessness. A non-punitive approach will not remove the need in some circumstances for restraint or secure containment, but it does mean that restraint and containment should be carried out in a life-enhancing spirit of love and care".
Quaker Faith & Practice of Britain Yearly Meeting 23.102 (Six Quakers, 1979)

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