Conference Proceedings

The Role of Prison Reform in Transitional Societies

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Preface

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On 6 and 7 September 2004, in connection with Norway's Chairmanship of the Council of Europe, a conference was held in Oslo, titled *The Council of Europe – Politics and Practice*. The first day of this seminar was devoted to discussing the Council of Europe (CoE) from a political perspective. The second day focused on its practice – specifically the role of prison reform in transitional societies. The first day was co-organised and co-funded by the Royal Norwegian Ministry of Foreign Affairs and the Norwegian Institute of International Affairs (NUPI), whereas the second day was co-organised and co-funded by the Ministry of Justice and NUPI. This publication is based on proceedings from the second day of the conference. The aim is to explore questions and challenges related to prison reform, which has long been a neglected part of the security sector.

On behalf of the two organisations, I would like to thank the then Minister of Justice, Mr. Einar Dørum, for his thought-provoking and personal introductory remarks. I would also like to thank all the speakers, both for their interventions at the conference and for submitting their papers to enable us to publish these conference proceedings. Furthermore, I would like to express my gratitude to Mr. Erik Såheim and Heidi Bottolfs (both from the Ministry of Justice and initiators of the conference), as well as to Torunn L. Tryggestad and Anja K. Bakken, who together with myself, formed the organising committee. We of the NUPI team greatly appreciated the enthusiasm provided by Såheim and Bottolfs throughout this process. On behalf of the organising committee, I would also like to thank Espen Barth Eide, for chairing the seminar; Susan Høivik, for language editing; Ole D. Gulliksen, for publication design and Tore Gustavsson, for providing relevant literature.

The Rule of Law

On 21 and 22 May 2005, the *Washington Post* published a shocking report about detainee No. 18170 in Iraq's Abu Ghraib prison. In his own words: 'Then [the guard] brought a box of food and he made me stand on it, and he started punishing me. Then a tall black soldier came and put electrical wires on my fingers and toes and on my penis, and I had a bag over my head.'[1] Further, the detainee heard someone say 'Which switch is on for electricity?'[2]

Sadly, the world has read many similar stories in recent years, particularly from Iraq and Afghanistan. We have also heard about the hundreds of detainees held without charges or trial at the US naval base at Guantánamo Bay in Cuba. After the Abu Ghraib scandal broke came the news that a series of government memoranda suggested ways in which US agents could circumvent the international ban on torture.[3] Moreover, that the media happen to have covered these particular abuses does not imply that similar misdeeds are not taking place elsewhere in the world, every day.

We know that torture and inhuman treatment occur all over the world. But given US President George W. Bush's repeated assertion that the USA is dedicated to the cause of human dignity, it is perhaps more surprising that some of the most infamous abuses in prisons in recent years have been committed by the US military in US-managed detention facilities. Not least the example from Abu Ghraib shows how important it is to look behind the rhetoric of state leaders, to have a clear idea of what is really taking place behind bars. Double standards are often more visible in the case of Western leaders, because their rhetoric tends to be more focused on human rights. Especially after 11 September we have witnessed that '…the framework of international human rights standards has been attacked and undermined by *both* governments and armed groups'.[4]

1 *The Washington Post*, 21 May 2005, *New Details of Prison Abuse Emerge*. Downloaded on 3 September 2005 from http://www.washingtonpost.com/wp-dyn/articles/A43783-2004May20.html

2 *The Washington Post,* 22 May 2005, *Soldiers and Detainees Tell Stories Behind the Pictures*. Downloaded on 3 September 2005 from http://www.washingtonpost.com/wp-dyn/articles/A46555-2004May21.html

3 Amnesty International Report 2005: *The State of the World's Human Rights*. London: Amnesty International, p. 7.

4 Amnesty International Report 2005: *The State of the World's Human Rights*. London: Amnesty International, p. 7. Italics mine.

Prison Reform – the step-child of SSR?

The penal sector is an important component of the security sector. As argued by *Annika L. Hansen* in this report, security sector reform (SSR) is an intrinsic and vital part of a state-building process, in that it seeks to re-establish the fundamental relationship between a state and its citizens where the individual trusts the state to guarantee his/her security. Exploring the state of the art of SSR and the dilemmas involved in implementing such reforms**,** Hansen argues that we must distinguish between the normative and structural dimensions of SSR. Whereas the structural dimension includes elements like training, force reduction and even establishing for instance a police academy, the normative dimension focus more on the understanding of the rule of law.

One of the many lessons learned, or rather identified, from numerous reforms of the security sector is that reforms need to be implemented in the sector as a whole and not piecemeal. Although this has become widely recognised, experience has shown that the donor community often fails to give the same attention to prison reform as it does to, for instance, reform of the police and the rule of law system. Why is this? It could be argued that while lack of success in reforming the police and the rule-of-law system would seriously prolong the need for international presence in a conflict-ridden society, as well as representing a threat in destabilising and exporting criminal elements to other countries, unsuccessful reform of the penal sector affects only the criminals within a given country and is therefore more of a human rights concern than a security concern as such. On the other hand, it could also be claimed that successful reform of the penal sector can be seen as a litmus-test of whether the security sector has been successfully reformed or not. This point is also made by Erik Såheim and Hans-Jürgen Bartsch in referring to Winston Churchill's famous statement from 1910.

Erik Såheim delves further into this matter by discussing general trends and challenges to the prison system. One of the challenges raised is whether '…the prison world may function as a source of moral and spiritual pollution on a more general basis for society'. Another is the tendency that for prisons to become a substitute for a welfare state in crisis. Provocatively, he asks whether a system that stimulates vengeful sentiments on the individual and the institutional level can ensure lasting stability and security within a nation. Furthermore, as the title of his intervention suggests, he also presents the history of the prison system – from the Bastille to Abu Ghraib.

Prison Reform and the Council of Europe

The Council of Europe has a long history of concern with prison reform. This is explored in the third article, written by *Hans-Jürgen Bartsch*. He focuses on three of the most important instruments in the construction of a European prison law or codex, whose main purpose is to assist member states in meeting their obligations regarding the treatment of prisoners. These three instruments are the European Convention on Human Rights, the Anti-Torture Convention and the European Prison Rules. Furthermore, Bartsch discusses challenges the CoE faces regarding prison reform, using Russia as an example. He inquires why the penal sector receives so little attention from our 'media society', and finds that 'the right to information' has degenerated into 'the right to entertainment'. Prisons lack the appeal that the other sectors have, and so they attract less attention.

Prisons are institutions that are isolated and often forgotten. This is a serious matter, because prison conditions often fall short of the UN and regional minimum standards to which most states subscribe.[5] This is one reason why monitoring prisons is crucial. In the fourth article, *Ingrid Lycke Ellingsen* focuses on monitoring prison conditions, from the perspective of the CoE Committee for the Prevention of Torture (the CPT), where she has been a long-time member. Lycke Ellingsen presents the mandate, main objective, composition and experiences of the CPT, and goes on to discuss some of the most urgent problems observed by the CPT in European prisons today: torture, overcrowding, living conditions, health care and qualified staff. While concluding that many challenges still remain, she also notes some positive developments that have taken place.

Pre-trial Detention & Key-factors of Prison Reform

One of the many points of concern regarding prisons is the steadily rising number of prisoners despite the decrease in crime rates.[6] As of February 2005, over nine million men, women and children were being held in penal institutions throughout the world.[7] Most

5 Ibid.

6 This point is also made by Såheim and Bartsch in these proceedings.

7 According to the International Centre for Prison Studies at King's College, London. See: http://www.kcl.ac.uk/depsta/rel/icps/world-prison-population-list-2005.pdf In comparison, the figure was around 8 million in 1999, according

of them are awaiting trial, and many have little or no access to adequate legal assistance. Almost half of the detainees are in the USA, China or Russia. In the fifth article, *Heidi Bottolfs* discusses pre-trial detention. She argues that it is of particular importance to focus on prisoners awaiting trial because most instances of human rights violations occur then. Furthermore, inmates are most vulnerable in this phase. She asks whether there is a contradiction between effective investigation and the principles of human rights. Bottolfs presents ongoing activities in the prison cooperation involving Norway, Russia and the Baltic States; she discusses the concerns and challenges in applying pre-trial detention, and provides information on activities within the project that has the same name as her presentation: Pre-trial detention in the Baltic Sea Region.

There is also a dilemma between a society's need for safety and security in times of change and unrest, and on the other hand the respect for human rights for all, including those who are deprived of their freedom. Limitations and possibilities of prison reform are discussed in the sixth and final article by *Pär Colliander*. Colliander stresses how we should be careful with the terminology we use in talking about how to handle criminals and criminality. He argues that expressions like 'war against crime' and 'war against terrorism' may threaten the future of any society because they can easily overshadow the fact that also criminals are entitled to protection by the state as the guarantor of basic human rights. Colliander also discusses the factors he considers most important when reforming a prison or a prison system: the political climate towards crime and prisoners, the structure of the prison, the quality of staff and managers and public confidence in prison reforms.

Concluding Remarks

Both in practice and in theory, the penal sector has received less attention than other components of the security sector. However, recent revelations regarding prison conditions and torture in connection with the so-called war on terror have served to sharpen the focus on the penal sector.

By increasing awareness and knowledge of the donor community concerning prison reform, this can accomplish several things.

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to the International Penal Reform Conference that same year; see International Centre for Prison Studies, 1999: *A new agenda for penal reform.* London: International Centre for Prison Studies and Penal Reform International, p.4.

First, it should augment the understanding that prisons need to be monitored. Second, although this often boils down to a matter of politics and budgets, reform of the penal sector should not be neglected. From experience we now know that, without penal sector reform, reform of other parts of the security sector often proves to be of less value.

Security Sector Reform – State of the Art and Impediments

Annika S. Hansen
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Origins of Security Sector Reform Policies

Security Sector Reform (SSR) has to be seen in the context of the dramatic evolution in peace operations since the end of the Cold War, which has resulted in steadily expanding and more multi-faceted peace operations. The more international interventions – most commonly under a UN umbrella – engaged in supporting the implementation of peace agreements, the broader the scope of activities addressed in a peace operation. Similarly, there is now greater willingness to handle the internal security arrangements of a foreign state, as through a reform of police forces. Today, the security sector has become a staple of most mission agendas.

The twin principles of state sovereignty and non-intervention have dominated the post-war era, forming the foundations of how the United Nations and other international institutions have been organised. In recent years, the principle of sovereignty has been discussed and its "sacrosanct" status questioned. Most importantly, sovereignty has evolved qualitatively. There is now a realisation that sovereignty gives to the state certain rights, but that these are coupled with duties and responsibilities on the part of the state or government. This is also linked to the emergence of the concepts of human security and the responsibility to protect. In the context of SSR, the state's responsibility to provide a safe environment and guarantee the security of its citizens is central.

Another driving force for SSR after the end of the Cold War was the fact that the development community began to consider (internal) security issues, which had previously been taboo. Throughout the Cold War, assistance to insurgent groups or unstable client

regimes had been politically highly sensitive and controversial. Then, in the course of the 1990s, both the development community and the peace support community began to take a closer look at the security sector.

A more systematic approach under the heading of Security Sector Reform emerged among the recommendations presented in academic writing on peace operations and state building in the 1990s. Naturally, the focus of the research community has been guided by recent experiences in missions, especially in the Balkans, but efforts to support peace processes in Latin America, Far East Asia and Africa have also played a significant role. In 1998, policy makers became involved when the Organisation for Economic Co-operation and Development (OECD) and the British Department for International Development (DfID) picked up the term and commissioned the first of a series of policy papers on SSR.

The concept soon became extremely popular, and efforts to promote SSR in a wide range of countries followed. Much of this was due to its comprehensiveness and its resulting ability to incorporate the concerns of most interested parties, ranging from the development community to the crisis management community. SSR allots fairly equal weight to the pet grievances of each actor and envisages an approach that takes into account the interlinkages among the various elements of a peace process – two factors which have made it hugely attractive to all actors involved.

Attempts to implement SSR have predominantly taken place in two basic types of situations. Firstly, SSR has been pursued in countries undergoing the transition from authoritarian rule to a democratic governance model. This is where the Council of Europe has played an active role, both among its member states and in encouraging prospective members to reform. Secondly, SSR has become a central element in post-conflict situations, with the first step often a Disarmament, Demobilisation and Reintegration (DDR) programme.

Besides the UK and the OECD efforts, other countries that have promoted and financed SSR include the Nordic countries, Belgium, Germany, the Netherlands, Switzerland and the United States. Security Sector Reform has been partially implemented, but never in its entirety. I will return to the dilemmas of implementation later.

What is the Security Sector?

The security sector is at the heart of a state's sovereignty, in that the state possesses the sole legitimate role of exercising coercive power in order to deal with external and internal threats to the security of the state and its citizens. The components of the security sector are military and paramilitary forces; intelligence services; national and local police forces, including border guards and customs services; judicial and penal systems; and the civil authorities mandated to control and oversee these agencies.

Thus, Security Sector Reform can be defined as a reform of the organisations that have the authority to use force, or to order the use of force, or the threat of force, as well as those civil structures that are responsible for their management.[1]

When is a Security Sector in Need of Reform?

It is helpful to review some typical features of a security sector in need of reform. Inherent in these features are the reasons why they represent an obstacle to a democratic society governed by the rule of law.

It is typical, for instance, that the constitutional basis for the security sector is unclear in such cases, especially as to the distribution of power among various security agents, and that mechanisms to ensure accountability and oversight are lacking. The rule of law may not be based on a clear legal framework, but instead follow informal rules for social interaction. The shadow society that emerged in Kosovo in the late 1980s and early 1990s is one example of this. In many cases, the body of criminal law is practicable, but the laws that regulate the legal process (such as Criminal Procedure Codes) can be in need of reform, as they may not ensure due process or offer sufficient protection of basic rights. It is important to keep in mind that the law – regardless of its merits as a legal regulatory mechanism – must ultimately be perceived as fair, effective and legitimate by the population.

Another feature of a country with a malfunctioning security sector is that it will often have been subject to war and/or a history of oppression by an authoritarian regime. As a result, its security forces are frequently bloated – over-sized and more heavily armed

1 SSR definitions taken from Jane Chanaa (2002) *Security Sector Reform: Issues, Challenges and Prospects* (Adelphi Paper No. 344, IISS/Oxford University Press: Oxford).

than would be the case in a democratic society – and may have expanded their activity into sinister or criminal areas.

Moreover, in the wake of an oppressive regime, the distinction between internal and external security forces is often blurred, especially where military, police or other security forces have been employed as instruments of oppression. The military dictatorships in Latin America, as well as in the former Yugoslavia, are prime examples of how military or security forces have been used to consolidate authoritarian rule. After a civil war, police forces can also have been involved in war fighting. This will have severe implications for the security sector, as the legacy of war and/or oppression will have left internal and external security forces with inappropriate organisational cultures and views of their roles in society.

By the same token, the population in such countries will often lack a clear understanding of the appropriate roles of the various security forces. They will not, for instance, understand the police as a "public service institution". In some cases, the security sector will have developed an identity and agenda of its own. Instability inflates the power of the security sector – a power it may be loath to part with in the transition to a more peaceful society.

At the same time, particularly in the aftermath of a civil war, the authority of the state's security forces may be challenged by rival armed groups, for instance by the rebel armies or warlords. The presence of alternative security providers undermines stability, predictability and effective government. Two recent cases in point where the central governments do not have full territorial control are Iraq and Afghanistan.

Aside from cultural and organisational dysfunctions, the security sector may be hampered by material and/or infrastructure damage in the aftermath of a war. That might seem a mundane issue, but the examples of East Timor, Kosovo and Iraq have all shown just how destructive the lack of necessary materials and facilities can be.

Material shortcomings can be exacerbated by another feature that has marked states in transition as well as post-conflict states. Often a peace process will be challenged by the emergence, consolidation and proliferation of criminal activities and corresponding networks. Mozambique and El Salvador are just two of many cases which exemplify this point.

SSR takes place in a political context, and this will be a decisive factor in its success or failure. It is helpful to view the political starting-point for an SSR effort in terms of the willingness and the ability of the host government to undertake and support a reform

Table 1: How Favourable Is the Political Context for SSR?

Ability	Willingness	
	Willing/able	Not willing/able
	Willing/not able	Not willing/not able

process. Table 1 shows four possible starting-points.

Where the host authorities are both willing and able, there is only a limited role for outsiders, aside from advising on the reform process. Where the host government would like to carry out a reform but is incapable of doing so, external parties can offer more extensive and more intrusive support, such as by carrying out some policing functions, or in the most extreme case assuming the responsibility for law enforcement. There is less room for external intervention when the host government is not willing to reform its security apparatus, regardless of its ability to do so.

Why Reform the Security Sector?

There are good reasons to conduct a reform of the security sector in conflict-ridden societies or countries in transition. They can be summarised as follows:

First, a reformed security sector will provide a more solid foundation for economic development. As indicated above, an unclear legal framework – unclear rules for the operation of the security sector, as well as for social and economic interaction and the political process – produces insecurity in daily life, thereby blocking socio-economic and political development. Interest in investment will be limited if there is no stability and predictability in the legal system. Moreover, criminal conditions tie up scarce resources: with a reformed security sector, these can be freed up by reducing crime and fighting corruption more effectively, so that they can then be re-directed towards socio-economic development.

Second, security sector reform increases stability, as well as equality, impartiality, predictability and justice in human interaction. These are basic principles in the legal protection of individuals and the cornerstones of the rule of law. Similarly, without popular trust in the rule of law and in the state's ability to provide security for its citizens, peace will not be consolidated. SSR is an intrinsic and vital part of a state-building process in that it seeks to re-establish the fundamental relationship between a state and its citizens where the individual trusts the state to guarantee his/her security.

Examples of Tasks in Security Sector Reform

It is important to distinguish between the *normative* and the *structural* dimensions of SSR. Examples of the structural dimension include restructuring, reduction and training in technical skills in the police, military or judicial system. This might also involve establishing a police academy or developing its curricula. (See Table 2.)

The normative dimension, by contrast, focuses on transferring an understanding of human rights, through training or through monitoring and providing advice to police or judges. Here the main intention is to instil an understanding of the rule of law.

Reform efforts seek to develop different types of capacity for each of the actors in the security sector:

1. The capacity to understand (and to execute) their role within a framework of democratic governance. This is often termed the "wider rule-of-law context".
2. The capacity to develop strategies, policies and plans to implement these.

Table 2: A Few Examples of Activities in SSR

	Civilian oversight	Military forces	Police forces	Judicial system	Penal institutions
Structural	Institution building (government, media, civil society) Public complaints bodies	DDR Reduction Restructuring Withdrawal from internal sec. issues Mil expenditure Equipment	Demilitarisation Reduction Disbanding paramilitaries Multiethnic composition Technical training Internal discipline	Restructuring Criminal procedure codes Appeal system Vetting	Construction Living conditions Appropriate pay for prison staff Legal codes and procedures
Normative	Awareness of role	Curricula in academies Professional ethos/codes of conduct Security policy	Curricula in academies HR training Public service Professionalism	University education/ Professional training	Vocational training for prison staff, incl. HR training

This means that a reform programme has to target culture, as well as enhancing skills, technical capacity and capabilities. Unless skills are placed in a democratic and rule-of-law context, SSR is meaningless. The overall aim of a reform programme, then, is an effective, just and trustworthy security sector, under democratic control.

It is important to realise that the activities here grouped together as a comprehensive "security sector reform programme" were not invented in recent years. The modern concept of SSR represents an effort to collect existing and ongoing activities under a new heading and relate them to one another. Perhaps the most laudable feature of the SSR concept is its comprehensive, all-encompassing nature.

For example, it emphasises that training even the best police force is fruitless if the subsequent judicial process does not function. Or that, without the appropriate political context, the most efficient police force can be employed to enhance an undemocratic or authoritarian regime's capacity to oppress its people. Or that the perfect police force will not be effective unless the population has been convinced that law and order is the most appropriate guiding principle for society, has confidence in and actively uses the judicial system. The fact that the SSR concept places so much emphasis on the interlinkages among the various elements of a reform programme has led to more attention being directed towards otherwise neglected issues such as judicial and penal reform.

Moreover, different components are applicable in different settings. The context for many of the Council of Europe activities related to SSR has varied, as indicated above. By engaging its member states rather than initiating reform programmes outside their territory, CoE Security Sector Reform as a *post-conflict* measure has been the exception rather than the rule. The countries of the Balkans are the main exceptions here.

Guiding Principles and Dilemmas of Implementation

In part, efforts at SSR have been successful, but implementation of the concept involves fundamental dilemmas that threaten the value inherent in the comprehensiveness of the approach. These dilemmas are closely linked to several guiding principles that can be formulated for the reform process and for the end product.

In order to inspire public confidence, the security sector must be characterised by transparency and accountability. The trust and the cooperation of the public are essential for the effectiveness

of policing and the judicial sector. As widespread corruption can have a devastating effect on trust and effectiveness, anti-corruption measures need to be carried out to enhance the credibility of the security sector. The activities of the Council of Europe's Group of States against Corruption (GRECO) are highly relevant to SSR – especially because they emphasise the independence of investigative bodies and the training of personnel to fight corruption.

Returning to the structural and normative dimensions of SSR, the legitimacy of the country's government is a pivotal factor. Any reform that does not build on concurrent efforts at democratisation harbours the danger of making authoritarian regimes more effective at oppression.

As both SSR and the accompanying redistribution of power within a state are highly political matters, it will always be necessary to maintain a minimum of consent and political commitment from the host government. There is a fine balance to be struck, between engaging the authorities in a constructive manner, and having the tools to exercise pressure and react to recalcitrant behaviour.

Long-term measures to improve the performance and legitimacy of the security institutions are necessary to provide a solid basis for any peace process and for a prosperous society based on the rule of law. However, it is equally clear that re-distributing power among the security institutions and between the security institutions and the state – and, in the process, questioning each actor's legitimacy – is a highly destabilising endeavour that requires sensitivity and vision.

In order for any SSR efforts to bear fruit over time, they will need to be anchored in local views: there must be a broad buy-in by society. Not only must the solutions proposed be considered appropriate, but they must also be realistically affordable. Potential local partners range from the authorities and their security apparatus, to rival armed groups, local civil society, private business, etc. Here, the external implementation effort faces difficult questions: With whom should it cooperate? How should one go about identifying cooperation partners? To what extent should solutions be imposed? To what extent should one accept solutions that are generated locally but that may not fulfil external standards of democracy and human rights?

Precisely because SSR is so comprehensive, it requires substantial efforts to ensure good coordination. There must be coordination among external actors in the field and at headquarters; within each contributing country; and between external and local actors.

All these actors are characterised by differing starting-points, organisational features, etc. As SSR spans the whole spectrum from emergency relief and crisis management to development assistance, there are obvious conceptual difficulties resulting from a lack of common definitions, terminology and international standards.

Although the concept of Security Sector Reform is very comprehensive and addresses most concerns that might conceivably arise in connection with a transition or post-conflict process, certain components have been generally neglected in the implementation of SSR. For one thing, intelligence services and border guards have received limited attention.

Perhaps most importantly, judicial and penal reforms are often overlooked when it comes to international aid, even though they are integral parts of the security sector. It must be recognised that a reform of police forces alone is of little value if it is not matched by similar efforts to create an impartial, effective and trusted judicial system, where criminals – once apprehended – can be brought to trial and justice. As this issue has moved up on the international agenda, the need for international experts – judges, prosecutors, lawyers, prison staff, etc. – has also increased.

Closing remarks

While it is clear that a comprehensive approach to Security Sector Reform and other measures to provide a secure environment is critical, it is also a fact of life that funding and the personnel resources made available by contributing states will be limited. A very difficult question is therefore how to set priorities and how to ensure that the measures undertaken are cohesive and complementary.

Greater effort has to go into answering these difficult questions. It is also important to realise that the decision as to which elements of reform to pursue will always be a political one – regardless of the objective needs that a conflict-ridden society or a country in transition may have.

The way forward has two main components. An important first step may now be to outline clearly the limits of SSR. Another would be to engage local partners more constructively. They are, after all, the ones that will be using and that will be protected by the reformed security sector.

From the Bastille to Abu Ghraib – the Role of the Prison in a Democratic Society

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Police

Let me start by expressing my deepest respect for the work done by the Council of Europe. I have spent, if not all, at least most of my professional life within the Norwegian prison service – in prison jargon I may characterise myself as a "lifer". For the past three years, my main responsibility has been to coordinate the international projects of the Norwegian Correctional Service.

My international professional knowledge is first and foremost connected to the work related to prison reforms in Russia and the Baltic states, although through my work I have come to acquire fairly good insight into the judicial systems in many other European countries as well. I cannot praise the role played by the Council of Europe in the reform processes highly enough.

However, it is my impression that the role and significance of the Council have not always been fully understood and recognised among many of the more "established" European states. This may partly be because the work and the role of the Council represent "soft policy" – more about values than budgets and investments. Perhaps the lack of enthusiasm that we sometimes see may also have some connection with the fact that the Council and its bodies occasionally produce critical statements. Nor has Norway has escaped such notice. Several people in this assembly will recall how the Europe Committee on Prevention of Torture (ECPT) in the late 1990s criticised certain aspects of Norwegian custodial practice. I am pleased to inform you all that the same criticism has gradually led to constructive reflection and certain changes in prison life in my own country.

This seminar is partly a result of informal talks between repre-

sentatives of the Norwegian correctional services and researchers from the Norwegian Institute of International Affairs. Through these talks we have been introduced to some of the basic concepts and problem approaches related to what is commonly known as the "security sector".

Security sector and security sector reform are relatively wide and loose concepts. It does not lie within my role nor within my ability to define or clarify the concept, but I want start my contribution by referring to an article written by Chester A. Crocker in *Foreign Affairs* (no. 5, 2003). In this article he debates the connection between an impaired security sector and terrorism:

> In much of the transitional world – those at-risk societies concentrated in Africa, the Middle East, southwest Asia – there is a footrace under way between legitimate governmental institutions and legal business enterprises, on the one hand, and criminal networks, often linked to warlords or political factions associated with security agencies, on the other. Frequently, the informal, undocumented economy is caught between these forces, struggling alongside embryonic civil society groups to survive and watching carefully to see which way the winds blow. When state failure sets in, the balance of power shifts ominously against ordinary civilians and in favor of armed entities operating outside the law.

Much has been opined and written about prisons and prison systems, but one has to do thorough research within political science literature to find reflections and viewpoints concerning the role of the prison system in shaping the democratic state and the rule of law. Here we are almost on untouched soil. I am convinced that, through this seminar, we will point out several problem approaches which require far more attention in the years to come. I hope that this seminar can become the kick-off for a more permanent cooperation between social scientists and practitioners working in the prison and probation services.

The focus of this seminar is the prison system in the transitional world, but my contribution will be more about general trends and challenges to the prison system. Of course, the prison system in transitional states faces special problems, but I am convinced that a common challenge to all states is summed up in the basic question: *What is the role of the prison system in a nation based on democratic governance and the rule of law?*

The Roots and the Meaning of the Prison System

It is common to date the birth of the "modern" prison to the early 19th century. The first English cell prison, Pentonville, was opened in 1842. In North America, the well-known prisons of Philadelphia and Auburn were opened in the early 1800s.

Going back a bit further, we note that the French Revolution was initiated by the storming of the Bastille on 14 July 1789. The fortress, which was also used as a prison, had become the symbol of suppression and arbitrariness. In fact, however, on the day of the storming, there were only *seven* prisoners in the fortress. This fact may serve as a reminder: in criminal policy, symbols and perceived images are often more important than realities.

Several explanations have been presented to the growth of the prison system of the 19th century. Penal change was a complicated affair, full of contradictory impulses and policies. However, it is clear that humanitarian impulses had an important place in its history. Both in North America and in Britain, the Quaker community played an important role in what was seen as a reformatory process.

It is possible to see the prison system of the 19th century as a child of the Enlightenment and of Modernity. Modernity represented a rebellion against the foreordained, predestined, view of life. The prison had and still has many faces, but in most countries the modern prison was introduced as an educational instrument, intended for moral and religious reform. Reconciliation was the over-arching task of the prison. Imprisonment was meant to mark a parting of the ways: on release, the former convict should leave prison more enlightened in every aspect of life, ready to start a new life to the benefit of himself, his family and society.

However, ideas are not always in accordance with realities. More often than not, daily life in prisons has been in stark contrast to the official rhetoric. Correctional services have a euphemistic tradition – nice words have often been used for harsh realities.

Professor David Garland at New York University is one of the most acknowledged "prison observers" of our times. In his latest book, *The Culture of Control* (2002, Oxford University Press), he turns a critical light on the somewhat dramatic change of criminal and prison policy that has taken place since the 1970s. The new policy has, according to Garland, more or less superseded a 150-year-old tradition of criminal politics which he terms the tradition of the Penal-Welfare State and which had developed over many years. "The result was a hybrid, penal-welfare structure, combining

the liberal legalism of due process and proportionate punishment with a correctionalistic commitment to rehabilitation, welfare and criminological expertise."

Garland's message is that, although we should not glorify the Penal-Welfare State tradition, we should recognise that it to some extent represented the embodiment of a humanitarian tradition that is now threatened. Time does not allow me to follow Garland's argumentation in detail. Instead, let me focus on some factors that may be of special importance to the role of the prison system in our societies.

Size

Zygmunt Bauman has suggested that the 20th century should be described as the century of prisons and prison camps. During this century millions of people were confined and maltreated in the worst manner possible – in the Nazi concentration camps and in the Soviet Gulag era, but also in prison camps and ordinary prisons in many other countries.

We all agree that the use of imprisonment to suppress or even eliminate political opposition conflicts with basic humanitarian and democratic values. Deprivation of liberty represents in itself a serious intervention into the life of any person. Imprisonment of persons and groups may also be seen as an indicator of and a reaction to "outsideness" in a society. We may well ask whether this is the best and most adequate reaction to structural and social problems.

So, seen from a democratic perspective – should there be a quantitative limit to the use of imprisonment? Norway has a daily prison population of some 3,000 inmates. This is still a low figure, some 30–40% below the average for other Western European countries, but the population has grown. During the 1990s the figure rose by 19%. In fact, recent decades have shown a significant increase in the number of inmates in most countries. The trend has been especially pronounced in the United States, where the figure has increased by more than 500% in 25 years. In the USA, more than two million people are in prison. In 2000, one of eight black men aged 25–29 was in prison: black US males have a one-in-three chance of serving time in prison at some point in their lives – greater than the chance they will go to college. For Hispanic males it is one in six, whereas for a white male the chances of imprisonment are only one in seventeen. A report from US Justice Department from August 2003 tells us that 5.6 million Americans are either currently in prison, or have served time there.

Increased criminal activity can explain, at best, only part of this development. In several Western countries, crime rates have flattened or even showed a reduction in recent decades. In Norway we had an 11% reduction in reported offences from 2002 till 2003. In the USA there has been a significant reduction in crime since the early 1990s.

The impact of incarceration does not end with the sentence. In every country, former inmates are more or less handicapped when they are released from prison. They may be excluded from receiving public assistance or financial aid. And with the increased use of background checks – especially since the terrorist events of 9/11 – they may be permanently excluded from jobs in many professions.

Of special interest to this seminar is the inmate's status in the democratic processes. Out of 5.6 million Americans with prison experience, 4 million are denied the right to vote; in 12 states, that ban is for life. Needless to say, this may have a deep influence on the outcome of elections and other democratic processes.

The concept of democracy is wide and vague, but liberal democracy is often seen as the result of a social contract between the Citizen and the Ruler. The individual citizen gives up a part of his freedom in return for stability, safety and welfare for himself and his fellow men.

In a changing world, the formation of the social contract should be seen as a dynamic process. New social and technological realities give us new laws – laws where the individual faces new limits to his freedom. But shouldn't a dynamic social contract also have another side to the equation – namely the responsibility of to Ruler to find new solutions and new strategies in times where the welfare and well-being of the citizen are at stake?

I will present as a working hypothesis that extensive use of the prison solution reduces the "Ruler's" social creativity and his ability to find adequate new social solutions – solutions that can address the new challenges facing society and its citizens. In the long run, this lack of ability to listen to people's needs and the lack of institutional flexibility may pose a serious threat to stability and democracy.

Increased Costs – Reduced Standards

In 2001 in the United States, local, state and federal spending for corrections totalled 60 billion US dollars. In Norway the budget for the correctional service is 2 billion Norwegian kroner (NOK).

Prisons are not a cheap solution. The cost of a place in a closed Norwegian prison is about 1500 NOK – or 200 US dollars – per day. Prison construction has been a rapidly growing business in many countries. In a world where organised crime and even terrorism are part of the criminal landscape, security specifications are under continuous revision. The rapidly growing prison population, combined with rapidly growing investment costs, has put the prison services under severe financial pressure in most countries.

Within the prison service – as in most other services – there is not necessarily a one-to-one connection between costs and quality. Having said that, there is no doubt that the standard of many of the traditional activities and measures that constitute prison life have deteriorated in many nations in consequence of the increased prison population and new penal policies. Still, as a civil servant within the Ministry of Justice in Norway, I feel it only fair to add that we have not seen much of this negative development in Norway so far. But every reader of Norwegian newspapers will have noticed that a balanced, decent liberal policy is under pressure. Reduced access to education and medical services, lower standards and lack of refurbishment and maintenance in cells and wings will first and foremost affect the individual prisoner – his welfare, and his prospects for life in prison and after release.

Every practitioner within this field knows that a prison is a dynamic unit and the prison climate is vulnerable. Sometimes even small changes in rules, regulations and standards may destabilise a prison. The normal consequences of such a destabilised prison regime are increased insecurity, reduced contact between inmates and guards, growing fear and bitterness and a stronger sense of criminal identity.

Sometimes the consequences of a neglected prison system are even more dramatic. Baroness Vivien Stern, Secretary General of Penal Reform International – an NGO promoting penal reform throughout the world – is the editor of a book with the title *Sentenced to Die* (1999, London: International Centre for Prison Studies). This is not a book about capital punishment, but a collection of articles about tuberculosis and other communicable diseases in the prisons of Russia and other countries of the former Soviet Union.

Much is being done in Russian prisons to raise medical standards and provide better sanitation. It is my impression that the Russian authorities have been making serious efforts to better the conditions. Through the Baltic Sea Task Force and through our own twinning projects, Norway has been assisting the Russian prison

administration in this work. But there is more to be done; human rights groups estimate that up to 11,000 prisoners die in Russian prisons every year.

In most Western prisons, communicable diseases are under control, although we often see dramatic increases in the number of HIV-infected prisoners in certain regions or in local prisons. But many Western prison systems seem to have an increased proportion of inmate with various types of mental disturbances. We also see a rising number of assaults – mostly between and among inmates – and the number of reported rapes is increasing.

The picture is complex, and the situation varies from country to country. It is not my intention to draw a broad globally negative picture of the prison world. However, I firmly believe that we should all realise that the quality of our prison institutions is endangered, and that neglect of the prison system may have consequences both for the inmates and for the society outside the prison walls.

The permeable walls

Prison walls are permeable. The prisons and the way we treat our prisoners have been described as a mirror of the values of a society values. In 1910, the then 36-year-old Minister of Home Affairs, Winston Churchill, termed the way we treat crime and criminals "one of the most unfailing tests of the civilisation of any country".

But the flow goes both ways. Guards and goods pass in and out of the prison gates every day. So do visitors and officials. Inmates are released and find their way back to the community. Products from the prison workshop are sent out in the community, as are prison values and prisoners' experiences.

When tuberculosis spread like wildfire in Russian prisons in the 1990s, it caused death and suffering among the inmates. But germs and viruses also passed prison walls, and prisoners' health problems soon became the problems of the local communities as well.

Is that sort of "sickening effect" restricted to germs and viruses? Or is it possible that the prison world may function as a source of moral and spiritual pollution on a more general basis for society? If prisons become a breeding ground for hatred and bitterness, if respect for society, its institutions and its civil servants is undermined by the convict's experiences in prison and through the judicial process, will these experiences in any way influence society?

In Norway, we have 3,000 inmates in our prisons, but since the average length of sentence is relatively short, the number of

new entries into our prisons is 12,000 every year. Some of these individuals have been to prison before, but if we add together all persons who have been prisoners and also take into consideration their close family members, friends and girlfriends, we end up with tens of thousands of Norwegians who are heavily influenced by the message sent out from the prisons. A long and strict sentence may deter an individual from an active criminal career for months or years, but what is the status when that person finally walks out of the prison gate? And what has happened to his younger brother and his friends during his stay in prison?

In the USA, one out of three black men will end up in prison. Also in other nations, ethnic or social minorities very often are over represented in prisons. Within those communities or ethnic groups, prison experiences must be a factor that should not been underestimated.

Deprivation of Freedom as Last Resort

> Deprivation of liberty should be regarded as a sanction or measure of last resort and should therefore be provided for only where the seriousness of the offence would make any other sanction or measure clearly inadequate. The extension of the prison estate should rather be an exceptional measure, as it is generally unlikely to offer a lasting solution to the problem of overcrowding...

These are not my words, but come from a Recommendation from the Committee of Ministers at the Council of Europe from September 1999. Deprivation of liberty represents a dramatic intervention into the life of an individual. Access to modern prisons with good sanitary conditions, good health services, educational facilities and work, does not change this fact substantially.

The freedom of the individual has, especially in post-war times, been called the cornerstone of our type of society. Technological and economic developments have given each and every one of us opportunities to unfold in ways unthinkable only a few decades ago. And yet, it is my opinion that depriving an individual of his of her freedom is just as dramatic an act today as it was one hundred years ago.

If we wish to turn this development, if we wish to avoid overcrowding and deterioration of prison conditions, we will need to strengthen the efforts being made to find and make use of credible alternatives to prisons in our penal codes. Importantly, we also need

to renew our acknowledgement of the connection between general policies of welfare, health, social politics and criminal policy. There is no doubt that we are witnessing a tendency for prisons to become a substitute for a welfare state in crisis. It should be a source for serious consideration when countries report that there are far more persons with severe psychiatric diagnoses inside their prisons than in psychiatric institutions.

Conventions and Recommendations as Safeguards

The 20th century was still young when Churchill gave his famous speech about prisons and civilisation in the House of Commons in 1910. In the coming years, the world would experience two world wars; there would be Auschwitz and Gulags.

However, the 20th century also had its brighter sides. Within the ordinary prison system, a humanisation gradually took place. Many of the values and practices developed within the framework that David Garland describes as the Penal-Welfare state have since the Second World War been codified in conventions and recommendations. We have got rules especially suited for prison systems, both within the United Nations and within the framework of the Council of Europe. The building and shaping of these international conventions and recommendations has been the result of a hard, time-consuming and complex work.

It is of greatest importance that we, both on the national level and through our work at the Council of Europe and other international agencies, safeguard the central values in the international agreements. The agreements are comprehensive. But let me draw your attention to some viewpoints and values that I consider to be absolutely central in a correctional system that is based on liberal democratic values and that is also aware of its role in supporting the democratic state and the rule of law.

The European Prison Rules were adopted by the Committee of Ministers of the Council of Europe on 12 February 1987. These rules have no binding legal status in international law; however, they have become widely recognised as constituting a code of practice in prison administration and treatment. They have an important influence on the moral and practical standards that govern prison administration.

The European prison rules contain 100 sections. Part 1 is introduced by setting the six Basic Principles. Here I want to focus on two of these principles:

- The deprivation of liberty shall be effected in material and moral conditions which ensure respect for human dignity and are in conformity with these rules.
- The purposes of the treatment of persons in custody shall be such as to sustain their health and self-respect and, so far as the length of sentence permits, to develop their sense of responsibility and encourage those attitudes and skills that will assist them to return to society with the best chance of leading law-abiding and self-supporting lives after their release.

In my mind, prison is and should be a temporary place of residence. Work and life in prison should be aimed towards release and re-integration in society.

These rules represent the core values in the Penal Welfare State, in the humanitarian traditions that so far have been developed and safeguarded by UN and by the Council of Europe.

In spring 2004, the Norwegian research institution FAFO presented a report *Living Conditions among Prisoners*. The report repeats and confirms what is well known among social workers and prison practitioners, namely that inmates tend to come from a special background.

- One out of three inmates has had a close family member in prison
- They have a low level of education
- Their connection to the labour market is weak: only one of three had a job
- Four of ten have an income below the poverty line
- One of three has no permanent address
- Six of ten are alcohol or drug abusers
- Most of them have health problems
- One of two has children

The implementation of humanitarian prison rules and values cannot remedy the social status of inmates or their health problems. Neither do the rules in themselves reduce criminality. But it is my conviction – and my practical experience – that prison regimes with a practice based on these principles may ensure a regime based on fairness and respect. Within such a regime, inmates may disagree with or dislike a decision, but seldom will the decision itself create lasting bitterness and motivation for revenge.

I have already referred to Professor Garland and his work.

Perhaps the most important aspect of the "new criminal policy" as Garland sees it is the introduction of an expressive and revengeful justice: "For most of the twentieth century the openly avowed expression of vengeful sentiments was virtually taboo, at least on the part of state officials."

If Garland's description is correct – and I think it is – we should ask: is this a wise policy? Will a system that stimulates revengeful sentiments both on an individual and an institutional level ensure lasting stability and security within a nation? In my opinion, the answer is no. I am convinced that the main challenge to the criminal justice sector – especially as seen from the perspective of democratic governance – is, besides ensuring conventional safety and stability, to serve as an instrument for reconciliation between individuals and groups within society.

An Independent Prison Administration

The relative size and status of the prison service may vary. The general picture, however, is fairly unambiguous: prison service is the junior partner in the chain of criminal justice. The other links have more resources and higher status. As a general rule, those working in other departments will have more education and also better pay. These conditions may affect the recruitment of new officers to the prison services. In several countries, the prison systems have problems recruiting enough well qualified workers, especially in urban areas.

Low pay and low status may also increase the possibility of corruption and other behaviour not compatible with professional conduct. The low status of the probation service could also make it difficult for the entire service and its servants to attend to legitimate professional interests when these conflict with the interests of the police or the prosecuting authorities.

Since 1789 no prison has played a more important political role than Abu Ghraib (with perhaps an exception for Auschwitz). Much has been said and more will be said about this scandal. On 17 May 2004, the *New York Times* wrote in an editorial: "The sickening pictures of American troops humiliating Iraqi prisoners have led inevitably to questions about the standards of treatment in the corrections system at home..."

Reflection about own values and own practice is a good starting point for assistance and intervention in the criminal justice systems of nations currently in transition. In Abu Ghraib, the leadership

failed to create a culture that defined those in custody as citizens and human beings with rights.

Here let me ask: is what we have seen in Abu Ghraib more than a result of weak or non-existent local leadership? I am afraid that it also reflects the weak position of the values and interests of the criminal justice system when these interests happen to conflict with the interests of the police and the prosecuting authorities.

Humanitarian values are under pressure also in my own country. If Norway and other Western nations cannot stand up as good examples, prison reform in countries in transition will be meaningless. No organisation has contributed more to giving the prisons and the probation service an independent role in the chain of criminal law than the Council of Europe. No organisation enjoys greater moral authority in our part of the world when it comes to prison reform.

Let us not undermine that authority. I wish the Council of Europe and all its supporters the best for the future.

The Council of Europe and Prison Reform

Hans-Jürgen Bartsch
former Head of the Department of Crime Problems, Council of Europe

In 1910, Winston Churchill – who was then British Home Secretary – addressed the House of Commons and made a statement which penologists have quoted ever since:

> The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country.

In other words: the degree of civilisation of a society can be determined by the way it treats those who have offended against its laws. Churchill's declaration is as valid today as it was nearly a hundred years ago. For the international organisations which were created in the wake of the Second World War, it has served as a guiding principle in their attempts to develop common standards for the treatment of prisoners. From the very beginning, the Council of Europe (CoE) has played a pioneering and determining role in these efforts. In this intervention I hope to substantiate this proud boast with convincing evidence.

But before doing so, I should like to express my gratitude to the organisers of this seminar for enabling me to report on the Council's achievements in the field of prison reform. I am particularly happy to present my paper in the context of the Norwegian chairmanship, because my links to your country are long in duration and deep in attachment. My very first journey abroad, hitchhiking at the time, took me to Norway exactly 50 years ago. Later on, as a young lawyer, I had the good fortune to work for a Norwegian – a half-Norwegian actually – who was to become a decisive influence

in forming my convictions and attitudes: that was Willy Brandt, then Governing Mayor of my hometown. My subsequent visits to your country – to Fjordane in the summer and to Telemark in the winter – resulted in many friendships which have lasted until today. I could also mention my great admiration for the plays of Ibsen, the paintings of Munch (two of them now sadly missing) and the music of Grieg – particularly when played by Leif Ove Andsnes, arguably one of the best pianists today. I beg you to forgive me this very personal preface; it is intended to explain why my expression of gratitude is more than just the gesture of courtesy customarily due to the hosts of a conference.

The reason for inviting me to this seminar is, I suspect, that I have spent the major part of my professional life in the CoE, during the past ten years as head of its Crime Department. As such I have been closely associated with the endeavours to reform the prison systems of member states, particularly those in transitional societies – the subject of your discussions today.

From the outset, the development of common standards for the treatment of prisoners has been intended to assist member states in meeting their obligations arising from the European Convention on Human Rights. This first international human rights treaty has been the benchmark for the elaboration of numerous conventions, resolutions and recommendations which today constitute what could be called a European Codex for the Enforcement of Sentences. Three of these instruments I will briefly discuss; they represent the major stages – the pillars – in the development of this codex.

The European Convention on Human Rights

When it was concluded in 1950, the Convention represented something totally new in public international law. First, responsibility for the protection of fundamental rights, until then the prerogative of the sovereign state, was transferred to a community of states. Secondly, to ensure that contracting states complied with their obligations, international control organs were created – until 1998 the Commission and the Court, now the single permanent European Court of Human Rights. Thirdly, the right to bring a case was conferred on the individual. Until then, international jurisdictions had been open only to governments. This individual petition – the possibility for citizens, including prisoners, to take their grievances directly to an international judicial organ – marked a truly revolutionary step in the development of public international law.

The case-law of the convention organs has had a decisive influence on the elaboration of European norms for the treatment of prisoners. In the 1960s, more than 50% of all individual applications to the European Commission of Human Rights originated in prisons. Even today, some 15% of the cases are brought by prisoners, whether pre-trial detainees or convicted prisoners. This is the more surprising as the Convention does not contain any specific provision on the treatment of inmates. It regulates in detail *when* a person may be lawfully deprived of his or her liberty, i.e. it lays down the conditions for ordering detention – arrest, pre-trial custody, imprisonment, detention for the purpose of extradition – but it is silent on the question of *how* such a person is to be treated in prison. Only the International Covenant on Civil and Political Rights, the human rights convention of the United Nations, contains such a provision: according to its Article 10, persons deprived of their liberty are to be treated with humanity and with respect for their dignity. There have been attempts to include a similar provision in the European Convention, but so far these have been unsuccessful, the prevailing opinion being that such an amendment would not be likely to strengthen prisoner protection against ill-treatment, since notions such as "humanity" and "dignity" are not justiciable.

It was up to the Commission and the Court to develop treatment standards which would satisfy the requirements of the Convention. They have done this on the basis of the general convention rights, in particular those relating to the prohibition of torture and other inhuman and degrading treatment or punishment, access to justice (in particular as concerns the judicial review of the justification for detention), freedom of religion, contacts with the outside world (correspondence, family visits), freedom of expression, and the right to marry.

In these cases, the convention organs face the difficult task of striking a fair balance between the rights of the prisoner and the need of the prison to guarantee security and order within its walls. Reviewing the decisions rendered over the past 50 years, one notices a trend, from an initially restrictive to an increasingly extensive interpretation of prisoners' rights. The case-law on Article 12 – which guarantees the right of men and women to marry and to found a family – provides a telling example. In 1961, the Commission held that the prison administration's refusal to allow a prisoner to get married did not contravene Article 12. In 1980, it changed its opinion, holding that a general prohibition against marrying for those sentenced to life imprisonment constituted a violation of the provision.

The most serious – and also the most frequent – complaints from within penitentiary establishments relate to the prohibition of torture and inhuman or degrading punishment (Article 3). This is not because there is widespread torture or ill-treatment in European prisons, but because in the absence of a specific provision on the treatment of prisoners the Court has to adjudicate these cases under Article 3. Obviously, the threshold for gaining cause is high. Recently, however, applicants have been increasingly successful in winning cases concerning inhuman and degrading conditions of detention as a consequence of overcrowding, especially in the prisons in Eastern Europe. I will come back to this problem.

In these as in other decisions concerning prisoners' rights, the pivotal question is always this: which restrictions on the exercise of a prisoner's rights are permissible under the Convention? It is obvious that certain restrictions are inevitable. The Convention itself allows them. It is their extent which is always subject to dispute between the applicant on the one hand and the respondent government on the other. The case-law on this question is abundant – too abundant for it to be described here in detail. Suffice it to mention the gist of the Convention organs' position, spelt out clearly in the Court's *Golder* judgment in 1975 and maintained ever since: the Court rejected the government's contention that imprisonment entailed inherent limitations on the exercise of the prisoner's human rights, even where the Convention does not expressly allow any restriction. The Court insists on examining the circumstances of each individual case and endorses restrictions only when they are "necessary in a democratic society" – "necessary" meaning here "*absolutely* necessary" for the protection of an overriding public interest. It also examines whether the measure was appropriate for achieving the intended purpose.

That was, admittedly, a rather succinct glance at 50 years of human rights jurisprudence – no easy task to do satisfactorily in a few minutes. But I hope to have shown the crucial role the Strasbourg protection system has played in developing European prison law.

As an instrument which contains legally enforceable obligations, the Convention has also gained paramount importance in the context of the Council's enlargement from a West European to a truly pan-European organisation. All applicant states in Central and Eastern Europe have had to undertake to ratify the Human Rights Convention and to submit to the individual petition. The Convention has thus become instrumental in promoting and furthering the reform of the prison systems in the new member states.

The Anti-Torture Convention

The 1987 Anti-Torture Convention is the second pillar in the construction of a European prison law. Because of its cumbersome title – European Convention for the Prevention of Torture or Inhuman or Degrading Treatment or Punishment – it is commonly referred to as the CPT. As opposed to the Human Rights Convention, which provides for *reactive* protection, i.e. for remedies which aim at having measures declared contrary to the Convention *after* a violation has occurred, the CPT provides for *proactive* protection. It seeks to promote conditions of detention which avoid human rights violations.

The Convention provides for the setting up of a committee of independent experts – called, like the Convention, the CPT. This committee is empowered to make unannounced inspection visits to any place where persons are deprived of their liberty by public authority – prisons, detention centres, police stations, psychiatric hospitals – in order to ensure that the conditions of detention satisfy the requirements of the Human Rights Convention and other European norms relating to the treatment of prisoners.

This control system no longer needs detailed description, and certainly not by me, as you will have the benefit of an insider appreciation this afternoon when Dr Lycke Ellingsen will address you. After 15 years of operation, the system is well-known by prison administrations and prison governors, most of whom have had occasion to receive a visit from the committee. Here I will confine myself to presenting only a brief outline.

Following an inspection visit – which is either a regular periodic or, in urgent cases, an ad hoc visit – the CPT draws up a report and recommendations, which it communicates to the government concerned. This report remains confidential unless the government agrees to its publication – which has now become the almost general rule. Only where a government persistently refuses to act on the committee's recommendations may the CPT publish a public statement denouncing the government's failure to act on the recommendations. So far, this has happened in respect of Turkey and of the Russian Federation.

The control system is based on the concept of cooperation. It is intended to assist the contracting states in their efforts to comply with international human rights standards. It is not the CPT's job to criticise or condemn governments. Otherwise it would risk duplication or even confrontation with the judicial control system of the Human Rights Convention. However, this is not to say that

the relations between the CPT and the governments concerned are always devoid of friction, to put it mildly.

The CPT's visit reports and its annual activity reports – which usually focus on a particular problem area – have become a reliable source for ascertaining the state of human rights protection in European prisons. They highlight shortcomings and thus constructively complement the findings of the Court of Human Rights.

The European Prison Rules

I now turn to the European Prison Rules (EPR), which constitute the third pillar in the construction of a European prison law. Already in 1973, the Committee of Ministers had adopted *Standard Minimum Rules for the Treatment of Prisoners*. In 1987, it revised them in the light of new developments in prison management and modern penological research, and adopted them under the title *European Prison Rules*.

It was primarily this text which helped the CoE to promote European standards in the new member states in Central and Eastern Europe, particularly its underlying philosophy set out in Rule 64:

> Imprisonment is by the deprivation of liberty a punishment in itself. The conditions of imprisonment and the prison regimes shall not, therefore, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in this.

In other words: People are sent to prison *as* a punishment, not *for* punishment. I deliberately said "promote" and not "enforce", because the EPR are not a legally binding instrument. They were adopted by the Committee of Ministers in the form of a recommendation – Recommendation R (87) 3 – and that is exactly what they are. As opposed to a treaty – like the ECHR or the CPT – they do not contain enforceable obligations. They are addressed to the governments of member states which are invited to be guided, in their legislation and practice, by the principles enunciated in these Rules. Legally speaking, member states are therefore free to decide whether they want to implement the Rules at domestic level.

In view of this lack of legal force, the success story of the Rules is all the more surprising. Irrespective of their legal nature, they have come to be regarded as a standard source of reference for legislators and law enforcement agencies for all aspects of prison management that are essential to humane conditions and positive treatment. As

they reflect the consensus of the community of European states, they are also frequently referred to by the European Court of Human Rights – every time the Court has to determine current standards, in order to decide whether an impugned measure was "necessary in a democratic society". The EPR have thus become a common European prison law.

A committee of experts has recently been entrusted with revising the Rules again, in particular in light of the case-law of the Court and the recommendations of the CPT. It has also been instructed to incorporate all Committee of Ministers recommendations in the penitentiary field. There are some 15 by now; they concern matters such as pre-trial custody, recruitment and training of personnel, prison work, long-term sentences, dangerous prisoners, prison leave, education, transmissible diseases and health care. The committee is expected to present the result of its work by the end of 2005.

Prison Reform

I should like to conclude with some comments on the challenges the Council of Europe has been facing following its enlargement since 1990. The fall of the Wall in my hometown, the collapse of the Soviet Union, the disintegration of Yugoslavia and the emergence or re-emergence of democratic states in the Eastern part of our continent – all these have resulted in a new political landscape. The legal systems of the former Socialist countries have been undergoing radical changes, with enormous repercussions for the reform of their prison systems.

When these states applied to the CoE for membership, hardly any of them was in a position to implement the standards which the organisation had adopted in the previous 50 years of its existence. Nevertheless, after intense debate both in the Parliamentary Assembly and in the Committee of Ministers, it was decided to admit them, on condition that they undertake to adopt, within precise time-limits, the measures necessary to conform with European standards, inter alia those governing the enforcement of criminal sanctions. Reform of the prison systems thus became an essential part of the cooperation programmes initiated by the Council.

Let me give one example to illustrate the monumental task which faced, and still faces, the organisation. I have chosen one of your neighbours, the Russian Federation, not only because it is by far the biggest member state (and for that reason faces problems which are greater than elsewhere), but also because Norway is actively

involved in several cooperation programmes with this country.

The Crime Department of the CoE publishes annual statistics on the prison population of its member states – convicted prisoners as well as pre-trial detainees. These data reveal that the West European average is around 80 prisoners per 100,000 population, unfortunately with a rising tendency in some countries – for example, the United Kingdom. The figure for Norway, by the way, is 59. When Russia joined the CoE in 1996, there were 740 prisoners per 100,000 population: this was ten times the European average, and more than a million people in real terms. Although Russia has succeeded, through amnesties and legislative changes – including a more restrictive use of pre-trial custody, the development of non-custodial sanctions, and the introduction of early (conditional) release – in reducing the figure to 638, it still occupies the first place in the European league table. Only the USA and China imprison more people in terms of their overall population.

The consequences of this policy for the Russian prison system were disastrous. Penitentiary establishments were – and many still are – hopelessly overcrowded. In some pre-trial detention centres, three inmates have to share one bed, i.e. sleeping in shifts. Trained prison staff did not exist, neither did sentence planning. Prisoners were guarded by the military arm of the Ministry of the Interior, whose only duty it was to prevent escapes. The budget for the prison system was utterly inadequate.

Progress, although slow, has undeniably been made. The CoE can pride itself on having significantly contributed to the reform process, enabling the Russian system – and many others – to enforce sentences in conformity with European standards. At this point I should like to take the opportunity to pay tribute to the many national officials who assisted the CoE in implementing its reform programmes by contributing their invaluable expertise. Some of them are present here today as speakers or participants.

One of the main objectives has been the demilitarisation of Russia's prison system. This has been achieved: responsibility for the prison system has been transferred from the Ministry of the Interior to the Ministry of Justice. Proper prison staff have been recruited and trained, and sentence planning schemes are being developed. Above all, our partners have understood that security in prison can best be achieved by establishing good prisoner–staff relations.

In order to produce the desired effect, legislative changes, important as they are in a society governed by the rule of law, need to be accompanied by a change of mentality in those responsible for the

enforcement of sentences. In this respect, two promising developments in the transitional societies of Europe merit a mention: the prison systems have been opened up to public scrutiny, thus ending the climate of secrecy which pertained in Soviet times, and civil society is gradually being involved in prison management; newly created NGOs are providing assistance in the care of inmates and in the after-care of released prisoners.

So what are the tasks for the future? The problems outlined with regard to Russia are particularly serious in that country, but the experience of Russia, or indeed that of other East European countries, is by no means unique. Urgent reform is needed in many other member states, in the East as well as in the West, if prisons are to cease to be regarded as the "Bricks of Shame", as Vivien Stern titled her critical study of the British prison system.

The prison population inflation is arguably the greatest challenge facing our prison administrations today. Steadily rising numbers of prisoners are reported from many, if not most, member states. This trend will continue to impede prison reform as long as those responsible for crime policy persist in their unsubstantiated conviction that imprisonment – and imprisonment for increasingly longer periods – is the most appropriate means of fighting criminality. The results of criminological research are unambiguous: there is no convincing evidence for the existence of a link between the crime rate and the use of imprisonment. In the United States, for example, the prison population has increased fourfold during the last 25 years, although the crime rate has not significantly changed. Our politicians do not seem to be receiving the message, however. The arguments advanced by the advocates of "law and order" policies are sometimes frightening in their populistic simplicity. A former Minister of the Interior of one CoE member state had this to say in support for his call for more severe sentences: "There is only one cause for crime – and that is the criminal. We must therefore see to it that criminals are properly punished." Everywhere, not only in Eastern Europe, the enlargement of the prison estate – the construction of new prisons or the extension of existing establishments – is seen as a solution to the problem of overcrowding.

Here again, the CoE has attempted to assist member states in managing the crisis. It has recommended limiting the use of pretrial detention, developing alternatives to imprisonment for less serious offences, and alleviating the burden on the criminal justice system by introducing out-of-court settlements, i.e. mediation between the offender and the victim. The problem of overcrowding

was specifically addressed in 1999 in a recommendation which was strongly influenced by the experience gained in the cooperation programmes with East European countries. A prison system which is inadequately financed, insufficiently staffed and occupied over capacity cannot possibly meet the standards imposed by the European Convention on Human Rights. Overcrowding necessarily entails inhuman and degrading treatment. Recommendation R (99) 22 on prison overcrowding and prison population inflation therefore reminds legislators that a reduction in the number of prisoners requires a coherent and rational crime policy, rather than the construction of new prisons. In no uncertain terms it states:

> The extension of the prison estate is generally unlikely to offer a lasting solution to the problem of overcrowding.

And in line with the crime policy objectives consistently advocated by the Council of Europe over the past half-century, it reiterates:

> Deprivation of liberty should be regarded as a sanction of last resort and should therefore be provided only where the seriousness of the offence would make any other sanction clearly inadequate.

What is urgently needed is an adequate legislative framework which, in line with this philosophy, is conducive to a rational sentencing practice. What, in my opinion, is also needed for achieving these objectives is greater awareness in society as to the reality of the prison system and recognition of society's responsibility for it. I fully agree with the introductory comments made in the seminar programme: prison reform is not given the same attention as police and criminal justice reforms. To the question "Why is this?" I should like to tender a possible answer: we live in what is frequently referred to as a "media society". People take notice of societal issues only insofar as these are addressed in the mass media. Prisons lack the media appeal that the other law enforcement agencies have. They do not attract the same attention as the police chasing criminals or the court sitting in judgment over them. In terms of media interest, the enforcement of sentences cannot compete with police investigations or courtroom dramas, because it takes place out of sight, behind impenetrable walls. If one were to compare society to a family, one would have to describe the prisons as its unloved children. They are the Cinderellas of society, and the media treat them as such. Only when a prominent convict escapes or a released

prisoner commits another crime, do the media take notice. Although prisons are functioning on its behalf, society does not appear to be much concerned about them – and this lack of interest is reflected in the meagre media coverage they engender.

Yesterday, several speakers deplored the low visibility of the Council of Europe and the scant publicity given to its achievements. This is certainly true of its work in the field of prison reform, with the exception of some reports on spectacular human rights cases. In this context, we need to pay greater attention to an aspect of modern society which adversely affects our endeavours to reform our prison systems: prison matters are perceived as having little "entertainment value", and this presents prison reformers with a formidable handicap in an era when the right to information is rapidly degenerating into a right to entertainment. However, as tempting as it is to indulge in a further exploration of this phenomenon of present-day society, I will have to leave that discussion to a future seminar. As for "The Council of Europe and Prison Reform", I have exhausted my subject and, I am sure, also your patience. Thank you for your attention.

Monitoring Prison Conditions

Ingrid Lycke Ellingsen
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Introduction

Some time ago I visited a prison in one of the big European cities. The prison was of medium size, with a population consisting of both remand and sentenced male prisoners. There were three or four isolation cells located in the basement. I wanted to have a look at those underground conditions since, on other occasions, I had seen prisoners hidden in basement isolation cells because they had been physically ill-treated. I became suspicious when the prison guards did not want me to enter one of the cells; they insisted that the prisoner was too dangerous and it was not possible for them to guarantee my safety.

However, as long as I was there as a member of the Council of Europe's Committee for the Prevention of Torture (the CPT), the guards could not deny me access to the cell. After some negotiations, the cell door was opened. Inside the confinement I found a poor creature of a man. The cell was in a terrible mess. It hadn't been cleaned for a long time; the floor was covered with food leftovers, litter and dirty clothes. The smell was indescribable. The inmate was obviously very ill and in bad shape. I sat down on his bed, took his hand, and inquired about his condition. Tears rolled down his cheeks, and he said in a very weak and depressed voice: "They think that I am HIV positive and nobody dares to enter my cell. The guards only push the food over the door sill three times a day, nobody has allowed me to get some fresh air for a long time, and nobody dares to touch me. I myself don't know the result of the HIV test." I recommended of course that the prisoner should immediately be taken to a hospital, and it did not take many hours

before he was transferred to a health institution; I heard that he had later been released. A small matter to us, but for him perhaps a life-saving action.

A 16-year-old boy who was kept in prison said: "I felt very lonely and I really mean very lonely. You are on your own and there is no one to talk to. All you can do is think and it really winds you up. I had no one to speak to and it all built up and I started thinking that I can't take this any more." (Barry Goldson, 2002: *Vulnerable Inside*. London: The Children's Society). These are just two illustrations of the importance of monitoring all aspects of life inside the walls, and of taking action where possible.

Historically the Council of Europe is the European region's most important organisation in the field of human rights protection, and a wide range of monitoring/inspecting mechanisms have been established within its framework. I wish to focus on one of the most unique monitoring bodies: the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment – the CPT. My knowledge of the situation in penitentiary establishments across Europe is due to my longstanding membership in this committee.

Let us begin with a look at some recent news headlines, which can indicate some of the problems facing the penal system nowadays.

- Finland: Number of prisoners on the increase
- Ireland: Prisoners to sue State over "slopping out" rights breach
- Österreich: Die Justizanstalt Stein kämpft mit akuten Personalproblemen
- UK: Drug abuse rising in overcrowded prisons
- Turkey: 14 detained in protest against F-type prisons in Istanbul
- Czechs consider special prison for paedophiles
- Die Schweiz: Zürcher Gefängnisse völlig ausgebucht
- Suisse: Les pantaloons des gardiens de prison zurichois sont toxiques…

These news flashes can easily be perceived as indicating a situation of extreme human misery. That is only one side of the coin – the reverse one – but it is the one I am going to discuss.

In its efforts to guarantee human rights, the Council of Europe has placed increasing emphasis on preventing violations. Protection against torture is guaranteed by the principle of the prohibition of

torture, stipulated in the European Convention on Human Rights (ECHR). According to Article 3 of the Convention, "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". It was this article which inspired the drafting of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in 1987. Not all countries were equally happy that the Convention included the term "torture"; however, several other countries said that it was important to call a spade a spade. To date, the Convention has been ratified by all the 45 member states of the Council of Europe; the last states to ratify were Serbia and Montenegro at the beginning of 2004. In the broader European region at this date (September 2004) only Monaco and Belarus have not yet joined the CPT family.

The Committee's main objective is to provide for a system of prevention by establishing an expert body with a unique mandate of on-site inspections. According to this mandate, "…the Committee shall, by means of visits, examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment".

The Committee is composed of a number of independent experts equal to the number of the member-states. The experts come from various professional backgrounds – they may be lawyers, medical doctors, or perhaps specialists in prison or police matters. They visit, regularly or an ad hoc basis, places where persons are deprived of their liberty by a public authority. Such places include prisons, juvenile detention facilities, police stations, holding centres for immigration detainees, psychiatric hospitals and social-care institutions, just to mention a few.

The CPT has a special privilege: it is to be granted unlimited access to places of detention and to interview detainees in private. Additionally, it is to be able to communicate freely with other persons who might provide information, such as NGOs, prosecutors, judges and other relevant professional bodies. The CPT has until now paid more than 180 visits to the different member states. Some countries have been visited more often than others: for instance, Turkey has been visited 17 times, the Russian Federation including Chechnya 11 times, and some other countries like France, the United Kingdom and Spain have been visited 7–9 times. I personally have had the advantage – or disadvantage – of scrutinising prison conditions in around 25 countries.

The recommendations which the CPT may formulate on the

basis of facts ascertained during a visit are included in a report which is sent to the state concerned. This report is the starting point for an ongoing dialogue with the country. Close up to 80% of the reports have been made public, and can be found on the CPT website (www.cpt.coe.int), which also provides further information about the Committee and the standards which the CPT has developed over its 15 years of activity.

Some urgent problems

Simply to list the most urgent problems observed by the CPT in European penitentiary establishments in nice, neat order seems to me to be a pointless exercise. The challenges are extensive and very much intertwined in one way or another. Most of them will also have an impact on the prisoners' health conditions and their quality of life. Instead, I will focus on some which remain unsolved to this day and which urgently need to be faced.

1. torture and inhuman or degrading treatment
2. prison overcrowding
3. unsatisfactory living conditions
4. substandard health care
5. lack of qualified staff

Torture and ill-treatment

At the heart of the CPT lies the question of torture and ill-treatment. Let me emphasise that acts of torture and ill-treatment are never permitted. The international human rights instruments do not leave any room for doubt or uncertainty in respect of torture and ill-treatment. They state clearly that there are absolutely no circumstances in which torture or other cruel, inhuman or degrading treatment or punishment can ever be justified. That said, the closed and isolated nature of prisons can certainly offer the opportunity for abusive actions to be committed with impunity – whether in an organised manner, or at other times because of the actions of individual members of staff. There is the danger that, in countries or institutions where the punitive function of prisons is given priority, actions which amount to torture or ill-treatment, such as routine unlawful use of force and beatings, may come to be regarded by staff as "normal" behaviour.

We all know the expression: "Prisoners are sent to prison *as*

punishment, and not *for* punishment". And recently we have all been helpless observers to the drama unfolding in the infamous Abu Ghraib prison in Iraq. Could that happen in a European prison? It is impossible to answer; nobody can provide any guarantees that an unreliable person does not take the opportunity to exceed his or her powers and physically or mentally injure an inmate in his care. The CPT has not often come across cases of torture or physical ill-treatment of prisoners by prison staff, but it certainly happens now and then. When the CPT has met prisoners who allege that they have been physically maltreated and when we have found medical evidence of such treatment, we have usually found that this misdeed has taken place upon apprehension by the police or during police interrogation. This also means that prison health care staff can play a very important role in discovering the signs and symptoms of ill-treatment, and must know how to tackle such situations in an adequate way.

According to the European Prison Rules, "The deprivation of liberty shall be effected in material and moral conditions which ensure respect for human dignity and are in conformity with these rules." A prison should be managed in ways that are adapted to individual circumstances and consistent with the principles of justice, equity and fairness. Enforcement of custodial sentences requires striking a difficult balance between the objectives of ensuring security, good order and discipline on the one hand, and providing prisoners with decent living conditions, active regimes and constructive preparations for release on the other hand. Many countries across Europe are currently in a very difficult socio-economic situation. All the same, lack of funding can never justify that prisoners are being physically ill-treated.

Prison overcrowding and its consequences

The phenomenon of prison overcrowding continues to blight several penitentiary systems across Europe. The CPT regularly discovers how overcrowding seriously undermines attempts to improve the conditions of detention, including the quality of life and health of the prisoners.

The total prison population in Europe numbers around 1,795,000. Not surprisingly, the country with the highest number of prisoners in Europe is the vast Russian Federation. Some four years ago, Russia's approximately 950 pre-trial facilities and corrective institutions had a population of over 1 million detainees – or 688 prisoners per

100,000 of the national population. Of these, 6% were women. As a result of the judicial reform and legislative initiatives in the Russian Federation, the prison population has gradually dropped and is expected to shrink further, with the ratio of prisoners to 100,000 population being reduced to less than 600. One positive development has been the amendments to the Russian Criminal Code, which entered into force at the end of 2003 and eased punishment for some petty and medium crimes.

Otherwise in Europe, the Baltic countries, although small in population size, have a rather high incarceration rate. Norway, with its population of approx. 4.5 million, has around 2,900 persons incarcerated, or 64 per 100,000 inhabitants. Iceland has the lowest rate with 39/100,000, but also Slovenia, Croatia and Liechtenstein show favourable figures.

Regrettably, positive developments have not taken place everywhere. Some countries, among them Poland and the United Kingdom, have experienced a devastating rise in their prison populations. When Poland was visited by the CPT in 1998, the number of detainees constituted around 57,400; the number then gradually increased, constituting 80,700 in 2004! The official space norm per prisoner was previously 3m^2, but in practice is now estimated to be only 2.5 m^2 per individual.

Less than 10 years ago, the number of inmates in the prisons of the United Kingdom was around 51,000. As of September 2003, however, the total was higher than 80,000. Northern Ireland and Scotland, as components of the UK, are included in these figures.

Living conditions

I recently visited a penitentiary establishment in a Central East European country which suffered from extreme overcrowding. One cell, which measured 45 m^2, contained 28 beds and 46 prisoners: in other words, each prisoner had less than 1 m^2 at his disposal. Nearly half had no bed of their own.

Staff working in prisons often report that the prison environment has changed, for the worse. Things have become tougher, more prisoners are drug abusers and many are sentenced for drug-related crimes; selling and buying of drugs continue inside the facilities. As a consequence there may be more violence between prisoners and staff, and among prisoners themselves.

Overcrowding will necessarily have a major impact on living conditions. The most basic hygienic standards cannot be met, and

in some countries the CPT still finds examples of "slopping out", whereby prisoners are not allowed to visit the toilets at all times but have to use plastic buckets or even plastic bags to collect urine and faeces.

Some prisons, especially in Central Eastern Europe, are housed in old dilapidated buildings. Not infrequently, these involve health-related risk conditions – inadequate ventilation, stuffiness, high humidity, inadequate lightning etc. – which constitute a breeding ground for tuberculosis and other diseases.

Lack of beds in overcrowded cells forces prisoners to share beds, and sleep in shifts of 3 to 4 hours at a time. Overcrowding and shortage of staff make it difficult to offer all prisoners outdoor exercise, even though this is provided for in the European Prison Rules. Of course there will be serious difficulties in providing other out-of-cell activities such as sports, games, work and education – just to mention a few examples.

The combination of overcrowding, an impoverished regime and a poor level of cleanliness and hygiene plus a generally run-down state of an establishment can rapidly lead to situations that fall within the scope of the term "inhuman and degrading treatment". Not infrequently, I have noticed that living conditions in prisons and pre-trial detention centres have become incompatible with regard for human dignity. The Council of Europe has recognised the clear need to harmonise detention conditions and introduce permanent external monitoring, which also implies harmonising offences and penalties. It is proposed that a general framework should be drawn up which would be binding on all Council of Europe member states, reminding them of the rights and obligations of prisoners, comprehensively listed in a "European Prison Charter".

Tossing increasing amounts of money to the prison system, only to result in new prisons being built, will not offer a lasting solution. Instead, current law and practice in relation to custody pending trial, sentencing as well as the range of non-custodial sentences available, need to be reviewed. There are initiatives on behalf of the Council of Europe in some East European countries to reform their penitentiary systems. Several countries have already made amendments to their Code of Criminal Procedure. Various recommendations on how to solve problems connected with overcrowding can be found in documents from the Council of Europe's Committee of Ministers, available on its website. Let me also mention the CPT's annual reports – especially the 11th General Report, where a chapter is devoted to recent developments in respect of imprisonment.

Health care

The majority of penitentiary establishments have some semblance of a system of health care in place. Nonetheless, a number of problems remain unsolved. Medical care of prisoners has often been subject to public criticism in many countries, and the CPT has also come across establishments with substandard medical services, where even the most basic resources are lacking.

It was perhaps the HIV epidemic and the connections between risk behaviour and imprisonment which made the authorities in many countries aware of the crucial importance of monitoring prisoners' health. It was not only a question of offering sick prisoners medical treatment in accordance with the principles of normalisation and comparable with health care available in the community, but also of providing them with information, education and preventive measures such as bleach, clean needles and syringes, and condoms.

Even after a few years of functioning, the CPT found it important to draw up a general policy based on certain fundamental principles, which we could recommend to the member states in order for them to strengthen the medical service provided to individuals deprived of their liberty. Prisoners are entitled to the same level of care as persons living in the community at large, in relation to both somatic health care as well as psychiatric care. Another principle is to ensure that prisoners should have access to a doctor, not only for an initial medical examination on arrival, but to be available whenever needed. A further important principle is that prisoners should be treated with confidentiality and with respect for the right to self-determination. But the task of prison health-care personnel should not be limited to exclusively treating sick prisoners; it also lies within such services to work preventively by combating the spread of transmissible diseases such as HIV, hepatitis, tuberculosis, and skin diseases, as well as to work together with the security staff in creating suicide-prevention programmes and programmes to combat violence. The medical services should provide humanitarian assistance to especially vulnerable groups, such as mothers and children, juveniles, prisoners with socio-psychological problems and those unsuited for continued detention, and should keep an eye on prison living conditions as a whole.

In the following I will restrict myself to discussing a few especially important medical matters: mental health problems, and the challenge involved in combating transmissible diseases like tuberculosis and HIV/AIDS. However, it should also be noted that

mental diseases and drug dependence are the most prevalent conditions in prison morbidity today.

Mental health

In comparison with the general population, prisoners show a high incidence of various mental health problems. Surveys of serious mental disorders in prisons in the Western world reveal disturbingly high figures: on average 4% with psychoses, 10% with major depression, and 65% with personality disorders among male inmates. Interfax reported in 2003 that one third of the current prison population in Russia suffered from mental disorders. Some statistical data concerning the female population in the same country indicated that most of the women inmates had come from fragmented dysfunctional families or had grown up in orphanages without any family at all. Many of them had endured sexual assaults and other forms of violence as children and adolescents. In the outside world they often lack the most basic necessities such as housing, jobs and a normal social environment. That is also my impression after having interviewed many women in penitentiary establishments across Europe.

BBCNews reported recently that people are urging the British government to take action to improve the prisons' treatment of mentally ill inmates. Some 75% of the male inmates in England and Wales were said to suffer from two or more mental health problems. Almost 10% of the male prisoners were said to suffer from severe disorders such as schizophrenia, compared with less than 1% of the general population. An increase in the number of suicides, suicide attempts and acts of self-harm is reported from several countries. In 2002, around 920 suicides were committed in prisons in the member countries of the Council of Europe. Research in Norway has shown that, in one specific prison, every second inmate serving a long-term sentence underwent psychiatric treatment.

Transmissible diseases

We are all concerned about the spread of transmissible diseases, especially tuberculosis and HIV/AIDS, in prisons. The dramatic rise in some former East Bloc countries is a source of particular anxiety. At the end of 2003, approximately 75,000 detainees in prisons in the Russian Federation were suffering from the active form of tuberculosis – although the number was decreasing due to the gen-

eral reduction of the prison population and the improved supply of first-line medication. The death rate from tuberculosis went down from 484 instances in 1999 to 112 in 2003. Still, about 30% of the nation's heavy TB burden is concentrated in the prisons. There is in addition a high prevalence of MDR-TB. Comparative figures can be found in some other countries where efforts have been made to combat tuberculosis.

The spread of other socially significant diseases among detainees is also high in comparison with the situation among the general population. In global terms, 14,000 persons will become infected with HIV every day – and some of them will certainly find their way into European penitentiary establishments. To give an exact indication of the number of inmates who are infected with HIV is not possible; testing is voluntary and many detainees themselves are not aware of their infection. Quite a few inmates are in a high-risk situation during imprisonment: a high percentage are drug abusers and continue to use drugs, often by sharing needles; tattooing is a frequent phenomenon, as well as sexual contacts without use of condoms. Vulnerable persons are often exploited by the stronger ones. The CPT has on several occasions been obliged to express serious concerns about the inadequacy of the measures taken to tackle these problems. Of course, in periods of economic difficulty, sacrifices have to be made, also in penitentiary establishments. However, 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 becomes a question of the care required to treat life-threatening diseases.

Staff

The CPT often hears complaints that the recruitment and retention of staff presents a special challenge for the authorities. Doctors and nurses working in prisons face unique problems. They must be able to provide high-quality health care in a demanding environment, without breaching international human rights and ethical standards. The CPT has also found that the training and preparation of prison doctors is sometimes of poor quality. Many do not have access to either international human rights law or to recognised international standards of ethics in health care for prisoners. Many witness violations of human rights, but do not know how to respond to them appropriately.

The Norwegian Medical Association, in conjunction with the World Medical Association, has therefore developed a web-based course in human rights and ethics for prison doctors. This, I personally believe, can prove a significant educational resource. It offers detailed practical advice for prison doctors seeking to improve their understanding of the human rights and ethical dimensions of their practice. The course is free of charge; the only thing which is needed is Internet access. The course has already been translated into several languages.

Admittedly, working in a prison is not easy. A penal institution is the meeting place of a variety of individuals in an unusual setting where one set of individuals are deprived of their liberty by another set of human beings who are charged with securing this same deprivation of liberty. This is a setting which in itself is not conducive to normal human intercourse and which easily can give rise to tension both between staff and inmates, as well as among staff members and among inmates. Among the key issues that influence the individual staff member seem to be perceived lack of management, support, the negative work culture, staff safety, and high stress levels. The health condition of prisoners, especially of those with psychological/psychiatric symptoms, will naturally have an impact on the individual staff member and his/her behaviour. All staff members need to feel that their individual worth is recognised, that their work is valued and appreciated, and that their concerns are understood by the management. In addition it is necessary to give support and counselling to those staff members who have been in traumatic situations, such as hostage incidents or the discovery of a suicide. The prison management should always be alert to signs of staff members undergoing an emotional crisis and in need of extra support, in order to avoid job dissatisfaction, high turnover, stress-related disorders and burnout syndrome.

In its monitoring work, the CPT regularly hears that the recruitment of qualified staff constitutes a headache for many penal systems. Factors which influence this include low salaries (between 30 to 70 Euros a month for a guard in some countries), low prestige and reputation, no pre-job training and heavy workload. Lack of staff, qualified or not, can have a deleterious effect on the prisoners' quality of life. Recently I visited a prison where one guard had daily responsibility for up to 100 to 200 inmates. It goes without saying that under such conditions it was impossible to offer them, for instance, the advised one hour out-door-exercise.

Positive developments

There is, however, some light at the end of the tunnel. One of the most important things is that the death penalty is abolished when a country joins the Council of Europe.

The penitentiary system has been transferred from the Ministry of the Interior to the Ministry of Justice in many countries, and the health-care staff have in some countries become more closely affiliated to the Ministry of Health.

Almost 80% of the CPT's reports have been published and are openly available. As a consequence, the prisons have become more transparent, and the public has become better informed of the situation inside prison walls.

Codes of Criminal Procedure have been amended, strengthening the prisoners' legal protection, and changes of the legal safeguards and regulations have taken place.

Several old prison buildings have been closed and replaced by modern and suitable prison accommodations. Metal shutters in front of cell windows, which obstructed access to natural light and ventilation, have been removed in some prisons, and some of the worst disciplinary cells have been taken out of use.

In some prisons the possibilities for education and work have improved.

Health care has also improved in several places. As a rule, prisoners are now medically examined on arrival. Donations have made it possible to replace old and antiquated equipment, and a greater variety of medicines has become available – only to mention a few bright spots.

Conclusion

To monitor prisons by an independent outside body is not an easy task. The CPT has been in force for over 15 years now. Looking back, I can only say that in the long run the work of the Council of Europe through the Anti-torture Committee has been of immense importance, for both the authorities and the individual prisoners.

We have, however, many challenges in front of us – and I am speaking not only on behalf of the Council of Europe and the CPT, but for all of us who have a relation to the penal system. We must prevent violations of human rights. Moreover, we must do our utmost to alleviate the pain, anxiety and hopelessness too often observed among the prisoners (and the staff), which have a big impact on their quality of life. We also need to try to contribute to

the psycho-social rehabilitation of prisoners, which, we hope, will make it possible for them to create a better life outside the prison walls.

Pre-Trial Detention – a Dilemma between Effective Investigation and Human Rights?

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Introduction

The object of my presentation is to draw attention to a special group of prisoners – pre-trial detainees. Why should persons awaiting trial be of particular interest in connection with prison reforms in transitional societies – or in any society, for that matter? I will argue that there are several reasons why this particular group of prisoners requires special attention.

First, it is in pre-trial detention that most cases of human rights violation take place. Too often, unlawful pressure is used for investigative purposes. Second, it is at this very first phase of imprisonment that inmates are most vulnerable and at risk of developing traumas or even causing self-destruction, sometimes as extreme as suicide or attempted suicide. Third, in many countries the fact that the law prescribes short periods of pre-trial detention is seen as justification for devoting scant attention to the institution of pre-trial detention. Yet, in most countries, independent institutions have considered the periods of pre-trial detention to be too lengthy. As a consequence of the above, it is undoubtedly so that many pre-trial detainees find themselves in worse situations and conditions than convicted prisoners.

It is my firm belief that the manner in which one deals with pre-trial detention constitutes a litmus test of the state of rule of law in that country. Indeed, if we acknowledge rule of law as one the cornerstones of democracy, the application of pre-trial detention can serve as one very important indicator as to the state of a democracy.

Here I will first give a brief presentation of ongoing activities in

the prison cooperation between Norway and the Russian Federation and the Baltic States. I will then address some major concerns in the application of pre-trial detention and current practices in the countries around the Baltic. I conclude with some basic information on activities within the project "Pre-Trial Detention in the Baltic Sea Region."

General Background on Norway's Prison Cooperation with Russia and the Baltic States

Norway has been working together with the prison administrations of Latvia since 1996 and the Russian Federation since 1998. The project accommodates a vast range of activities, such as ensuring reasonable health conditions, education and purposeful activities for inmates, rehabilitation and human rights issues in general. In short, the project aims at establishing a practical dialogue on respect for human rights and human dignity for persons who are deprived of their liberty.

In our work we soon realised that the key problems in the Latvian and Russian prison services – in fact in the entire Baltic Sea region – were almost always at the worst in pre-trial detention centres. In order to address the problems of pre-trial detention throughout the region, we established contact with the Commissioner of the Council of the Baltic Sea States (CBSS)[1] in autumn 2002. We decided to work together on a project titled "Pre-Trial Detention in the Baltic Sea Region", aimed at supporting the ongoing efforts in the member states of the Council of the Baltic Sea States to improve and modernise their pre-trial detention systems.

Before proceeding to the actual project itself, let me explain the term "pre-trial detention" and some main concerns regarding the application of pre-trail detention.

1 The Council of the Baltic Sea States was established at a conference of the foreign ministers of Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Norway, Poland, Russia, Sweden and a member of the European Commission, in Copenhagen in March 1992. Iceland joined in 1995. The CBSS is a regional organisation and serves as an overall regional forum for intergovernmental cooperation, focusing on the need for intensified coordination of activities in virtually every field of government.

Pre-trial Detention – the Dilemma between Effective Investigation and Human Rights

My focus is on the deprivation of liberty that is based on a suspicion that the person in question has somehow been involved in a crime, as a participant rather than as a witness. From the initial measure (however described) until the process is concluded with a trial leading to conviction or acquittal – or is in some other way discontinued (whether because no charges are brought or they are dropped for whatever reason at some point before trial) – a person will be subject to pre-trial detention for as long as he or she is not at liberty. This will be the case wherever the person is held, be it a police cell, a prison or other place of detention. The use of the term "preventive" in some countries to describe detention for this purpose does not alter its essential character as an element of the criminal process. It is thus not to be confused with detention that does not have the object of later prosecution for an offence, regardless of whether such prosecution ultimately takes place.

Pre-trial detention is an indispensable instrument of the justice system of every country. Yet, the application of pre-trial detention calls for extreme caution. Why? I believe that the answer can be found in one of the cornerstones of democracy: the rule of law. Three principles deserve our special attention, as they set strict limitations on the application of pre-trial detention.

The first principle is the notion of presumption of innocence. This means treating all pre-trial detainees as if they were innocent – since a basic principle in criminal procedural law is that one is innocent until proven guilty; and that in case of doubt, it is better to let a guilty person go free than to imprison an innocent one.

In discussing the institution of pre-trial detention and efforts to improve it, we should remember that the detainees concerned are not convicts. Detention on remand precedes the verdict; accordingly, it is not supposed to be punishment. Efforts in this field should therefore be directed at imposing pre-trial detention as a purely preventive measure, not as a punitive one. The need for implementing pre-trial detention must be based on respect for the rights and personal dignity of the detainee – in short, to uphold our common understanding of human rights.

Second, we have to remember the principle of proportionality. Pre-trial detention must not be out of proportion to the interference that it represents in the personal freedom of the pre-trial detainee, or to the crime committed, or the later decision that will be taken by the court if the pre-trial detainee is found guilty.

Thirdly, the conditions authorising arrest and detention should be in accordance with a procedure prescribed by law. This means that domestic law must lay down the procedure to be followed by persons authorised to carry out arrest and detention, and that the correct procedure must be observed in every instance.

I refer to these three as cardinal principles, as they are crucial in securing the rule of law, and thus democracy, in our countries. They should not be treated as abstract legal terms, but must be kept in mind when we discuss approaches to pre-trial detention that can better correspond to the democratic set-up of our societies.

The main problem seems to be less the failure to acknowledge the basic principles of human rights and rule of law. In fact, as can be read in the CBSS survey *Pre-Trial Detention in the Baltic Sea Region,* national legislations have accomplished positive achievements resting on the above-mentioned principles. However, it does not seem that these changes have always been accompanied by similar developments in the actual implementation of pre-trial detention.

Before turning to some concerns in regard to pre-trial detention as outlined in the above-mentioned survey, I would like to emphasise that all countries in our region, without exception, face difficulties in applying the institution of pre-trial detention in compliance with international standards. This is a regional problem, not merely individual problems of some individual nation-states.

Findings of the Survey on Pre-trial Detention in the Baltic Sea Area

In all CBSS member states, persons can be arrested and detained on the suspicion that they have committed a criminal offence. In the course of the past decade, the national bodies concerned with arrest and detention of suspects and with the investigation of crime have seen major reforms, especially in the eastern member states. International standards and recommendations by independent bodies have been increasingly taken into account.

Positive results of this development can be seen in all CBSS member states. All prison systems in the CBSS area are now administered by the country's Ministry of Justice. The decision on detaining a suspect for a longer period of time is not left to investigative organs, but is always taken by the independent and impartial authority of a judge. Most national legislation stipulates the detainees' rights to notification of relatives, to legal counsel and to

appeal decisions. The extension of pre-trial detention is often subject to strict conditions and maximum time limits. And throughout the CBSS area, domestic legislation provides prison inmates with some basic rights concerning detention conditions.

However, the positive achievements in national legislation seem only partly to have been accompanied by similar developments in the actual implementation of pre-trial detention. In some member states, the prison administrations acknowledge their current incapability to assure the realisation of standards established through the adoption of new legislation. Many countries are struggling with overcrowded prisons, overburdened courts and lengthy periods of pre-trial detention. Independent sources have revealed that in some CBSS member states the application of torture and other forms of degrading treatment persists, and that the safeguards against torture stipulated by law are not always implemented in practice.

This harsh discrepancy between legislation and implementation of pre-trial detention may be attributed, on the one hand, to the rising importance of human rights (including the rights of detainees) in the international arena, boosting the political will to comply with international guidelines on the national level. On the other hand, however, implementation often not only bears financial implications that many prison systems cannot immediately assume, but also requires time and know-how to acquaint those acting "on the ground" with the new standards, methods and procedures. Apart from improving the material bases of pre-trial detention and the overall efficiency of the system, training of the professionals concerned should therefore be a priority in all CBSS member states.

The overcrowding of prisons and pre-trial detention facilities is an urgent problem facing almost a third of the member states. Prison overcrowding entails a whole set of subsequent problems, including deteriorating health conditions, inadequate treatment of prisoners and the overburdening of prison staff. In the CBSS region, recent responses to high prison occupancy rates have included the planning and construction of new prisons and the declaration of amnesties and pardons. These responses, focused on the sheer numbers of prison inmates, have temporarily alleviated the burden of surplus detainees, but it is doubtful whether they will be adequate in the long run.

The daily regime for pre-trial detainees is highly insufficient in most of the CBSS region. Pre-trial detainees are seldom given the possibility to work or engage in other kinds of purposeful activities. They are mainly left to themselves, locked up in their cells for most

of the day. This state of affairs is aggravated by the application of varying degrees of isolation that seems frequent in several member states. The lack of purposeful activity and human contact may have severe negative effects on the persons involved, possibly hampering their future reintegration into society. In some member states, efforts have been made to reduce such effects: personal officers have been assigned to detainees, common rooms have been established, and the use of isolation has been made subject to stricter preconditions and supervision. These efforts should be intensified and turned into a more comprehensive approach to pre-trial detention that is mindful of both the risk of criminalising mere suspects and the importance of their later reintegration into society.

As part of this new approach, and in light of the problem of overcrowding, it may be helpful to devote more attention to alternatives to pre-trial detention. The legislation of most CBSS member states already foresees several alternatives – including house arrest, regular reporting to local authorities, prohibition against leaving the country or the region, bail provisions, and accommodation in specialised open institutions (for example, supervised housing for juveniles or drug addicts). However, such alternatives seem only reluctantly applied in the CBSS area thus far.

Finally, twinning arrangements between the prison services of various member states have borne positive results. It seems advisable that practitioners in the field of pre-trial detention be offered the opportunity to work together further, so that relevant knowledge can be exchanged within the CBSS area.

Activities within the Project "Pre-Trial Detention in the Baltic Sea Region"

The project is being realised in four stages. First, the production of the above-mentioned survey. Second, an expert seminar, held in Pushkin/St Petersburg 2–4 February 2003. Third, an electronically-based reference bank of relevant documentation on pre-trial detention in and outside of the Baltic Sea region. And finally, the establishment of an interdisciplinary regional working group to provide practical guidance to the CBSS member states on implementing the recommendations of the 2003 seminar.

Survey on Pre-Trial Detention

Before we could start discussing ways of improving pre-trial detention, we needed to know where we in the Baltic Sea region stand right now: what advantages and shortcomings our present systems entail. For this purpose, information was gathered on the legal bases and the practical implementation of pre-trial detention from all CBSS member states. The findings have been supplemented by a table allowing for comparison of basic statistical data on prison systems (see Appendix 2).

The survey served as a background document at the seminar held in Pushkin. It attempts to summarise and comment on the findings, thereby providing an updated picture of pre-trial detention in a regional perspective. However, as the survey was intended to provide a general overview of pre-trial detention in the region as a basis for further discussion, it does not purport to be a comprehensive study of the issue.

Seminar in Pushkin and Subsequent Recommendations

On 2–4 February 2003 we brought together nearly 60 experts and practitioners in the field of pre-trial detention from the entire region, including representatives of national prison administrations and public prosecution authorities, ombudsman institutions, international organisations and NGOs. The St Petersburg/Pushkin seminar aimed at assisting the ongoing efforts of the CBSS member states in improving their pre-trial detention systems by providing a forum for discussion and a platform for exchange of best practices.

Participants agreed on a set of recommendations for the application of pre-trial detention in our region, the so-called Pushkin recommendations (reproduced in Appendix 1), in three parts.

First, the seminar decided to set up an interdisciplinary working group to address the problems of pre-trial detention in the region.

The second part of the recommendations indicates key focus areas in addressing the issue of pre-trial detention. Let me draw your attention to the focus on the *regime and psychical conditions* of the pre-trial detention centres and prisons. This was chosen because we rest assured that experts in the field have already started the necessary and difficult debate on how to *reduce the use* of pre-trial detention. As a supplement to these efforts, we believe that it is imperative to focus also on the conditions, psychological as well as physical, of pre-trial detention, not least since most countries perceive pre-trial detention as an indispensable instrument of their

system of justice. Both strategies are needed: one which aims at reducing the application of pre-trial detention in general and encourages alternatives to pre-trail detention; and one which focuses on the conditions and the regime of pre-trial detention.

The third part of the recommendations concerns the need for regional cooperation mechanisms to strengthen the competence and ability to act within the region as a whole.

Electronic Reference Bank

A reference bank containing relevant documentation on pre-trial detention in and outside of the Baltic Sea region has already been established and is currently being re-launched (www.pre-trial-detention.com). It will also allow for further exchange of information by means of links and discussion areas. To the extent possible, the information will also be made available in Russian.

Regional Working Group on Pre-Trial Detention

In line with the recommendations mentioned above, an interdisciplinary and regional working group has been established, to provide practical guidance to CBSS member states on implementing the recommendations of the Pushkin seminar.

The working group consists of experts in the field. There are the three directors-general from the Baltic states, the head of the prison administration for Northwest Russia, representatives from the Norwegian and the Finnish Ministries of Justice, and from the Swedish police. Additionally, two experts from the International Centre for Prison Studies at King's College, London, are also fully fledged members of the group.

The working group met twice in 2003. Another meeting was held in 2004, and it is expected that the group will complete its work by the end of 2005. The working group has four main tasks: First, to update and monitor the electronic reference bank. Second, to develop a module on the rights of pre-trial detainees, for training of prison and police staff. Third, to develop a manual for staff working in pre-trial detention facilities. And finally, to assist as necessary in other ways in promoting more humane application of pre-trial detention in any of the CBSS member states.

Concluding Remarks

There are too many pre-trial prisoners in our region. Any efforts to reduce the numbers of pre-trial detainees are welcome. Legal reforms alone are not sufficient. In fact, the survey showed that national legislation in the Baltic region is in line with international norms and standards. It is the lack of insight, and at times lack of willingness, to put these standards into practice that prevents true reforms. Thus, it has been the overall aim of the project "Pre-trial Detention in the Baltic Sea Region" to provide relevant advice and gather information on best practices, so that we can proceed to deal with the practical problems.

Prison Reform – Possibilities and Limitations

Pär Collianer,
CoE and OSCE prison expert, formerly a Director of the Swedish Prison System

It is often said that people are radical while young, and become more conservative as they grow older. I hope you are not too disturbed by my confession that with me it has been quite the opposite. Through more than 42 years within the Swedish Prison and Probation Service and various international commitments, I have seen prison systems in over 30 countries. I am simply stating a fact when I say I feel increasingly in opposition. I truly ask myself what we are doing in many countries. It seems as if we are making bad things worse. Well, perhaps the prison service should not be the most advanced and radical part of a society – but neither should it be the one pointing its nose backwards when everything else is in transition forwards! Sometimes I really think our "making bad things worse" comes at a high price.

In many countries it seems that the execution of sentences and deciding what to criminalise has become increasingly dependent on political actions caused by dramatic events. Thus, criminal policy is no longer a result of a well-gathered overview of all the legal system, but is simply following the lead given by other events in society.

Prisons can be seen as mirrors of society. In most countries they have low priority in terms of the budget. Politicians usually dismiss the number of votes gained from prisoners or ex-prisoners as negligible. More importantly, anyone seeking to change budget priorities towards improving prison conditions is often viewed as being "soft" on crime. If a politician wants to gain votes on prison issues, it seems that he has to allocate resources to security and to measures that will give him a reputation for being "tough" on crime.

Why is this so? My answer is ignorance, pure ignorance. Because to be tough on crime, to treat prisoners in a manner that fails to offer support or training – that is a way to create hatred and build up anger in the inmates. And once released, they are increasingly likely to get involved in new crimes.

In the former Soviet countries – and I have seen many of their prisons – the person who committed a crime was considered an enemy of the state, an enemy of the people. This attitude easily creates the impression that there is a war going on. A war not only against crime but also against those who commit the crimes. The criminals are seen as the enemy.

We have to be careful about the language we choose. It is dangerous to use expressions like "war", "war against crime", "war against narcotics", "war against terrorism". Using such terminology will often put us in a situation where the limits of accepted behaviour towards criminals and drug users become stretched to include behaviour that would otherwise never be accepted in a democracy built on the concept of "law and order". I see this development as extremely dangerous and a threat to the future of any society.

International rules, conventions, recommendations and such contain strong safeguards to protect any person, also prisoners, against bad treatment at the hands of the authorities. Do we accept and respect those rules? Does public opinion really understand that *every person* is entitled to protection from the state? That the government has a responsibility to guarantee the basic human rights, those to which we are all born, those which no one can rightfully take away? Is there acceptance that all this also holds true for prisoners – even if they themselves may have violated the human rights and integrity of others?

I would like to hope there is common acceptance for this, but unfortunately I am not sure. We have to remember how and why we got the international set of rules called "human rights". After the Second World War, we became aware of at least some of the atrocities committed in various kinds of camps during the war. At the time, those were recent events, so it was fairly easy to get common acceptance for international agreements. No one wanted such terrible things ever to happen again. Unfortunately, it seems, mankind never learns: we must always repeat and try anew to come to where the generations before us have already been.

The UN Charter itself was the very first instrument to guarantee fair and just treatment of all human beings, wherever they are and whatever terrible acts they may have committed. After the Charter

there have come numerous more specific rules (torture conventions, etc.) – including several directed specifically at the situation where people are incarcerated. Why are there special rules for incarcerated persons? Rules like the Standard Minimum Rules for the Treatment of Prisoners or the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, or the European Prison Rules, or others?

We need these special rules as safeguards because of the extremely vulnerable situation in which incarcerated persons find themselves. Deprivation of liberty is in fact a kind of legalised violence – a violence which may be employed only by the proper legal authority, namely the state. Taking someone into custody should always include taking full responsibility for that person's life and health, as well as ensuring fair and legal treatment.

The official attitude towards prisoners can be seen as a framework for their treatment. It is, of course, founded on law, but more specifically on what is politically possible in the country. Prison reform is definitely dependent on political acceptance. If it is more or less officially accepted to view prisoners as enemies of the people – then there is certainly not much space for prison reform. Here we all have some kind of educational responsibility, we have to inform of the risks connected to incarceration. We have to inform the common man and woman, the politicians, the mass media, and the other links in the legal system. Tell them about the need for and importance of balance between protecting society in the short term (hard security) and the same protection in the longer term (also security). We must all understand that the first obligation in any prison service is to avoid a situation where prisoners are released, filled with hatred and anger towards society and its representatives. Instead, they should leave prison equipped with as good a personal balance as possible, and at least be in the beginning of a process which, we would hope, will lead to an accepted life in society.

Since the Age of Enlightenment there have been movements aimed at changing the behaviour of prisoners. The accepted idea has become that prisons exist to fulfil two important needs: to punish people so as to make them or others avoid criminal behaviour, by incapacitating them for a certain time; the other idea is that the time in prison should be used to change the attitude and behaviour of those who are criminals. Here, we often use the term "treatment", borrowed from medical science. This is very complicated, and sometimes we despair and cannot see any light at the end of the tunnel. Maybe we have to understand that crime is not a disease, at

least not when we talk about those individuals who have committed crimes. By definition, crime is described as a certain behaviour that is not accepted by society and that has been declared illegal by a legislative decision. But this can also mean that behaviour which is allowed (though perhaps not morally accepted) on New Year's Eve may be illegal as of New Year's Day. So, with the same behaviour you are considered a criminal one day but not the day before!

It is not quite clear what it means to "treat" or give "treatment". Normally, we believe there is a connection between the crime committed and certain "criminogenic" factors, such as the use of drugs, social problems, poor education, etc. These problems may be highly personal but are also related to the background and the socio-economic situation out in society. As we cannot do much to change the situation in society, we instead offer what we call "programmes" to the prisoner, and we try to persuade him that participating in these programmes will give him a better life when released. It is not always easy to persuade the prisoner to take part in the programme. He knows very well, for example, that there are many others outside the prison walls who have committed the same crimes but are so far undetected – and with no offer of a programme. Many prisoners see the difference between themselves and those undetected as simply bad luck on their own part.

Is it so that persons who are caught and found guilty of having committed some crime are more dangerous than the many out in society not yet detected? I don't think so. I have found more and more that we use the prisons for the poorest part of the population, for the real losers. There is always a minority group in prison that does not fit this description, but the mainstream consists of persons who are losers in everything: in school, in the labour market, in social life and so on. They are such thorough losers that they are not even capable of committing a crime without getting caught. I have seen so many cases in which the criminal has been very clumsy, sometimes so clumsy that you would think he has an inner wish to be caught by the police…Whichever way we argue about these matters, all will still be but speculation.

Without much hesitation, we can always offer some basic programmes concerning matters like education, medical or psychological treatment – if the prisoner takes part in such activities it will normally mean at least some improvement in the quality of his life. However, no one knows if these activities will have any influence on the level of crime, for the individual or for society. There are many other types of programmes on the market today – including those

that aim to teach the prisoner how to use his earlier experience to change his behaviour in the future. These programmes are meant to bring the prisoner to an awareness of how his way of acting has influenced not only himself, but also his victims. This is not as new an idea as we may think. Over 150 years ago, the prison *cell* was introduced as something very progressive. Crimes were seen as sins and the prisoner as a sinner. In isolation in his cell, allowed only to read the Bible and other religious books, he was to analyse his life and deeds. The idea was that he would regret his wrongdoings and return to society with a full understanding that he would not commit new sins. And as experts to lead and support him there were clergymen in all prisons.

Gaining public confidence is extremely important for all prison reformers. With each dramatic event in the prison world, we can see how the varnish of public understanding is very thin indeed. Dramatic escapes – as was recently the case in Sweden – will immediately be followed by loud cries from the public or their representatives, the politicians. They will demand total security at almost any price. Of course, no one should be able to escape, but there are always voices calling for more restrictive regimes in the prisons. They are not only talking of security-related changes, but you can hear things like: "prisons are luxury hotels, the food is too good, they can even watch TV [which I personally would sometimes see as a punishment!], we must not be so soft on prisoners", and so on. I always interpret these cries as a sign that the need for revenge is not far away. It seems irrelevant that officially the punishment is the deprivation of liberty as such, and no extra punishment beside that. The court, following the law, has decided upon the severity of the sentence and thus set the time limit for incarceration related to the specific crime. Very often people say: "criminals must *feel* that there is a punishment." But here they are missing the point. Many, many years ago, when I was fairly new in the service, I once paid my first visit to a very modern newly opened prison in Sweden. In the first group of prisoners there was an old recidivist whom I had met before. Young and enthusiastic as I was, I asked him if this was not a nice prison to be in. His answer taught me a lot: "Young man, being here is like sitting in the toilet on a golden chair." He most certainly understood the idea of deprivation of liberty!

There is the old saying: "We put them in prison as a punishment, not to punish them there!" I am not sure this is broadly accepted by public opinion in any country, simply because the awareness of basic human rights is unfortunately so low.

I see another problem with prison reforms – not very much discussed, but definitely one to mention here. That is the ethical aspect involved. How far can we go in order to get prisoners to agree to participate in a certain programme which we believe would be suitable and good for them? Incarceration does not necessarily mean that they are obliged to take part in programmes aimed at changing their attitudes. How much force can we use? I don't mean force in its literal sense, but connected to most of these programmes are conditions. If you don't take part in this or that programme, then we may reduce your other benefits – things like home leaves, family visits and so on. In this way, we force prisoners to take part just because we believe it's good for them. For me, this is an ethical problem, since we are not able to really prove the effects of the programmes. Some of the activities are close to what can be seen as degrading treatment or at least humiliating if the conditions are too hard. A good example is the fight against narcotics in prisons. In Sweden, even a person who never has even been suspected of any involvement in drugs at all is forced to agree to urine tests if he wants to be granted normal home leave!

We must always remember that the stay in the prison is forced upon the prisoner. I have never met anyone who volunteered to be an inmate! Sometimes we think we have the most wonderful rehabilitation programmes, but that in itself can never be a reason for sending someone to prison. Maybe we need to examine our own reasons for some programmes. Sometimes, I suspect, we make them to comfort ourselves. We know that it is damaging for people to be in prison, and we need to know that at least we are doing something not so bad.

The essence of what I have tried to say is that we must be aware of and respect the integrity of the prisoner. This is true even if he himself is so damaged that he does not understand how to do it himself. It is important to discuss and understand what we really are doing. One thing seems sure: in a prison where most of the staff and most of the prisoners are involved in various programme activities, at least we know by experience that the human climate is much better than in other establishments.

The key to success or failure, the way to at least reduce the harm caused by incarceration and at the same time increase confidence in the system, all lies in the quality of the *staff*. Let us first say some words about type of persons to avoid recruiting. Typical examples are: those who take the job because that was the only work available in the area, and they don't want to move; or staff who come

to the prison service because they did not qualify for the police or military service. And then there are those who already in the first interview will explain their deep interest in supporting society in the war against crime, or that they want to help to bring some order to the criminals. Anyone stupid enough to say such things already from the beginning, let us simply avoid them!

Too much public talk about "war" against crime can, understandably, give new recruits the impression that they are going to be some kind of soldiers. If they seem to react adversely when you tell them that no, they are supposed to build positive professional relationships with the prisoners – well, let them go, but maybe you can understand why they are confused. If you are able to achieve public confidence and political acceptance for prison reforms, it will be much easier to recruit good persons as staff – but, then, to achieve this, you need good staff. Catch-22 all over again!

Recruitment and training are definitely the two most important matters concerning staff. Prison work is very special, it is difficult to describe what is needed and also difficult to find out which persons will really be happy as staff – we must take some risks and try to get the trade unions to accept some probationary service. If the staff are well educated, have a high personal morale and understand how difficult it is to be a prisoner, then they can act as models. Staff who have a positive set of personal values and who work close to the prisoners may become good models. Maybe the best reform we can offer is to try to have staff so successful in their "model" work that prisoners adapt the same attitudes and can avoid being led astray once they are outside again.

The basic criterion when recruiting new staff is that they understand what harm can be done in a prison and also how to make it a safe place. They must understand that protection of society means maintaining a balance between having the prisoners inside prison walls, and at the same time preparing them for a life outside. What is "safe" must be safe for both officers and inmates: "the serving environment is the working environment for the staff." There is a common interest in making things safe while also doing everything possible to create a positive human climate.

The initial training of the staff must involve a lot of work with *human rights*. Every prison officer must be thoroughly familiar with the philosophy behind the international rules; he must feel this in his heart. Perhaps there is not much risk of actual torture in many prisons today, but what is called degrading treatment often happens without the officers even understanding that it is exactly

what is going on. Most reforms and positive programmes will lose much of their effect if the staff members are not aware of why and how such things are introduced.

In older days, there was a strong military hierarchy in most prisons. Well educated, young people of today will not accept such a structure. In modern prison work, the job will be done by teams; and each team also has the experts needed for its programmes. All the same, there must still be clearly defined leaders with personal responsibility. The team leaders must be modern leaders who have learnt to work together with the staff and listen to them, but they must also be capable decision makers who take responsibility. I have seen what I think is a mistake in many services that try to be "modern" and abandon the military style. The thing is not to take away the responsible leader (the number of levels can often be reduced, though), but to make them work in another way, as team leaders. In short, that means that the team leaders have a discussion and listen to the members of their team; after this procedure they explain what decision they are going to make and why (it could be so easy as firm legislation). The framework and the direction of the service must, of course, be set by the central level with contacts to the political level in the service.

To promote confidence and support in public opinion we must not underestimate the role of the single basic officer. He has his private friends, they all know where he works and they have their opinions (as most people have about crime and criminals). What he says is in fact important. Is he able to explain why the prisoners should be treated humanely, even those who have committed the most awful crimes? If so, we have reached the first very important step towards greater common acceptance.

Even if we have recruited the absolutely best persons available, we must support them during service and also be aware of the need to follow up the development of their personalities. The prison is a dangerous environment for both inmates and staff. The staff can be formed and influenced by the degree of difficulty of their work; perhaps some should have time away from the close contact with prisoners, while others may need support. We must remember that the prison officer's duties have to be carried out in a complex social climate where there are many risks involved, also for the strong and balanced personality. In my opinion, all modern prison work means that the basic staff – those in close contact with the prisoners – need the support given by professional counsellors.

I can't avoid speaking a little about control as well – control of

the basic prison officers. Many of the lowest grade uniformed staff in a society – prison guards, customs officers, policemen on the street and others – have jobs in which they sometimes can exercise immense power over other persons. Even in a system with good criteria for recruitment and good training, there must be a structure that makes it possible to control the basic staff. The structure of a prison cannot be like that of a factory or an office or a shop. The important difference when compared to all other working places is that prisons involve the administration of legal violence, the incarceration of human beings.

This means that some of the not very modern hierarchic structure must be maintained in the prison system. There must be leaders on a level close to the prisoners, able to control the situation for the prisoners – fair treatment. Legal responsibility cannot be shared – there must always be some clearly identified person who is responsible. There must also be a system to guarantee that all actions are legal and right – independent of whether there are complaints from the prisoners. We must acknowledge that many prisoners are simply not capable of making complaints – others may have their own reasons not to complain, such as being afraid.

There have been some mistakes in modern prison management. Taking away all leaders is no solution. The thing is to have the leaders, on all levels, but acting differently. They have to be team leaders, persons who can listen to their qualified co-workers but who in the end are capable of making the decision on their own responsibility. However, they should always be able to explain the decision to anyone concerned. The modern leader needs enthusiasm and support from his staff – but he also needs to stay in control. If we want to introduce reforms in a prison, the first step must be to listen to the staff involved, to make them understand. Of course, we can't ask the prisoners to take all the responsibility – but if we want them to take responsibility for their own lives and if we respect them as human beings, we must involve them in what happens.

A manager must have very good knowledge of the staff; not only their formal qualifications but also their interests and leisure activities. Anyone really keen on any pastime can enthusiastically describe his interest and also fairly easily get other people interested. Leisure activities can be a very good way to use staff as models, allowing staff to lead prisoners in training concerning these various interests. In this, it should always be remembered that the important thing is not the kind of hobby or activity as such, but the ongoing transfer of values involved.

Are prison reforms closely connected to budget? Do we need money to introduce reforms? Of course, money means something, it always does. But in my experience, the budget is not the most important factor. I have seen prisons with similar economic conditions but with very different management results.

In conclusion, let me repeat which factors I see as the most important when reforming a prison or a prison system:

- the political climate towards crime and prisoners (most important of all)
- the structure of the prison
- the quality of the staff
- the quality of the managers
- public confidence in prison reforms.

Appendix 1:

The Pushkin Recommendations*

Pre-Trial Detention in the Baltic Sea Area.
St. Petersburg/Pushkin 2-4 February 2003

The seminar "Pre-Trial Detention in the Baltic Sea Area" was conducted on 2–4 February 2003. The event was initiated by the CBSS Commissioner on Democratic Development and the International Prison Project at the Norwegian Ministry of Justice. The seminar was hosted by the General Prison Administration of the Northwest Russian Federal District at its Training Centre in St Petersburg/ Pushkin. Providing a forum for discussion and a platform for the exchange of best practices in the region, the seminar gathered some 55 experts and practitioners in the field of pre-trial detention from almost all CBSS member states, including representatives of national prison administrations and public prosecution authorities, ombudsman institutions, international organisations and NGOs. As a result of the seminar, the participants agreed upon a set of recommendations, which reads as follows:

The institution of pre-trial detention must be established and implemented in full compliance with existing European and international norms and standards. There is a set of international principles regarding pre-trial detention. The most important principles are as follows:

International Covenant on Civil and Political Rights, Article 14

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

* Downloaded from the Internet 11 March 2005: http://www.baltichealth.org/cparticle74607-7717.html

International Covenant on Civil and Political Rights, Article 9:

1. Everyone has the right to liberty and security of the person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

International Covenant on Civil and Political Rights, Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

Pre-trial detention is an indispensable instrument of the justice system of every country in cases of serious crime. However, it is important to recognise the lack of parity in the application of this principle among CBSS member states in this regard. The partners should work towards full implementation of Rule 2 of the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules).

(3) In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system shall provide a wide range of non-custodial measures from pre-trial to post-sentencing dispositions. The number and types of non-custodial measures available should be determined in such a way so that consistent sentencing remains possible.

When examining whether custody pending trial can be avoided, the judicial authority shall consider all available alternative measures (Council of Europe Recommendations No. R (80) 11, Article 15 on specific regulations).

The participants note these provisions and agree that the application of pre-trial detention must be based on the fundamental principles of rule of law, most importantly the presumption of innocence. Detention on remand precedes the verdict and accordingly should not be used as punishment. Our efforts in this field should therefore be directed at imposing pre-trial detention as a purely preventive, but not as a punitive measure (Council of Europe Recommendation (80) 11, Article 1). The need for its implementation must be based on respect for detainees' rights and personal dignity.

Part I: The Establishment of a Regional Working Group and its Focus Areas

• To establish a multi-agency and interdisciplinary working group

The participants recommend the CBSS Commissioner to appoint a Working Group on Pre-Trial Detention in the Baltic Sea Area which shall address and monitor concerns regarding pre-trial detention. The working group shall report to the CBSS Commissioner, and propose relevant action plans, including a follow-up conference and workshops, for the fulfilment of its goals, namely the implementation of pre-trial detention in full compliance with existing norms and standards.

The working group shall undertake a multi-agency and interdisciplinary approach to the problems of pre-trial detention. It shall collect and distribute information from a vast range of sources and disciplines, including that of the prosecuting authority, the police, judges, NGOs, ombudsman and others. Therefore, the working group shall coordinate its efforts in cooperation with other existing initiatives, such as the Council of Europe Committee of Experts (PC-DP) working on the recommendations concerning remand in custody; and, in questions relating to health in pre-trial detention facilities, the CBSS Task Force on Communicable Disease Control. The working group should in particular address the following topics:

a) the long periods of detention pending trial
b) overcrowded prisons
c) violent, physical or verbal abuse of detainees
d) the requirement to ensure minimum security standards to detainees
e) inter-prisoner violence
f) arrangements for disciplinary procedures, including punishment units
g) insufficient and outdated training for prison staff
h) the health situation
i) constructive and purposeful education, occupation and other activities in pre-trial detention.

Part II: Key Focus Areas

• Interdisciplinary approaches to reduce the length and application of pre-trial detention in order to eliminate the problem of overcrowding.

The participants recommend all member states to establish efficient institutions, in order to make effective routines for investigation procedures and the course of justice. For the purpose of further developing the concepts and application of alternatives to pre-trial detention, particular emphasis should be put on developing an adequate instrument of risk assessment to better enable the judicial authority to apply alternatives to pre-trial detention.

• Staff: working conditions and training

Staff should be provided with safe and adequate working conditions. The member states should strive towards preserving and bolstering the social status and dignity of prison and police staff working with non-convicted detainees, in accordance with the Council of Europe Recommendations on Staff Concerned with the Implementation of Sanctions and Measures (1997) and its annex on ethical guidelines. Female members of staff should have working conditions that are equal to those of male staff. The staff should be under the jurisdiction of the Ministry of Justice or its equivalent. Training of all prison and police staff should include modules on the rights of pre-trial detainees.

• Juveniles in pre-trial detention

All juveniles should be treated by means of non-custodial alternatives to detention. Only older juveniles may be detained if they are accused of very serious crime and only as a measure of last resort for the shortest possible period of time. Where custody is inevitable, juveniles must be separated from adults and be given the opportunity to education, occupation or other kinds of purposeful activities.

• Women in pre-trial detention

The member states will work to ensure that the rights and needs of women in pre-trial detention are fully met. The issues of hygiene provision, specialised medical requirements and preserving links

with families, particularly young children, all need to be prioritised and addressed. Particular attention must be paid to women with young children, and detention must not conflict with the UN Convention on the Rights of the Child, requiring an assessment of the best interests of the child.

• Access to information and legal counselling

Persons that are placed in pre-trial custody must be informed about their legal rights. This also applies to prisoners of foreign origin who do not have command of the national language. Prisoners must be ensured effective access to a legal counsellor of their own choice, and effective access to international complaint mechanisms.

• Constructive and purposeful education, occupation and other activities in pre-trial detention

Remand prisoners must be provided with a "satisfactory programme of activities in which they can positively spend their time" (CPT). All CBSS member states must offer relevant education, occupation and other purposeful activities for detainees.

• Restrictions on contacts with the outside world

Prisoners, especially young people and children, must be afforded adequate contact with the outside world, particularly their families.

• Health

The health of pre-trial detainees must be ensured. TB and HIV/AIDS pose a serious problem in this context. Measures such as removal of the shutters should be prioritised in order to improve the health and living conditions in cells. The CBSS member states must adhere to the recommendations of the Second Interdisciplinary Expert Meeting on Prevention and Control of Tuberculosis Among Prisoners, which was held in St Petersburg 25–27 November 2002 and organised by the CBSS Task Force on Prevention of Communicable Diseases. Furthermore, the public health service and the prison health service must cooperate closely with each other, especially with respect to information.

• Prevention of ill-treatment in pre-trial detention facilities

In order to prevent ill-treatment in custodial institutions, the participants recommend the strict application of a medical examination by medically qualified personnel upon arrest, commitment to a temporary confinement facility, and commitment to a pre-trial prison. At the detainee's request, additional examinations and examinations by a doctor of own choice should be allowed. Following a court decision on further detention, the prisoner must without undue delay be taken to a remand prison under the jurisdiction of the Ministry of Justice. Prison staff, including staff in pre-trial detention facilities, should not routinely carry any kind of weapon.

• The need for monitoring

Independent monitoring institutions such as ombudsman institutions or NGOs must be established, or existing institutions supported, to carry out monitoring in all places where people have been remanded in custody. Their reports should be made available to the public.

Part III: Regional Cooperation

• Twinning arrangements

Twinning arrangements between the prison services of various member states have so far borne positive results. Therefore it seems advisable that practitioners in the field of pre-trial detention be offered the opportunity to cooperate further along this way, so that relevant knowledge is exchanged within the CBSS area.

• The establishment of a regional reference bank on PTD

The participants recommend the establishment of a data/reference bank with information on pre-trial detention and key areas of concern that should be made available on the Internet (web site/toolbox).

• Public awareness raising

In order to raise public awareness and support, the participants recommend available information on pre-trial detention (CoE, ODIHR material) to be translated into all national languages and distributed as widely as possible.

Appendix 2:

Pre-Trial Detention (PTD) in the Baltic Sea Region*

Country	Overall number of pre-trial detainees	Overall number of establish-ments for PTD	Rate of pre-trial detainees among prisoners	Overall number of juvenile pre-trial detainees	Rate of juveniles among pre-trial detainees	Overall number of staff in pre-trial detention establish-ments	Average duration of pre-trial detention (months)
Denmark	815	41	26%	1	0.1%	633	1.7
Estonia	1,537	4	32%	226	14.7%	1,429	3.5
Finland	477	N/A	15.6%	9	1.8%	N/A	2.9
Germany	17,431	N/A	25%	923	5.3%	N/A	N/A
Iceland	13	N/A	14%	0	0	N/A	N/A
Latvia	3,755	3	44%	228	6.1%	647	6
Lithuania	1,766	3	16.4%	115	6.5%	838	5
Norway	618	N/A	23%	N/A	–	N/A	1.9

* Data provided by the respective Ministries of Justice.

Acronyms

CBSS	Council of the Baltic Sea States
CoE	Council of Europe
CPT	European Convention for the Prevention of Torture or Inhuman or Degrading Treatment or Punishment; *also*: Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
DDR	Disarmament, Demobilisation and Reintegration
DfID	Department for International Development (UK)
ECHR	European Court of Human Rights
ECPT	European Committee on Prevention of Torture
EPR	European Prison Rules
GRECO	Group of States against Corruption (Council of Europe)
OECD	Organisation for Economic Co-operation and Development
SSR	Security Sector Reform