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Plenary sitting

7.12.2011

B7-0687/2011

MOTION FOR A RESOLUTION

further to Questions for Oral Answer B7-0659/2011, B7-0664/2011, B7-0663/2011, B7-0666/2011, B7-0661/2011, B7-0662/2011, B7-0667/2011, B7-0658/2011, B7-0665/2011 and B7-0660/2011

pursuant to Rule 115(5) of the Rules of Procedure

on detention conditions in the EU (2011/2897(RSP))

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European Parliament resolution on detention conditions in the EU (2011/2897(RSP))

The European Parliament,

- having regard to the European Union instruments dealing with the protection of human rights, in particular Articles 2, 6 and 7 of the Treaty on European Union and the Charter of Fundamental Rights of the European Union (CFR), in particular Articles 4, 19, 47, 48 and 49 thereof,
- having regard to the international instruments dealing with human rights and banning torture and inhuman or degrading treatment or punishment, in particular the Universal Declaration of Human Rights (Article 5), the International Pact on Civil and Political Rights (Article 7), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol to that Convention on the establishment of a system of regular visits by international and national bodies to places of detention,
- having regard to the Council of Europe instruments dealing with human rights and the prevention of torture and inhuman or degrading treatment or punishment, in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (Article 3), the protocols to the ECHR and the case law of the European Court of Human Rights (ECtHR), the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which established the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), and the CPT's reports,
- having regard to the instruments which deal more specifically with the rights of persons who have been deprived of their liberty, in particular: at United Nations level, the standard minimum rules on the treatment of prisoners and the declarations and principles adopted by the General Assembly; at Council of Europe level, the Committee of Ministers recommendations, namely Recommendation (2006)2 on European Prison Rules, Recommendation (2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, Recommendation (2008)11 on the European rules for juvenile offenders subject to sanctions or measures, Recommendation (2010)1 on the Council of Europe Probation Rules¹ and the recommendations adopted by the Parliamentary Assembly,
- having regard to its resolutions of 18 January 1996 on poor conditions in prisons in the European Union² and of 17 December 1998 on prison conditions in the European Union: improvements and alternative penalties³, and to its repeated calls to the Commission and Council to propose a framework decision on the rights of prisoners, as

¹ For an exhaustive list of the Council of Europe's recommendations and resolutions in the penal sphere: <http://www.coe.int/prison>.

² OJ C 32, 5.2.1996, p. 75.

³ OJ C 98, 9.4.1999, p. 209.

contained in its resolution of 6 November 2003 on the proposal for a European Parliament recommendation to the Council on procedural safeguards for suspects and defendants in criminal proceedings throughout the European Union¹, in its recommendation of 9 March 2004 to the Council on the rights of prisoners in the European Union² and in its resolution of 25 November 2009 on the multi-annual programme 2010-2014 regarding the area of freedom, security and justice (Stockholm Programme)³,

- having regard to the Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States⁴,
- having regard to Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union⁵,
- having regard to the proposal for a Council Framework Decision of 29 August 2006 on the European supervision order in pre-trial procedures between Member States of the European Union (COM(2006)468 final),
- having regard to the Commission proposal for a directive of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest (COM(2011)326),
- having regard to the Commission Green Paper on the application of EU criminal justice legislation in the field of detention - Strengthening mutual trust in the European judicial area - of 14 June 2011 (COM(2011) 327 final),
- having regard to the Oral Questions on detention conditions in the EU tabled by the ALDE, GUE/NGL, PPE, Verts/ALE and S&D groups,
- having regard to Rules 115(5) and 110(2) of its Rules of Procedure,

A. whereas the European Union has set itself the task of developing an area of freedom,

¹ OJ C 83E, 2.4.2004, p. 180. Paragraph 23: 'Encourages the Council and Commission to speed up the investigation n the condition of prisoners and of prisons in the EU, with a view to adopting a framework directive on prisoners' rights and common minimum standards to guarantee such rights on the basis of Article 6 [TEU]'. See also Parliament's resolution of 4 September 2003 on the situation as regards fundamental rights in the European Union (2002), paragraph 22: 'Considers, at a general level, that efforts must also be made in a European area of freedom, security and justice to mobilise European capacities to improve the operation of the police and prison system. for example ... by drawing up a framework decision on minimum standards to protect the rights of prisoners in the EU'.

² Report by Maurizio Turco, European Parliament recommendation to the Council on the rights of prisoners in the European Union (2003/2188(INI)), P5_TA(2004)0142.

³ P7_TA(2009)0090: in paragraph 112 Parliament 'calls for the construction of an EU criminal justice area based on respect for fundamental rights, the principle of mutual recognition, and the need to maintain the coherence of national systems of criminal law, to be developed through...minimum standards for prison and detention conditions and a common set of prisoners' rights in the EU...!.

⁴ OJ L 190, 18.7.2002, p. 1.

⁵ OJ L 327, 5.12.2008, p. 27.

security and justice, and whereas, pursuant to Article 6 of the Treaty on European Union, it respects human rights and fundamental freedoms, thereby taking on positive obligations which it must meet in order to honour that commitment;

- B. whereas detention conditions and prison management are primarily the responsibility of Member States, but whereas shortcomings, such as prison overcrowding and allegations of poor treatment of detainees, may undermine the trust which must underpin judicial cooperation in criminal matters based on the principle of mutual recognition of judgments and judicial decisions by EU Member States;
- C. whereas judicial cooperation in criminal matters needs to be based on respect for standards in the area of fundamental rights standards and the necessary approximation of the rights of suspects and accused persons and of procedural rights in criminal proceedings, which is crucial to ensuring mutual confidence among Member States in the area of freedom, security and justice, in particular given that the number of Member State nationals held in another Member State may rise as a result of such cooperation;
- D. whereas the total prison population of the EU in 2009-2010 was estimated to be 633 909¹; whereas the Commission Green Paper which contains that figure paints an alarming picture of:
- prison overcrowding²;
 - an increase in the prison population;
 - a rise in the number of foreign nationals being held³;
 - large numbers of pre-trial detainees⁴;
 - detainees with mental and psychological disorders;
 - numerous cases of death and suicide⁵;
- E. whereas Article 3 of the ECHR and the case law of the ECtHR impose on the Member States not only negative obligations, by banning them from subjecting prisoners to inhuman and degrading treatment, but also positive obligations, by requiring them to ensure that prison conditions are consistent with human dignity and that thorough, effective investigations are carried out if such rights are violated;
- F. whereas in some Member States a large part of the prison population is composed of

¹ Data reported by the Commission in its Green Paper on detention (COM(2011)0327 final); further data available from the Council of Europe, Space 1:

[http://www.coe.int/t/dghl/standardsetting/cdpc/Bureau%20documents/PC-CP\(2011\)3%20E%20-%20SPACE%20I%202009.pdf](http://www.coe.int/t/dghl/standardsetting/cdpc/Bureau%20documents/PC-CP(2011)3%20E%20-%20SPACE%20I%202009.pdf) ;

Space 2: http://www3.unil.ch/wpmu/space/files/2011/02/Council-of-Europe_SPACE-II-2009-E.pdf

² In the EU the average is 107.3; overcrowding concerns 13 MSs, as well as in England and Wales and Scotland, with the highest overcrowding in Bulgaria (155.6), Italy (153), Cyprus (150.5), Spain (136.3) and Greece (129.6).

³ EU average 21.7, with the highest percentages in Luxembourg (69.5), Cyprus (59.6), Austria (45.8), Greece (43.9) and Belgium (41.1).

⁴ EU average is 24.7, with the highest percentages in Luxembourg (47.2), Italy (43.6) and Cyprus (38.4).

⁵ CPT reports draw attention to the persistence of certain serious problems, such as ill-treatment and the unsuitability of prison facilities, activities and health care.

persons in pre-trial detention; whereas pre-trial detention is an exceptional measure and excessively long periods of pre-trial detention have a detrimental effect on the individual, can prejudice judicial cooperation between Member States and run counter to EU values¹; whereas a considerable number of Member States have repeatedly been condemned by the ECtHR for violations of the ECHR in relation to pre-trial detention;

- G. whereas one of the problems to which Member States frequently draw attention is the lack of resources available to improve prisons conditions, and whereas it may be necessary to create a new budget heading with a view to encouraging them to comply with high standards;
- H. whereas providing decent conditions for prisoners and granting them access to schemes designed to prepare them for a return to society help to reduce the likelihood that they will re-offend;
- I. whereas the Council has adopted resolutions and recommendations (which are not always implemented by the Member States) concerning the specific problem of drug dependence and the reduction of the related risks and dealing in particular with the treatment of drug dependence in prison and outside;
- J. whereas only 16 Member States have ratified the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, while seven have signed, but not yet ratified, it²;
- K. whereas some Member States grant national MPs and MEPs the right to visit prisons, and whereas the EP has called for that right to be granted to MEPs throughout the territory of the EU³;
- L. whereas children are in a particularly vulnerable position in relation to detention, in particular pre-trial detention;
- M. whereas on 30 November 2009, the Council adopted a roadmap for strengthening the procedural rights of suspected and accused persons in criminal proceedings, which is part of the Stockholm Programme and sets out vital safeguards that will help ensure that fundamental rights are respected in the push for increased cooperation between Member States in the area of criminal justice;
- N. whereas the Commission has issued a communication – further to an explicit request by the Council and as provided for in the Stockholm Programme and repeatedly called for by Parliament – entitled ‘Strengthening mutual trust in the European judicial area - A

¹ Roadmap for strengthening procedural rights of suspected and accused persons in criminal proceedings, 2009/C295/01, 30 November 2009.

² Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, France, Germany, Luxembourg, Malta, Netherlands, Poland, Romania, Slovenia, Spain, Sweden and the United Kingdom have ratified; Austria, Belgium, Greece, Finland, Ireland, Italy, Portugal have signed but not ratified it; source: <http://www.apr.ch/npm/OPCAT0911.pdf>.

³ See, for example, Parliament's resolution on prison conditions in the European Union: improvements and alternative penalties, paragraph 41: *'Calls for Members of the European Parliament to have the right to visit and inspect prisons and detention centres for refugees on the territory of the European Union'*.

Green Paper on the application of EU criminal justice legislation in the field of detention'¹, which launches an open consultation exercise for stakeholders on EU action to improve detention conditions so as to ensure mutual trust in judicial cooperation, highlights the links between detention conditions and various EU instruments, such as the European Arrest Warrant and the European Supervision Order, and makes it clear that detention conditions, pre-trial detention and the situation of children in detention are issues on which the EU could take initiatives;

1. Welcomes the Commission Green Paper; is concerned by the alarming situation as regards detention conditions in the EU and calls on Member States to take urgent measures to ensure that the fundamental rights of prisoners, in particular the rights of vulnerable persons, are respected and protected, and considers that minimum common standards of detention should be applied in all Member States²;
2. Reaffirms that detention conditions are of central importance for the application of the principle of mutual recognition of judicial decisions in the area of freedom, security and justice, and considers a common basis of trust between judicial authorities, as well as a better knowledge of national criminal justice systems, to be of critical importance in this respect;
3. Calls on the Commission and the Fundamental Rights Agency to monitor the situation as regards detention conditions in the EU, and support the Member States in their efforts to ensure that their laws and policies are consistent with the highest standards in the field³;
4. Calls on the Commission and EU institutions to come forward with a legislative proposal on the rights of persons deprived of their liberty, including those identified by the EP in its reports and recommendations⁴, and to develop and implement minimum standards for prison and detention conditions, as well as uniform standards for compensation for persons unjustly detained or convicted; calls on the Commission and Member States to keep the issue high on their political agenda and to devote appropriate human and financial resources to addressing the situation;
5. Stresses the importance of ensuring that fundamental rights are respected, notably the rights of the defence and of access to a lawyer, and that the rights of suspects or accused persons are guaranteed, including the right not to be subjected to inhuman or degrading treatment; recalls, in this connection, the importance of the Commission proposal on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest;
6. Stresses that detention conditions that are perceived as poor, or conditions that risk

¹ COM(2011)0327; see http://ec.europa.eu/justice/policies/criminal/procedural/docs/com_2011_327_en.pdf.

² Such as the European Prison Rules adopted by the Council of Europe.

³ Such as the standards established by the Council of Europe, the CPT, the European Court of Human Rights and its relevant case law, and the observations of the UN Human Rights Committee, Committee against Torture and Special Rapporteur on Torture.

⁴ See paragraph 1(c) of recommendation [T5-0142/2004](#).

falling below the standards required by the Council of Europe's European Prison Rules, could be an impediment to the transfer of prisoners;

7. Calls on the Member States to earmark appropriate resources for the restructuring and modernisation of prisons, to protect detainees' rights, to successfully rehabilitate and prepare detainees for their release and social integration, to provide the police and prison staff with training based on contemporary prison management practices and European human rights standards, to monitor prisoners suffering from mental and psychological disorders, and to create a specific EU budget heading with a view to encouraging such projects;
8. Reaffirms the need to promote the improvement of prison facilities in Member States, in order to provide them with appropriate technical equipment and expand the space available, and to make them functionally suitable to improving the living conditions of detainees, while ensuring a high level of security;
9. Calls on the Member States to ensure that pre-trial detention remains an exceptional measure to be used under strict conditions of necessity and proportionality and for a limited period of time, in compliance with the fundamental principle of presumption of innocence and of the right not to be deprived of liberty; recalls that pre-trial detention must be reviewed periodically by a judicial authority and that alternatives such as the European Supervision Order must be used in transnational cases; calls on the Commission to come up with a legislative proposal on minimum standards in this field based on Article 82(2) (b) of the Treaty on the Functioning of the European Union (TFEU), on the CFR, on the ECHR and on ECtHR case law;
10. Reaffirms the need for Member States to honour the commitments made in international and European fora to making greater use of probation measures and sanctions which offer an alternative to imprisonment, including decisions taken within the Council of Europe¹;
11. Urges the Member States to take action to prevent suicides in prison and to carry out in-depth and impartial investigations in all cases where a prisoner dies in prison;
12. Calls on the Member States and the accession countries to sign and ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment Punishment, which establishes a system of regular visits by international and national bodies to places of detention and confers on those bodies the task of visiting and inspecting prisons and hearing appeals by prisoners, as well as drawing up a public annual report for the relevant parliaments; encourages the European Union to make a call to sign and ratify the Optional Protocol part of its policy vis-à-vis third countries; calls on the EU and its Member States to fully collaborate with and support these bodies, including with appropriate resources and funds;
13. Believes that measures should be taken at EU level so that national MPs are guaranteed

¹ Such as Recommendation CM/Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules.

the right to visit prisons and that this right is likewise granted to MEPs within the territory of the EU;

14. Calls on the Commission to examine the impact of differences in criminal law and procedural law on detention conditions in the EU Member States and to make recommendations on these issues, notably in relation to recourse to alternative measures, criminalisation and decriminalisation policies, pre-trial detention, amnesty and reprieve, notably in the fields of migration, drugs use and juvenile offenders;
15. Reaffirms the importance of ensuring that children are treated in a manner that takes into account their best interests, including being kept separate from adults and having the right to maintain contact with their families;
16. Considers that every child deprived of his or her liberty should have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of liberty before a court or other competent authority;
17. Believes that Member States should implement effective and independent national supervision mechanisms for prisons and detention centres;
18. Supports the CPT's and the Council of Europe Commissioner for Human Rights' continued work in and visits to Member State detention centres;
19. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States, the Council of Europe, the Council of Europe Parliamentary Assembly, the Council of Europe Commissioner for Human Rights, the European Committee for the Prevention of Torture, the European Court of Human Rights, the UN Committee on Human Rights, the UN Committee against Torture, the UN Special Rapporteur on Torture and the UN High Commissioner for Human Rights.