

KMS Question: 110121: Evaluation of the Measures Taken in the Different Member States During the Ongoing COVID-19 Crisis

Following EuroPris President Romain Peray's meeting with European Commissioner for Justice, Didier Reynders, in December 2020, we would like to ask you the following questions as a first step in the evaluation of the measures taken in the different Member States during the ongoing COVID-19 crisis. This first set of questions relate to the emergency measures taken by judicial and/or prison authorities to reduce the number of persons in detention. This may concern measures reducing the intake of prisoners, early release schemes or the use of alternative measures to detention (such as electronic monitoring), both at the pre-trial and the post-trial stage. At a later stage, we will focus on other measures taken by the authorities during the crisis, such as the use of video calls, e-learning and e-medicine. The results of the evaluations could feed into a report on the lessons learned and the possibilities to maintain these opportunities in the long term.

1.a) What measures / alternative sentences did you apply to reduce overcrowding / number of prisoners in the PRE-TRIAL PHASE?

In the Spanish criminal justice system, at the pre-trial stage the judge can resort to different so called cautionary measures (*medidas cautelares*) to ensure the attendance of the accused to the trial, the preservation of evidence or to prevent the risk of recidivism. As foreseen in the Criminal Procedural Code, cautionary measures include pre-trial detention, bail, prohibition to leave the country, to drive or to live in a particular place or a restraining order. These measures are considered temporary and dependent on the need to secure the trial, are not regarded as punishment or penalty, therefore cannot be equated to "alternative sentences" as prison sentences or sanctions alternative to prison (treatment, community work, training, etc.) will only be imposed after a trial has been held.

The assessment on the whether it is necessary or not to impose pre-trial detention or any of the available cautionary measures, lies with the judge, therefore the Secretariat of Criminal Sanctions, Rehabilitation and Victim Support (hereinafter SCSRVS) cannot implement any temporary measures to reduce pre-trial detention nor prison sentences. Moreover, the data concerning these measures belong to the General Council of the Judicial System (*Consejo General del Poder Judicial*) and the SCSRVS has no access to them.

Against this background, both the Catalan Minister of Justice, Ms Capella, and the Secretary of Criminal Sanctions, Rehabilitation and Victim Support, Mr Calderó, requested the president of the High Court of Catalonia (Tribunal Superior de Justicia de Catalunya) to introduce temporary recommendations for all the criminal courts to help reduce new admissions into prison to the extent possible. To this date, the SCSRVS is not aware that any particular measure was recommended in order to reduce pre-trial detention or postpone the enforcement of prison sentences.

Over the months of the strictest lockdown, the number of new admissions decreased significantly due to the suspension of judicial and procedural activity. This led to a natural reduction of the pre-trial detainees and new sentenced inmates in prison. However, when the judicial activity was resumed, the number of new admissions increased again as it is shown in the following tables.

	NEW SENTENCED INMATES		PRE-TRIAL DETAINES	
	2019	2020	2019	2020
January	147	131	274	343
February	162	142	378	416
March	145	102	412	316
April	139	29	274	168
May	160	28	381	183
June	128	82	408	333
July	143	136	372	390
August	104	96	290	322
September	123	95	301	313
October	136	144	416	444
November	118	123	383	379
December	117	71	346	346
TOTAL	1.622	1.179	4.235	3.953

1.b) What measures / alternative sentences did you apply to reduce overcrowding / number of prisoners in the POST-TRIAL PHASE?

A significant number of inmates have been granted a specific type of open regime foreseen by art. 86.4 of the Prison Regulations. Art. 86.4 PR is meant for inmates that have been granted 3r grade and allows them to live in their home or in a half-way house, without having to spend the night in prison, while being supervised by the prison multidisciplinary teams.

In 2020, a total of 2169 inmates were granted art. 86.4 PR, compared to the 539 that were granted this open regime in 2019.

In order to be granted art. 86.4 PR, the inmate has to meet the following criteria:

- Presenting indicators that they will be able to comply with the lockdown measures applicable in the community
- Having a place of residence
- Having sufficient source of livelihood
- Presenting low risk of reoffending and low risk of drug/alcohol consumption relapse.

The prison multidisciplinary teams closely monitor these inmates through different means such as the electronic monitoring bracelet, alcoholometer, geolocation and videocall. In addition to all of the above, in-person follow-up is also being conducted contacting inmates at least twice a week to monitor their progress in the community.

With regard to those inmates with a pre-existing health condition rendering them particularly vulnerable to covid-19, or those older than 70 years old, their situation has also been reviewed. Those who met the criteria mentioned above, have been granted art. 86.4 PR so that they are at home or in supervised apartments while being monitored.

Those who meet all the requirements but do not have a place to live, have been placed in half-way houses that have been rearranged to comply with the strict health safety measures these particularly vulnerable inmates require. Close monitoring in the terms described earlier is also being conducted.

All cases in which art. 86.4 PR has been granted over the months of the pandemic, are being evaluated regularly by the prison treatment boards over the 6 months following the decision, in order to assess whether the open regime under art. 86.4 PR, is being beneficial for the inmate thus it can be confirmed, or needs to be withdrawn.

Moreover, the cases of inmates that were serving a security measure in the Prison Psychiatric Hospital Unit were assessed to identify those who could be relocated to complete the last stages of the security measure in a psychiatric hospital in the community.

2. a) What measures worked best to achieve the reduction of overcrowding / number of prisoners in the PRE-TRIAL PHASE?

As explained under 1. a) the number of new admissions into prison decreased in 2020 compared to 2019, partly due to the reduction of criminality during the lockdown periods and also due to the suspension of the courts activity during the lockdown, but as far as we know, not because of any specific measure implemented by the judiciary to reduce the number of inmates in prison.

2. b) What measures worked best to achieve the reduction of overcrowding / number of prisoners in the POST-TRIAL PHASE?

All measures mentioned under 1.b) contributed significantly to reduce the number of inmates in prison at the post-trial stage.

The prison treatment boards, when reviewing the evolution of an inmate on 3rd grade or on art. 86.4, have decided to maintain it in a high rate of cases. The positive outcomes in the extensive

application of 3rd grade and art. 86.4 PR during the pandemic are a solid evidence that when being properly supervised and given the right support in their reintegration process, a larger share of inmates is prepared to serve their sentence in the community (3rd grade) and not spending the night in prison (art. 86.4) without breaking the sentence.

The relocation of inmates with a mental condition in psychiatric hospitals in the community, has also had very positive outcomes. This shows that in actual practice there are more inmates eligible to serve the last stages of their security measure in a psychiatric hospital in the community, which in its turn, favours their reintegration process.

3. a) What were the main challenges in applying such measures or resulting from those measures in the PRE-TRIAL PHASE?

See 1. a)

3. b) What where the main challenges in applying such measures or resulting from those measures in the POST-TRIAL PHASE?

The Secretary had informed the Prison Surveillance Coordinator Prosecutor (*Fiscal Coordinador de Vigilància Penitenciària*) about the professional criteria that would applied to grant art. 86.4RP to more inmates who were eligible for it. The Prosecutor considered that these criteria could only be applied exceptionally for the time span the state of alarm was declared and the strictest lockdown was in place. Currently the Prosecutor is appealing an important number of decisions of the prison treatment boards granting art. 86.4PR on the grounds that the exceptional circumstances do not apply any longer. Following from that, the Prison Supervision Court (*Jutjat de Vigilància Penitenciària*) is revoking art. 86.4 PR for a relevant number of inmates.

This adds to the fact that to our knowledge, as pointed out earlier, criminal courts have not implemented any specific strategy or measures to reduce the prison population by postponing the enforcement of prison sentences nor reducing the number of prison sentences imposed and resort to alternative sentences instead.

It is also worth mentioning that was challenging to find vacancies in Psychiatric Hospitals in the community for those inmates serving a psychiatric security measure. It was also the case for those inmates that were prepared for the open regime under art. 86.4 PR but did not have a place to live. In both cases it required new organisation arrangements in order to accommodate the increased demand.

4. a) Which measures could be continued to be applied in a similar way after the pandemic in the PRE-TRIAL PHASE?

As mentioned earlier under 1. a), the decision on whether to impose a pre-trial cautionary measure and which type, lies with the judge, hence implementing measures to reduce prison population at the pre-trial stage is out of the reach of the SCSRVS.

4. b) Which measures could be continued to be applied in a similar way after the pandemic in the POST-TRIAL PHASE?

The SCSRVS is determined to reach the point in which 30% of the prison population is on 3rd grade and to provide the means to support these inmates so that they successfully comply with the requirements of this life regime. Amongst others, the prison leaves have been extended so that the Individual Treatment Programmes continue to progress and support a safer return to the community.

With regard to those inmates who are serving a security measure in the Prison Psychiatric Hospital, the cases will be assessed with the new approach used in pandemic times so that those who are prepared, can complete the last stages of their security measure in a psychiatric hospital in the community.

5. Are you confident that the effects of these measures have changed professional cultures on a long term?

The positive experience of applying these measures at the post-sentence stage, has convinced prison professionals and senior officials that, more inmates could be eligible to an open regime and progress successfully. Namely, open life regimes can be granted on more instances and the SCSRVS has set the objective that once the pandemic is over, there should be at least the 30% of the prison population on 3rd grade.

Unfortunately, it seems that the professional culture of judiciary and the prosecution office has not changed significantly. From our viewpoint, they continue to resort to the prison sentence in excess. We firmly believe that judicial authorities, currently and in the future, could easily resort to alternative sanctions and restorative justice practices in a higher number of cases than they usually do. These are both fully legislated options in the whole of Spain and count on service provision available all across Catalonia.