



Resolution 2077 (2015)¹
Provisional version

Abuse of pretrial detention in States Parties to the European Convention on Human Rights

Parliamentary Assembly

1. The Parliamentary Assembly stresses the importance of the presumption of innocence in criminal proceedings. Pretrial detention (detention on remand) should be used only exceptionally, as a last resort, when alternative measures of restraint are insufficient to safeguard the integrity of the proceedings.
2. The Assembly notes the multiple negative effects of pretrial detention, both on the detainee and on society as a whole, most of which also occur when the detainee is subsequently acquitted:
 - 2.1. negative effects of pretrial detention on detainees:
 - 2.1.1. risk of job loss or bankruptcy; their families suffer economic hardship in addition to the human consequences of prolonged separation;
 - 2.1.2. in many instances, exposure to violence by other inmates and officials, the nefarious influence of hardened criminals, contagious diseases and difficult detention conditions, which are often worse for pretrial detainees than for convicted criminals serving their prison term;
 - 2.1.3. threat to the right to a fair trial guaranteed by Article 6 of the European Convention on Human Rights (ETS No. 5, "the Convention") due to the psycho-social consequences of pretrial detention, which is often accompanied by severe isolation and undermines the detainees' ability to defend themselves effectively;
 - 2.2. negative effects of pretrial detention on society as a whole:
 - 2.2.1. the high budgetary cost of detention in comparison with other measures of restraint, such as bail, house arrest, curfews or restraining orders, with or without electronic supervision. The resources spent on pretrial detention could be put to better use for crime prevention, increasing the rate of elucidation of crimes, and the re-socialisation of offenders;
 - 2.2.2. the loss of the economic contribution of pretrial detainees, the de-socialising effect of detention on the detainees' family and the negative effects of detention on the spread of infectious diseases;
 - 2.2.3. the fact that pretrial detention without effective controls creates opportunities for corruption and generally undermines the public's trust in the proper functioning of the criminal justice system.
3. The European Convention on Human Rights, as interpreted by the European Court of Human Rights, has established clear limits for the use of pretrial detention and rules applying to the treatment of pretrial detainees.
4. The Assembly notes that the laws of most member States are generally in line with Convention standards, but their application by the prosecutorial authorities and the courts is frequently not.

1. *Assembly debate* on 1 October 2015 (34th Sitting) (see [Doc. 13863](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Pedro Agramunt). *Text adopted by the Assembly* on 1 October 2015 (34th Sitting).
See also [Recommendation 2081 \(2015\)](#).

5. As the different practices in this respect, even among member States of the European Union, threaten the effectiveness of international legal cooperation, the European Union has commissioned extensive comparative research to identify problems and possible solutions.
6. The high number of pretrial detainees (in absolute terms and in relation to the total prison population), almost 425 000 (25% of all prisoners) in Europe (2013), is an indication that the permissible grounds for pretrial detention, notably to prevent a suspect from absconding or interfering with witnesses and other evidence, are generally interpreted too widely or invoked pro forma in order to justify pretrial detention for other, abusive purposes.
7. The following abusive grounds for pretrial detention have been observed in a number of States Parties to the European Convention on Human Rights, namely to:
 - 7.1. put pressure on detainees in order to coerce them into confessing to a crime or otherwise cooperating with the prosecution, including by testifying against a third person (for example the case of Sergey Magnitsky, in the Russian Federation, and certain cases of opposition leaders in Georgia, such as former Prime Minister Merabishvili);
 - 7.2. discredit or otherwise neutralise political competitors (for example certain cases of United National Movement (UNM) leaders in Georgia);
 - 7.3. promote other, including foreign policy-related, political objectives (for example the case of Ms Nadiia Savchenko, the Ukrainian pilot and member of the Ukrainian delegation to the Parliamentary Assembly, in the Russian Federation);
 - 7.4. put pressure on detainees in order to compel them to sell their businesses (for example the Gusinsky case in the Russian Federation) or in order to extort bribes;
 - 7.5. intimidate civil society and silence critical voices (for example the case in Turkey of a 16-year-old placed in pretrial detention for allegedly insulting the President via social media, the cases of prominent human rights defenders and lawyers in Azerbaijan, and the lengthy pretrial detention of peaceful protesters in the “Bolotnaya” and other cases in the Russian Federation).
8. The over-representation of foreign nationals among pretrial detainees gives rise to concerns that the legal grounds for detention are applied in a discriminatory way.
9. Some countries, such as Poland, have made considerable progress in reducing pretrial detention, by implementing substantial reforms to execute relevant judgments of the European Court of Human Rights.
10. Other countries, such as the Russian Federation, Turkey and Georgia, have adopted legal reforms accompanied by practical measures which have led to a clear reduction in the number of pretrial detainees and considerable improvements in the treatment of the majority of detainees, even though abuses of pretrial detention, as mentioned above, continue to occur.
11. The root causes of the abusive use of pretrial detention include:
 - 11.1. a political and legal culture which rewards those who are perceived as tough on crime, at the expense of the presumption of innocence;
 - 11.2. a structural imbalance between the prosecution and the defence in terms of power and available resources (access to relevant information, time, funding);
 - 11.3. the fact that decisions on pretrial detention are frequently taken by more junior judges, who tend to be overworked and reticent to assert their authority vis-à-vis the prosecution. The result is, in a number of instances, a widespread practice of rubber-stamping of the prosecution’s requests by judges, without taking into account the circumstances of the individual case;
 - 11.4. the possibility of “forum shopping” by the prosecution, which may be tempted to develop different strategies to ensure that requests for pretrial detention in certain cases are decided by a judge who, for various reasons, is expected to be “accommodating” (for example in Georgia, the Russian Federation and Turkey);
 - 11.5. the possibility for the prosecution to circumvent statutory time limits imposed on pretrial detention by modifying or staggering indictments (for example in the cases of Mr Ugulava and Mr Akhalaia, before the judgment of the Constitutional Court of Georgia in September 2015).

12. The Assembly therefore calls on all States Parties to the European Convention on Human Rights to:
 - 12.1. implement measures aimed at reducing pretrial detention, including by:
 - 12.1.1. raising awareness among judges and prosecutors of the legal limits placed on pretrial detention by national law and the European Convention on Human Rights and of the negative consequences of pretrial detention on the detainees and their families and on society as a whole;
 - 12.1.2. ensuring that decisions on pretrial detention are taken by more senior judges or by collegiate courts and that judges do not suffer negative consequences for refusing pretrial detention in accordance with the law;
 - 12.1.3. ensuring greater equality of arms between the prosecution and the defence, including by allowing defence lawyers unfettered access to detainees, by granting them access to the investigation file ahead of the decision imposing or prolonging pretrial detention, and by providing sufficient funding for legal aid, and also for proceedings related to pretrial detention;
 - 12.1.4. taking appropriate action to redress any discriminatory application of the rules governing pretrial detention with regard to foreign nationals, in particular by clarifying that being a foreigner does not per se constitute an increased risk of absconding;
 - 12.2. take appropriate measures to prevent “forum shopping” by prosecutors;
 - 12.3. refrain from using pretrial detention for purposes other than the administration of justice and to release all detainees currently held for any abusive purposes or under any abusive procedure (set out in paragraphs 11.4 and 11.5).
13. The Assembly commends the European Union for the initiatives taken in recent years aimed at reducing pretrial detention in European Union member States and invites the competent bodies of the European Union to continue basing their work on the standards set by the European Convention on Human Rights, as interpreted by the European Court of Human Rights.