
PRE-TRIAD

ALTERNATIVE PRE-TRIAL DETENTION
MEASURES: JUDICIAL AWARENESS
AND COOPERATION TOWARDS THE
REALIZATION OF COMMON
STANDARDS.

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Every year, around 10 million people worldwide are imprisoned in pre-trial detention and remain in prison for months or years before their guilt is proven.

According to the Council of Europe, there are currently 1,229,385 prisoners in all the prison institutions of the EU member states, of which 22.4% are detained even though they have not yet received a final sentence. Oddly enough, even though detention rates have been going down for several years now, the percentage of non-definitive prisoners has increased by 5.0% compared to 2016 [1]. In the European circuit, cases such as Italy, Greece and Sweden represent some examples of countries that are above the European average (26%) of prisoners in pre-trial detention, awaiting a fate.

The issue of pre-trial detention (PTD) is of concern, since its overuse has a negative impact not only on prisoners and their fundamental rights, but also on their families, communities and even on the financial resources of the countries [2]. Furthermore, it is impossible to overlook the organizational impact of the penitentiary system since one of the main causes of prison overcrowding is precisely due to the growing use of PTD.

Preventive detention therefore ends up functioning as a catalyst that aggravates many other problems; think of the hygiene of prison environments, the ease with which diseases can spread, the tensions and violence that the state of "provisionality" of detention often entails. It is not surprising that the World Health Organization defines prisoners in pre-trial detention, a "particularly vulnerable group" due, not only to problems related to the lack of communication with the outside world following the arrest, but also due to the conditions of the detention facilities. Consequently, the negative impacts of the PTD fall in the individual sphere of the detained subject also in reference to the social aspect and his psychological state. Anger and despair, as well as greed and restlessness, find reason to exist in a chaotic path without answers.

In fact, any pre-trial detention leads to an increase in expenses, a decrease in revenue and fewer resources for other programs (opportunity costs) [3], as people detained awaiting trial cannot work, earn an income and often lose work due to detention. And not only that, the risk is not only the loss of a job or long-term unemployment, but also underemployment after being released due to the inevitable "detention stigma", combined with the loss of educational opportunities and / or training.

In this context, the PRE-TRIAD project, funded by the European Commission, aims to lay the foundations for the creation of common standards with respect to fundamental rights on the practical application of the PTD and alternative measures to custody in prison, while promoting the application in the EU Member States of the Council Framework Decision 2009/829 / JHA of 23 October 2009.

This decision fits fully into the broad European objective aimed at preserving and developing an area of freedom, security and justice, allowing the situation to be protected when a person residing in one Member State is subject to criminal proceedings in another Member State. . Furthermore, the intervention of the European legislator originates from the observation that in practice, especially where the suspect/accused is a foreigner, the judicial authorities are more likely to resort to pre-trial detention rather than other alternative measures to prison.

[1] Aebi e Tiago, 2018.

[2] Open Society Justice Initiative [OSJI], 2011.

[3] OSJI, 2011, p. 35

In addition to the problem of prison overcrowding, this trend risks leading to a difference in treatment between suspects/accused citizens of the prosecuting Member State and suspects/accused persons who are citizens of another Member State, since, in the same situation, only the former could benefit from less restrictive precautionary treatment.

With this in mind, Framework Decision 2009/829 / JHA, relying on the known principle of mutual recognition of criminal decisions, aims in article 2 to allow precautionary measures other than the detention adopted by a judicial authority of one Member State. This can find execution in the Member State of normal residence of the suspect, or even in a different country of choice, simultaneously guaranteeing the regular course of justice and the appearance of the accused at the trial.

These impacts clearly underline the need for alternative precautionary measures to prison custody, which should instead be seen and adopted only in certain situations. Judicial awareness and cooperation of the various Member States in criminal matters are the successful approaches of the EU and are, without doubt, the best practices in the field of PTD alternatives.

The PRE-TRIAD project responds to the main objective of the EU to present proposals on the matter. This is done by contributing to the effective and coherent application of one of the mutual recognition instruments, namely Council Framework Decision 2009/829 / JHA on the application of measures alternatives to provisional detention and all related matters. Also providing a detailed report on national and European legislation on PTD, on its impacts, at national, organizational and individual level, as well as on successful alternative practices to PTD. As well, seeking to raise awareness among policy makers, judicial professionals and training academies, researchers/academics and all interested parties as well as the jurisprudence of the European Court of Human Rights. The awareness of the judicial professionals of the various Member States that within the PRE-TRIAD project will be possible with the promotion of various practical live events will improve not only judicial cooperation but also the interchangeability of practices, based on each context national, and in line with the application of Council Framework Decision 2009/829 / JHA.

The mechanisms underlying the aforementioned framework decision both ensure cooperation between the Member States and make it possible to balance the interests of the States themselves.

Including both security and effective repression of crimes on the one hand and the right to freedom and the presumption of innocence on the other.

The relationship between crime repression at the European level and the safeguarding of fundamental rights and freedoms has always been a source of tension. Until the adoption of the Lisbon Treaty, in fact, the security approach has undoubtedly prevailed in the various areas of cooperation concerned. However, the will of the States to cooperate on the matter has finally arrived, albeit late and in a still limited way, thus favoring the use of criminal law. This time it comes with the aim of guaranteeing and promoting fundamental rights, typical characteristics of the most advanced justice systems.

The new legal bases and the new institutional framework provide the potential elements for the development of a European criminal law as an effective in the suppression of crime, but which is also aimed at guaranteeing respect for the rights of the persons involved.

The right not to be deprived of one's individual freedom except in the cases and in the ways provided for by law constitutes one of the pillars of the European Convention on Human Rights. The ECHR has reserved the protection against the arbitrary application of such deprivation in article 5. The freedom of the person is sacred, and to violate this social, constitutional and human foundation is wrong. With an order of pre-trial detention, especially prison, the value of individual freedom is sacrificed in favor of collective, national, and public defense.

The recognition of individual responsibility, the legitimacy or otherwise of many of the pre-trial detention requirements laid down in the course of a criminal proceeding, is a theme that leads to the re-evaluation of the importance of the freedom and dignity of the individual, especially when the penal institutions that they contain them can no longer manage overcrowding and all negative impacts. When the living conditions inside the prisons become inhuman, a kind of "torture" is added to the sentence to be served instead of re-education, leaving the situations that arise to become increasingly critical and dangerous.

"There is no freedom whenever laws allow man to cease to be a person and become a thing in some events," wrote Cesare Beccaria.

At this point one wonders what the true meaning of the term 'freedom' is, what the intrinsic fears are and which are the deterrent factors.

The punitive power of the state represents the boundary line between society and its conflicts, and prison represents a continually boiling container. It is not at all the dividing line that separates good from evil, but it is that gray area where our civilizations' fight their ghosts.

Therefore, a system incapable of interfacing with the living conditions attributable to it will always find the only response in violence and blurred repression that allows it to continue lying to itself, hiding its moral and cultural decadence. On the contrary, a system that shows itself to be human and guaranteed should work on the dignity of the individual and not on his devastation, as a first step towards legality, as a first step to claim fairness, as a first step in educating to respect oneself and the community. This in turn helps reach consciences and increases the awareness of individuals without destroying their identity.

Finally, establishing common standards of respect for rights becomes absolutely necessary for the adoption and implementation of effective measures in the fight against crime, but, above all, it is the only way to build a real area of freedom, security and justice.



According to the Council of Europe, there are currently 1,229,385 prisoners in the penal institutions of the Member States that comprise the organisation. Of these inmates, more than 22% on average are under pre-trial detention (PTD). PTD should not be overlooked as its overuse negatively affects not only detainees and their fundamental rights, but also their families, communities and even countries' financial resources. Moreover, the organisational impact of this issue on penitentiary systems should also be addressed. The PRE-TRIAD projects aims to promote judicial cooperation between European Union member States (EUMS), making policymakers and stakeholders aware of the challenges posed by pre-trial detention. In addition, it is imperative to lay the foundations for the establishment of common standards with respect to fundamental rights regarding the practical application of pre-trial detention (and its alternative measures), while promoting the implementation of Council Framework Decision 2009/829/JHA of 23 October 2009.



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ANY QUESTIONS?

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