



“Regional Meeting on promoting reforms in pretrial detention”, February 19, 2015, Pristina, Kosovo

Meeting Report with conclusions:

As part of implementation the current project “Initiatives of Human Rights against torture and ill-treatment in correctional institutions” supported by OSI, The Kosova rehabilitation Center for Torture victims (KRCT) organized a Regional Meeting on “Promoting Reforms in pretrial detention” on February 19, 2015 in Prishtina, Kosovo.

The meeting gathered around twenty experts, including representative of relevant regional NGOs from Albania, Montenegro, Serbia, Macedonia, working directly in criminal justice reforms, Kosovo NGO’s, Ombudsperson Institution, Prosecutor Office, and KRCT staff. The event also brought together the international experts on PTD (Fair Trial International, Belgium and UK) as well as representative from the regional programs on criminal justice.

Prior to the meeting, regional partners were asked to deliver a background information paper - a short discussion paper in order to facilitate and shape the discussions with regard to what each organization wants to achieve at this conference.

In Kosovo, there is issue of massive use of PTD, its misapplication or lack of considering the alternatives; long pretrial detention and lack of effectiveness of judicial remedies; In Macedonia there is violation of presumption of innocence not only from the judicial authorities, but even from the politicians, government or media. The vast majority of requests for PTD approved by judges, which raise the dilemma - who indeed impose the PTD, prosecutors or judges? In Albania there’s need to improve the Criminal Code for a more effective penal policy. Use of detention as a formal punishment remains a key concern with regard to human rights violations. The situation in police pretrial facilities is of grave concern with the large number of reporting being exposed to violence during arrest or custody.

For Serbian NGO’s working in criminal justice reforms remains the priority build the state mechanisms capacities and strengthen existing ones such as probation service for proper implementation of PTD alternatives. Public security aspects dominate the agenda of human rights in places of detention in Serbia; In Montenegro the main concerns remain implementation in practice of law provision for the human rights in places of detention. There is still massive application and without justification of the PTD by judges.

The discussions focused primarily the main challenges that each country face in application of PTD under the respective judicial system as well as the opportunities on how to address and promote its effective use and promote alternatives to PTD to ensure more human and efficient criminal judicial system in the regional countries.

Participants mainly addressed improper application of PTD by the courts, its lack of reasoning and extending beyond reasonable deadlines. Hereto, it was estimated that the massive use of detention constitutes a violation of Article 5 of the European Convention of Human Rights and when applying for

a long time in closed institution it constitutes violation of principle of *presumption of innocence, right to life and freedom of movement*.

Another concern was considered poor physical conditions in places of detention where PTDs are held. The risk of torture and ill treatment and security during pre-trial detention is higher. In these places often overcrowded, there's lack of accommodation conditions, no privacy among detainees; the risk of transmission of transmitted diseases remains high etc. It was also emphasized that apart from the obligation of public authorities to ensure dignity and human treatment including proper accommodation for the prison population, above mentioned facts should address the violation of the Article 3 of the European Convention of Human Rights.

Due to lack of institutional mechanisms and capacities for the implementation of alternatives, participants emphasized the need to strengthen such mechanisms and provide trainings for judges and prosecutors in the efficient application of pretrial detention according to international standards, focusing primarily in ECtHR judgments/interpretation.

Further, for awareness raising purposes and promote reforms in detention custody, participants highlighted the argument of the consequences of unlawful detention which creates a very high cost for its compensation; provision of statistical data; using ECtHR decision/arguments where the Court has decided in favor of parties in local strategic cases; using data from detention monitoring and trial monitoring to address systemic problems and material conditions in places of detention; using specific researches; wide consultation with state and non-state bodies; writing public appeals; produce finding reports with recommendations; etc.

For the budget of countries like Kosovo, Serbia and Montenegro the question of compensation of unlawful detention is become a sensitive issue in recent years.

Participants agreed on significant and necessity of a wider access to official documents to ensure the right to information for the party accused party – *principle of equality of arms*. A challenge in itself was assessed awareness of the judicial authorities for the maintenance of data, in particular publication those important for the public.

The use of media for the public and institutional awareness purposes was estimated of as particular important factor. At this point, however, participants had their reservations starting from bad experiences when the media are influenced, driven by powerful political influence or in some cases due to their little attention on Human Rights in general.

It was noted that good relation of regional CSOs with judicial authorities in conducting its mandate as a positive incentive to put in their own agenda the pre-criminal justice issues and associated reforms. However, also was prevalent the idea of inclusiveness in this communication of other stakeholders such as media, lawyers associations, correctional and probation service, MPs, international actors etc., Establishment of mutual cooperation between NGO's and Advocates may be of useful for sharing the experience in PTD application.

In addition to discussing the meeting explored ongoing debates, initiatives, strategies surrounding PTD practices and potential avenues of NGO participation in reforms efforts. It examined how strategic litigation and detention monitoring can be applied to promote reforms in PTD.

Under the *thematic groups' discussion*, participants discussed concrete ways on how to influence policy and legislative reform in relation to PTD. The main conclusions from these discussions were:

1) *Changing judicial attitudes and promoting the use of alternatives to PTD:*

The group stated the problem as the overuse of pre-trial detention and the violation of the human rights of those people in detention. The group proposed the following advocacy actions to address this, focused on changing judicial attitudes and promoting alternatives:

- Share findings of trial monitoring projects and use statistics and human stories with the judiciary authorities;
- Sensitize judges and prosecutors about impact of their decisions and the conditions in detention facilities by highlighting concrete case examples from monitoring and arranging visits to detention centers etc. This will ensure that judges know where they are sending people to;
- Training of judges and prosecutors as part of their continuous training on the use of alternatives to PTD. Representatives from the Albanian Helsinki Committee explained that they have a Memorandum of Understanding with the Magistrates School through which they provide training and that this is an example of good practice;
- Strategic litigation focused on issues relating to Articles 3 and 5 of the European Convention on Human Rights;
- Build the alliances with different stakeholders, including state/non-state actors, the media, political decision-makers;
- Use the political agenda, such as the EU accession process under which every state has been given 'homework' which may be put to good use in pushing certain priorities; and
- Promotion of the findings of CPT reports.

2) *Obtaining statistical data - addressing the use of PTD:*

The discussions on this topic were oriented on how to obtain statistical data and how to use it to influence reforms in PTD.

The group first considered **what** type of data do we have and what type of data do we need?

- How many – number and categories of detained population;
- Costs – human and economic.

The group then discussed who should be approached to seek data:

- Courts;
- Prosecutors office;
- General Prison Directorate;
- State attorney;
- Probation Service;

The group agreed that any data collected should be made public by NGOs through shadow reports. It also agreed that this data should be collected regularly, on a periodic and systematic basis. The key priority is to have more transparency and information available.

Data is needed as a basis for analysis, comparison and for developing policies. New Action Plans and strategies are being developed all the time, but without a baseline established through statistical data collection, there is no way to assess whether progress is being made.

The group also suggested that access to information is key, and that data collected could best be shared through an open online data system to which all stakeholders can turn for statistical information. The group recognised that all the international and regional institutions may be interested in the data collected.

Where:

- Targeted institutions: Judicial Council; Ministry of Justice; Media community; State prosecutors; Ombudsperson; MPs; etc.

The group also considered the question of how to tackle the absence of data or the reluctance of the authorities to share existing data. There was a discussion around research methodologies which may help to produce the data which is needed to enable a detailed analysis of the situation.

3) Implementing international justice:

The group agreed that there were two main ways to encourage the implementation of international justice standards:

- *Strategic litigation*: There are obvious challenges for some NGO's to undertake strategic litigation in their advocacy efforts. It needs resources/money, lawyers, and in many cases time consuming etc;
- *Training*: There are three main dilemmas about this question which requires further deliberation:
 1. **Who** is going to be trained? The group agreed that the three main groups of stakeholders requiring training are judges, lawyers, prosecutors.
 2. **What**: This will really depend on the group being trained. The discussion focused on developing training for lawyers and it was agreed that such training should have a practical focus, including through the use of case studies (including examples provided by trainees themselves) and template motions. The group agreed that it would be helpful for NGOs and lawyers to meet at a roundtable to discuss the knowledge needs of lawyers so that training could be targeted accordingly.
 3. **How**: This will again depend on the group being trained. It will certainly be necessary to coordinate with the professional bodies representing each group, such as the Judicial Academy or the Chamber of Advocates, in order to ascertain the best method of training and to gain access to the trainees. While in-person training can be very effective, the group agreed that there are limitations on how many people can be trained in this way. It was agreed that online training could also be valuable.

Under the discussion on regional advocacy actions on "PTD reforms - future steps", regional partners agreed that joint actions could be developed as follows:

1. Sensitizing judiciary

- A regional approach to sensitizing the judiciary could be adopted, focusing on the actions discussed during the group sessions.

2. Data collection

- Joint approaches to seeking data
- Comparative data base developed through a shared research methodology, such as that designed and implemented by Fair Trials

3. Training of Lawyers

- A roundtable between lawyers and NGOs could be convened to discuss training needs and to make concrete plans for training focused on challenging pre-trial detention in practice and developing strategies for Strategic litigation aimed at taking cases to the ECtHR.

4. Unified campaign

- A region-wide campaign challenging the overuse of pre-trial detention and/or the conditions in detention, focusing on the use of human stories to build support and drive change.