Human Rights in European Prisons: Can the Implementation of Strasbourg Court Judgments Influence Penitentiary Reform Domestically?

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Introduction

The state of prisons in European states has over the past 20 years increas-ingly come under the purview of the European Court of Human Rights (ECtHR). In hundreds of judgments, the Strasbourg Court has applied fundamental human rights principles, pre-eminently the prohibition of torture and ill-treatment (art. 3 of the European Convention of Human Rights [ECHR]), to review complaints of detainees. Such complaints are

related to deficient conditions of imprisonment, such as overcrowding, poor hygiene and sanitation, and lack of access to adequate health, among others. Until the 1990s, the European Commission of Human Rights (ECommHR) and the ECtHR applied a high threshold for detecting breaches of human rights.[1] The ECtHR though took a more scrutinizing approach since the late 1990s and 2000s, gradually recognizing that par-ticular kinds of conditions and practices of incarceration cross the accept-able threshold of severity and violate the human rights of inmates. At the same time, European institutions and bodies, such as the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT), the European Commissioner for Human Rights of the Council of Europe (CoE), and more recently the EU, have over the past 15 years engaged in standard setting in regard to persons deprived of their liberty and in closer monitoring of European prisons.

On the basis of reviewing complaints by persons deprived of their liberty, the ECtHR issues judgments that states that have ratified the ECHR are obliged to implement (art. 46 of the ECHR). Through the domestic implementation of those judgments, a process closely supervised by the Committee of Ministers (CoM) of the CoE, the ECtHR's case law can exert a significant influence over prison reform in European states. National authorities are obliged to provide an individual remedy if they are found to have violated the ECHR, but also to institute general mea-sures aimed at preventing similar human rights infringements from recurring. General measures can take the form of legal reform, change in domestic courts' jurisprudence, or change in administrative practices, and it can amount to broader policy change. To be sure, the ability of human rights judgments to influence, let alone instigate, reform of national laws and policies is highly contingent, and it is rarely direct or straightforward. Yet, studies show that under certain conditions and/or in certain issue areas, the reform and policy impact of the ECtHR's judg-ments can be significant (Anagnostou 2013; Hillebrecht 2012; Helfer and Voeten 2014).

This chapter provides an overview of ECtHR judgments related to the state of European prisons and explores broad patterns of their implemen-tation across different states. In particular, it reviews the kinds of claims

raised in petitions before the ECtHR, the main issues that emerge as salient and the states that are most frequently implicated in prison-related infringements. It also discusses the measures that states tend to take to redress the respective violations, as well as the apparent obstacles to implementation. On the basis of the empirical data that we present, we provide a general appraisal rather than a systematic investigation of state implementation. In view of the large number of states reviewed, this study does not engage in any in-depth analysis of the domestic factors that impact upon implementation of prison-related judgments or of the influence of these judgments upon domestic prison reform—tasks which far exceed the size and scope of our chapter.

In this study, we are primarily concerned with the human rights review of cases that pertain to 'passive' ill-treatment of inmates, in large part a result of deficient material conditions and organization, as well as of unacceptable penitentiary practices of a state's prison system. We do not examine cases pertaining to deliberate or 'active' infliction of ill-treatment of inmates by prison and police authorities. While the latter is also a part and characteristic of a country's penitentiary system and culture, we focus on the former aspect of ill-treatment because it is more directly con-nected to the concrete and structural conditions of imprisonment, as well as to penal law and policy.[2] The material infrastructure and organiza-tional arrangements shape the general environment and the physical con-ditions in which persons are detained, but also the specific circumstances of the prisoner (Marochini 2009: 1113).

For the purpose of this study, we have compiled a data set of 165 adverse judgments of the ECtHR issued in 1990–2015, which find viola-tions of the Convention. Many of these judgments pertain to prison overcrowding, and to poor material conditions more broadly, as well as to inhuman or degrading conditions that are specifically experienced by inmates with a variety of health problems (mental, psychological, and physical). Individuals with health problems, often severe ones that occa-sionally lead to suicidal tendencies or suicide, are often more vulnerable and less able to withstand the general prison conditions. Many inmates also develop health problems while being held in prison or placed in dis-ciplinary cells and other kinds of solitary confinement. Although the Convention does not guarantee the right to prisoners' health care, the

ECtHR in its case law has conceded that prison authorities are under a positive obligation to protect the health of persons deprived of their liberty. The lack of appropriate medical care or delay in providing medical help to inmates may constitute a violation of art. 3.[3]

A major sub-category of judgments related to detention conditions originates from immigrants and asylum seekers, who are lawfully or unlawfully detained in facilities that are unacceptable by human rights standards. While we cover human rights judgments that pertain to detention conditions experienced by migrants and asylum seekers, we do not consider how states respond to violations regarding the lawfulness of migrants' detention per se; the latter issue exclusively falls within the remit of migration policy rather than of prison conditions and penal reform. Furthermore, in this study, we do not include cases that concern hunger strikes in detention, a special category of cases that is not directly linked to overall conditions of detention. We also do not include a rich and highly controversial strand of case law that pertains to the interfer-ence of prison authorities with prisoners' correspondence, and therefore with their right to privacy, as well as the body of case law in which the political rights of prisoners are at stake. We exclude these bodies of case law, which, albeit highly significant, are also not directly related to prison conditions as such.

The supervision mechanism of the ECHR system is centred on the CoM. This supervisory mechanism has been in a process of rapid change and radical overhaul over the past 10 years. It has placed an emphasis on the systemic causes of human rights violations and has had a major impact on the execution of judgments related to prison conditions and penal reform. The large number of repetitive human rights violations has rendered this issue area a typical one for the application of the pilot pro-cedure.[4] The first part of the chapter describes the processes and mecha-nisms of domestic implementation of ECtHR's judgments and their supervision and monitoring by the CoM. The second part provides an overview of the relevant ECtHR's judgments and the issues that they raise, and the violations detected by the Court. The third part of the chapter describes and discusses the kind of reforms and measures that national authorities undertake by way of implementing the general measures that are called for by the relevant ECtHR judgments.

The ECHR System and Other Bodies Monitoring Prison Conditions

Since the 1990s, the overall prison population across Europe and the CoE states has been rising. Nonetheless, substantial variation remains both in the evolution of the total population of inmates over time and in the prison population rate (PPR) across countries.[5] Persons from margin-alized groups and ethnic minorities tend to be over-represented among the prison population, while the proportion of non-nationals among inmates has also been rising in European countries (Coyle 2006: 129).[6] The large discrepancies observed in the prison population of the different European states are arguably related to differences in prevalent views about imprisonment as the most severe form of punishment in contem-porary Europe (since the death penalty and corporal punishment have been abolished) and what is intended to achieve (Coyle 2006: 107) or to low levels of social trust and political legitimacy that may render policies in some countries more punitive than others (Lappi-Seppälä 2011). The causes of this rising trend are complex, and they cannot be seen to be a direct reflection of increased levels of criminality. Instead, it is signifi-cantly linked to factors such as the introduction of more punitive crimi-nal justice legislation with prison sentences for crimes that would not have previously received such sentences (e.g. for drug abuse) or lengthier periods of incarceration. Prevailing stances among politicians and the media, which encourage judicial authorities to send more people to prison for longer periods of time, have arguably also contributed to the overall rise in prison population.

Regardless of the actual causes of increased levels of incarceration, the available prison places in many CoE member states have not kept up with the rising number of prisoners. This has led to a significant and generalized problem of prison overcrowding, which is often more pro-nounced in pre-trial detention facilities. Besides overcrowding, a variety of other conditions, rules, and practices that define detention regimes have come under fire from international organizations and NGOs for constituting a living situation for inmates that does not meet basic human rights standards (Coyle 2006: 104). The CoE Commissioner for Human

Rights has recently characterized prison conditions in several European countries as 'appalling', referring to prison overcrowding, lack of privacy, unacceptable disciplinary procedures to deal with violence and other types of misconduct by inmates, solitary confinement, inadequate provi-sion of and access to medical care, education and job training, as well as a particularly harsh regime for those serving life sentences (so-called lif-ers) (Hammarberg 2011: 241–246).

Already in the early 1970s, the CoE, prompted by the UN Standard Minimum Rules for the Treatment of Prisoners (1957), adopted its first set of prison standards (the European Standard Minimum Rules for the Treatment of Prisoners 1973). These were later revised and published in 1987 as European Prison Rules, and they were subsequently amended in 2006.[7] At the same time, the CPT was set up under the CoE's European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which came into force in 1989 and which has been ratified by all the 47 member states of the CoE. The CPT's main activity is practical and pre-emptive action through non-judicial inter-vention by means of on-site visits to assess existing conditions and prac-tices in places of detention in the contracting states. Through its reports, it communicates its findings to the state concerned and seeks to engage in constructive dialogue and cooperation with the national authorities. Its main goal is to improve respect for and compliance with human rights standards for detainees.

The application of human rights principles in relation to prison conditions by the ECtHR, and by courts more broadly, is constrained by a number of aspects. Lawful imprisonment is intended to be a form of punishment. In this context, practices, such as social isolation, which may be considered harsh or inhuman in general, are accepted to inhere in the nature of incarceration as a punitive institution. Therefore, they are less likely to be regarded as contrary to the prohibition of degrading and inhuman treatment, unless there is indication or proof that a particular kind of mistreatment was deliberately inflicted upon an inmate. This may be even more so when an offender is considered to pose a danger to pub-lic safety. In this case, more stringent disciplinary measures may be con-sidered necessary for the sake of maintaining prison order, re-evaluating accordingly the standards of humane treatment in reference to what is

otherwise an absolute prohibition of inhuman and degrading treatment (art. 3 of the ECHR). All of these aspects weaken the potential of judicial bodies' review to uphold robust human rights standards in prisons.

An additional factor constraining the effectiveness of judicial review in relation to prisons is the fact that the provision of decent detention conditions requires substantial economic resources. Courts, however, are often reluctant to interfere with matters dependent on policy decisions about how to allocate a finite amount of resources (for a discussion of these factors, see Foster 2015: 383). Still, the ECtHR observes that the lack of resources cannot justify prison conditions which are so poor as to reach the threshold of treatment contrary to art. 3 of the Convention, even as it recognizes that a country's socio-economic hardships may ham-per attempts to improve such conditions.[8]

Through its standard-setting and fact-finding activities, the CPT complements the judicial work of the ECtHR (Murdoch 2006: 164). Applicants to the ECtHR often rely on the CPT's findings to establish the factual background to conditions of detention in a particular country, as well as to construct the normative arguments that condemn a particular kind of treatment of detainees, largely in reference to art. 3 ECHR. The ECtHR (and formerly the ECommHR) has also regularly drawn on CPT reports in assessing the impact of detention conditions on the applicant (Marochini 2009: 1120). Some of the standards that the CPT has developed concern living accommodation and basic needs; staff selection, training and management; provision of an adequate regime of activities; and provision of health care in prisons. As regards living accommodation and basic needs, the CPT has established some rough guidelines, espe-cially concerning the size of cell space (Marochini 2009: 1119). Developments in the protection of prisoners resulting from the cumula-tive work of the ECtHR and the CPT have created new standards for the treatment of prisoners and their detention conditions (Marochini 2009: 1109). While the standards promoted by the CPT were more detailed and rigorous in comparison to the ECtHR —in part, a difference stem-ming from the fundamentally different nature of each body's work and intervention—the Strasbourg Court has increasingly aligned the norms it applies in its case law with the CPT standards and assumed a more proac-tive approach (Murdoch 2006: 166–167).

National authorities must choose the individual and general measures whereby they will implement the final judgments. The Court cannot annul, repeal, or modify statutory provisions or decisions taken by administrative, judicial, or other national authorities. While it is not empowered to indicate or suggest which specific individual or general measures the national authorities in a case should undertake, the Court has, in certain types of cases, which involve structural and systemic prob-lems, become more willing and forthcoming in indicating appropriate general measures (Forst 2013: 4; Sicilianos 2014). General measures in response to the ECtHR's judgments may include legislative amendments and administrative or executive measures (i.e. ministerial circulars or reg-ulations) in areas of state laws and policies that directly or indirectly come under the Court's purview in the context of examining individual cases (Sundberg 2001: 573–574). They may also include other actions, such as translation and dissemination of the ECtHR's judgments to national judges, as well as educational activities and other practical measures. Under the new working methods introduced as of January 2011, respon-dent states have to submit action plans/reports for the implementation of judgments within six months from the time a judgment becomes final. This prompts governments to react quickly to a finding of a violation by the Court.

In its periodic but regular meetings, the CoM, with the assistance of the Directorate General of Human Rights, reviews the information about the individual and general measures, which is communicated to it by national authorities. When these are considered to be sufficient to remedy the underlying violation, as well as to prevent its recurrence, the CoM terminates its supervision of a case by adopting a final resolution (Anagnostou and Mungiu-Pippidi 2014: 210–211).[9] For a long time, the supervisory role of the CoM was viewed as highly deferential to national authorities (Martens 1996: 77). Since 2000, however, despite the political constraints that underpin the CoM as a body, its role has become more transparent and scrutinizing in order to determine the efficacy of state actions (see CoM 2013: 21–27). Following the intro-duction of new rules in 2001 and subsequently in 2006, the agenda and content of the CoM meetings are no longer confidential (Bates 2005). Instead, detailed and timely publication of all relevant documents

examined by the CoM has provided greater visibility to the process of judgments' execution by states. The CoM is now entitled to receive information pertaining to execution of the ECtHR's judgments from national human rights institutions, from other states, civil society, as well as from international organizations and other CoE organs such as the Parliamentary Assembly of the Council of Europe (PACE) and the CPT (Sitaropoulos 2008: 530–532).

The new rules of procedure and the new tools that the CoM possesses to exercise its supervisory role significantly dwell upon judgments detect-ing human rights violations of a systemic nature. The first explicit attempt by the ECtHR to specifically deal with the challenges of breaches stem-ming from structural problems was the introduction of a 'pilot judgment' procedure.[10] Through this process, the Court selects a particular case as characteristic of a structural problem, which has led to violations in a large number of cases brought before the Court. It asks the respondent state to identify the dysfunction(s) that is at the root of repetitive viola-tions, and it gives some indication about the measures that should be instituted with the goal of eliminating those violations. The cases pro-cessed under a pilot procedure are given priority by the Court, which may adjourn the examination of all similar applications pending the adoption of the remedial measures in the pilot judgment.[11] In this way, the pilot-judgment procedure induces the respondent state to also take retroactive measures to address infringements in all similar cases arising from the same structural problem at the domestic level (Forst 2013: 19). The CoM now (following the adoption of Protocol No. 14, June 2010) adopts the enhanced procedure (as opposed to the 'standard procedure') for pilot judgments and judgments raising structural and/or complex problems as identified by the Court or by the CoM (see Department for the Execution of Judgments of the ECtHR (DG-HL), CM/Inf/DH(2010) 37, 6 September 2010: 2).

In view of this more rigorous kind of supervision exercised by the CoM over the past couple of years, states are likely to be under enhanced pressure to address human rights problems related to unacceptable prison conditions. Nonetheless, in its latest report on the implementation of the ECtHR judgments, the PACE expressed concern about the large number of non-implemented judgments pending before the CoM (nearly 11,000

cases), many of which reflect complex, structural problems. It also identified poor prison conditions among the most persisting structural causes of human rights violations, as well as among the outstanding human rights issues in the seven states with the highest number of non-implemented cases (Italy, Russia, Ukraine, Romania, Greece, Poland, and Bulgaria) (Committee on Legal Affairs and Human Rights 2015). At the end of 2014, poor detention conditions made up 14% of all cases under enhanced supervision by the CoM (based on the number of leading cases, i.e. cases that reveal complex and systemic problems in a state and which are often sources of recurrent infringements) (Committee on Legal Affairs and Human Rights 2015: 11).[12] We now turn to review the kinds of issues and problems related to places of detention, which give rise to numerous human rights violations.

Strasbourg Court Judgments Pertaining to Prison Conditions in Europe

While there were a few petitions related to prisoners' claims and rights in the 1970s and in the 1980s (mainly from the UK), the ECtHR did not find a violation related to detention conditions until much later—according to our sample, until 1998 in the case of *Ilhan v. Turkey*—[13]which was not primarily about conditions of detention but about the mistreatment that a Kurdish applicant had suffered by prison authorities in the north-eastern parts of Turkey, which were then under a state of emergency. Earlier, ECtHR judgments implicating countries such as Belgium and Switzerland occasionally found a violation,[14] but they often found no violation[15] or ended with a friendly settlement.[16] Our data set comprises 165 adverse judgments, namely cases in which the ECtHR found at least one violation of the ECHR in relation to prisons and imprisonment con-ditions. We selected these judgments by searching through the official database of the ECtHR (HUDOC), the Court's factsheets, other reports, and secondary literature. While we have no way of ensuring or verifying its representativeness, our close perusal of the Strasbourg Court's case law makes us confident that the studied sample contains most of the impor-tant judgments issued by the ECtHR. We also believe that it provides a

fairly accurate picture of the European countries and issue areas, where human rights violations occur.

Spread across 21 countries, the violations recorded in our data set can be subdivided into six issue areas. In the first place, unacceptable *conditions of detention in pre-trial/remand centres* is a major source of human rights violations. Such conditions are characterized by overcrowding, substandard material infrastructure, limited or no outdoor access or out- of- cell activities,[17] limited or no family visits, extended periods of pre- trial detention,[18] interference with a detainee's communication with his/her lawyer, and lack of or no health provisions for prisoners suffering from serious illnesses.[19] Lack of space in pre-trial centres is particularly pronounced. Applicants referred to cells, where each detainee had between 1 and 2 m^2,[20] or even less than 1 m^2 available.[21] Moreover, they referred to situations where they had to sleep in turns due to the fact that there were not enough beds available.[22] Lack of windows or ventilation,[23] no proper heating, poor food quality, disrupted water and electricity pro-vision,[24] and cockroaches, ants, and rats infestation[25] were some of the characteristics of deficient conditions in pre-trial detention facilities. Poor or no sanitary facilities were common in pre-trial/remand centres.[26] Detainees described situations where they were allowed limited short vis-its a day to the sanitary facilities, and in order to relieve themselves out-side the time earmarked for toilet visits, detainees had to use a bucket.[27] Applicants also complained about obstacles in the communication with their lawyers, such as rooms where they were separated by a glass parti-tion, with no space for exchanging documents, across which they claimed they had to shout to hear each other.[28]

Cases involving *health-related issues in prison* were about the following: (a) inadequate medical care given the applicant's health record; (b) negli-gence in prescribing appropriate medical treatment and subsequent dete-rioration of applicant's health due to the lack of medical treatment; and (c) detention conditions that were unsuitable for the therapeutic needs of the applicant or for his/her disability. A large number of cases concerned the failure to provide due medical care to an applicant suffering from a serious disease.[29] In one case, for instance, despite the fact that the com-petent authorities had been informed that the applicant was suffering from cirrhosis and that his condition necessitated appropriate treatment,

it was not until measures had been indicated by the ECtHR that the applicant began to receive regular check-ups.[30] Moreover, in a number of cases, negligence in failing to prescribe adequate medical treatment and subsequent deterioration of the applicant's health due to the lack of med-ical treatment were reported.[31] For instance, in one case, the Court con-cluded that the applicant had developed tuberculosis between the time he had been taken into police custody and the date on which the disease had been detected, on account of the poor conditions of his detention.[32] Furthermore, detention conditions that were inappropriate for the thera-peutic needs of the applicant were at stake in other cases.[33]

The vulnerability of mentally ill people and persons with disability[34] calls for special protection and was at stake in a number of cases. In one case, for instance, the Court stated that the authorities had failed to com-ply with their obligation to protect the applicant's right to life, as the applicant's placement in a punishment cell deprived him of visits and all activities, and subsequently aggravated the existing risk of suicide.[35] In another case, the Court concluded that inadequate medical care forced a prisoner suffering from severe epilepsy to rely for assistance and emer-gency medical care on his cellmates.[36] In its judgment of *Vincent v. France*, the Court found that the detention facility was particularly unsuited to the imprisonment of persons with a physical handicap who could move about only in a wheelchair.[37]

Judgments related to the *material conditions of prison facilities* detected violations stemming from (a) overcrowding and (b) poor material condi-tions (e.g. ill-lit, poorly ventilated cells, insanitary conditions, and inad-equate outdoor exercise). A large number of violations concerned overcrowded cells.[38] The Court observed that for substantial periods of time, applicants' cells had been overcrowded, leaving them with less than the statutory minimum 'humanitarian' amount of space. In one case, for instance, the Hungarian government had acknowledged overcrowding in the Hungarian prisons and that there had been 50% more prisoners in the Budapest prison than existing places. In this regard, the Court further noted that the Hungarian authorities had to rapidly take the necessary administrative and practical measures in order to improve the conditions in which detainees were kept in Hungarian prisons.[39] In yet another case, the Italian government had acknowledged that there was a structural

problem of overcrowding in Italian prisons. The Court decided to apply the pilot-judgment procedure in view of the growing number of persons potentially concerned in Italy. It called on the authorities to put in place, within one year, a remedy or combination of remedies providing redress in respect of violations of the Convention resulting from overcrowding in prison.[40]

Overall, poor material conditions were a common violation in a number of cases.[41] With specific regard to such cases, the Court stated that lack of space had been made worse by aggravating factors, such as the lack of exercise, particularly outdoor exercise, lack of privacy, and insalubrious conditions. In one case, for instance, the Court observed that the appli-cant had been held in ill-lit and poorly ventilated cells for almost four years and had had to endure cramped and insanitary conditions and a total lack of privacy when using the toilet facilities.[42] In another case, the Court observed that the problems arising from prison overcrowding in Belgium, and the problems of unhygienic and dilapidated prison institu-tions, were structural in nature. In this regard, it recommended that Belgium envisage adopting general measures guaranteeing prisoners con-ditions of detention compatible with art. 3 of the Convention.[43] Similarly, in another case, the Court identified a systemic problem within the Bulgarian prison system because of the serious and persistent nature of the problems on account of overcrowding and lack of privacy and per-sonal dignity when going to the toilet.[44] A pilot-judgment procedure was adopted in regard to Bulgaria. Overcrowding and poor material condi-tions often lead to deterioration of an applicant's already fragile health condition.[45]

Violations related to *inhuman treatment while in detention* pertain to solitary confinement, strip searches, and generally behaviour towards inmates that amounts to degrading treatment. A large number of cases concerned violations with respect to solitary confinement.[46] In those cases, the Court generally criticized the conditions and length of solitary confinement, and emphasized that solitary confinement was only appro-priate as an exceptional and temporary measure. In one case, for instance, the Court found that the conditions of the applicant's detention in soli-tary confinement had been such as to cause him both mental and physi-cal suffering and a strong feeling of being stripped of his dignity.[47] In the

same case, the Court further found that the main reason for the applicant's solitary confinement had not been his protection but rather his sexual orientation, which constituted discriminatory treatment. In another case, the applicant had spent almost his entire time in prison under a special security regime, alone in his cell, seeing almost no other people, being constantly handcuffed when outside his cell, and having to endure daily body cavity searches as a security measure.[48]

Additionally, a large number of cases also concerned strip searches, which the Court found that they resulted in human rights violations.[49] The Court reiterated that strip searches and even full body searches could be necessary on occasion to ensure prison security—including the pris-oner's own safety—or to prevent disorder or crime. However, they also had to be conducted in an 'appropriate manner' so that the prisoner's distress or humiliation did not exceed the level which such searches inevi-tably entail. In one case, for instance, the applicant alleged that he had been obliged to strip naked in the presence of a woman prison officer with the intention of humiliating him; he had been then ordered to squat, and his sexual organs and the food he had received from the visitor had been examined by guards who had worn no gloves.[50] Finally, degrad-ing treatment was another main issue related to inhuman detention vio-lations.[51] In one case, for instance, prison authorities had deliberately withheld a drug-addict prisoner's medication and locked her in her cell as a punishment for her difficult behaviour; they had administered her med-ication irregularly, and they had left her lying in her own vomit.[52] The Court reiterated that it was incumbent on states to organize their prison systems in such a way as to ensure respect for prisoners' dignity, regardless of logistical or financial difficulties.

In relation to *conditions of detention under special prison regimes*, there were 11 violations in our sample (5 of them from Ukraine). In the cases against Ukraine, the Court observed that the applicants' complaints raised serious issues of a general nature affecting the application of art. 3 of the Convention in relation to the conditions of detention of death-row prisoners. Moreover, the Court noted that where the death penalty was imposed, the personal circumstances of the condemned person, the con-ditions of detention awaiting execution, and the length of detention prior to execution were examples of factors capable of resulting to a treatment

or punishment that infringes art. 3 of the ECHR. While bearing in mind Ukraine's socio-economic problems and the prison authorities' difficulties with the implementation of new legislation and regulations, the Court nonetheless concluded that a lack of resources could not in principle justify prison conditions so poor as to constitute inhuman and degrading treatment.[53]

A significant number of cases also concerned the conditions and dura-tion of detention in special prison regimes.[54] The Court held that keeping detainees under the 'dangerous detainee' regime for several years, in isola-tion, without sufficient mental and physical stimulation, and without examining if there were concrete reasons for the prolonged application of that regime, was not necessary in order to ensure safety in prison. In two cases against Poland, the Court acknowledged that in order to ensure safety in prison, prisoners could be subjected to tighter security controls, involving constant supervision of their movements within and outside the cell, monitoring via close-circuit television, limitations on their con-tact and communication with the outside world, and some form of seg-regation from the prison community. However, the Court concluded that the duration and severity of the measures exceeded the requirements of prison security and that they were not in their entirety necessary.[55]

Finally, 13 violations in our sample related to *violence, ill-treatment, or suicide in prison*, specifically in regard to the failure of the authorities to guarantee the protection of a prisoner's life,[56] as well as a prisoner's physi-cal and psychological integrity.[57] In one of these cases, for instance, the Court found that the Turkish authorities had not only been indifferent to the applicant's son's grave psychological problems, even threatening him with disciplinary sanctions for previous suicide attempts. They had also been responsible for a deterioration of his state of mind by detaining him in a prison with adults without providing any medical or specialist care, which eventually led to his suicide.[58] In another case, the facility's author-ities had failed to guarantee the protection of a prisoner's physical and psychological integrity. The Court noted that the administration had not attempted to regularly monitor the conduct of inmates prone to being violent or take any disciplinary measures against the offenders. It was only after the last incident, which was described as the culmination of the applicant's ill-treatment, that the authorities removed him from his cell.

Still no meaningful attempts had been made to provide the applicant with psychological rehabilitation in the aftermath of the events.[59]

In identifying the countries with the largest numbers of human rights violations related to prisons and imprisonment, Table 1 must be read in conjunction with Table 2.

As we discussed in the previous section though, since 2010, the pilot procedure and the new rules of the CoM supervisory mechanism have enabled the Court and the Committee to group large numbers of cases together when it is recognized that certain kinds of violations in a coun-try are repetitive and have systemic causes. While several CoE states have petitions and violations related to unacceptable detention conditions, as our sample shows, there are a number of states where the problem of prison overcrowding and poor detention conditions is particularly severe and widespread and from which dozens of repetitive petitions are pend-ing before the Court. Our data confirm the findings of the latest report of the PACE of the Committee on Legal Affairs and Human Rights on the implementation of judgments, which identifies the following eight countries: Russia, Ukraine, Romania, Italy, Bulgaria, Greece, Hungary, and Poland (see Committee on Legal Affairs and Human Rights 2015: addendum). These eight countries assemble a much larger number of prison-related cases than Table 1 shows. In five of these countries, the ECtHR has applied the pilot-judgment procedure at least once (Russia, Italy, Hungary, Bulgaria, Romania) or it has grouped a larger number of cases under leading judgments (Greece, Bulgaria, Ukraine, Poland). While Bulgaria in Table 1 shows only 4 violations, Table 2 shows that 24 cases are grouped under the leading judgment of *Kehayov v Bulgaria*, 2005. In 2015, the ECtHR adopted the pilot judgment of *Neshkov and others v. Bulgaria* in view of the deteriorating situation of the penitentiary system in the country, despite earlier leading judgments and recommen-dations by the CPT, in response to which Bulgaria had pursued reforms. The vast majority of judgments involve violation of art. 3 of the ECHR.

Altogether, both Tables 1 and 2 depict the countries with the most serious prison-related human rights problems: Russia, Romania, Greece, Hungary, Bulgaria, and Ukraine, secondarily followed by France, Poland, Italy, and, less so, Belgium. The countries with the highest number of violations manifest problems across most issue

Table 1 Prison-related judgments by country and by issue area

Country against which complaint is lodged	Issue Area 1: Conditions of detention in pre-trial/ remand centres	Issue Area 2: Health-related issues (inmates with special health/mental problems, access to health care)	Issue Area 3: Inhuman detention (i.e. solitary confinement, degrading treatment, strip searches)	Issue Area 4: Overcrowding and poor material conditions overall	Issue Area 5: Special prison regime (high security or death-row inmates)	Issue Area 6: Violence, ill-treatment or suicide while in prison	Grand Total
Albania		2					2
Armenia		1	1				2
Belgium		4		1		1	6
Bulgaria	1		1	1	1		4
Croatia		1		3			4
Estonia				1		1	2
France		7	3	1	2	1	14
Georgia	1	6					7
Greece	3	2		11			16
Hungary	2	2	1	3			8
Italy		1	2	2		1	6
Latvia	1	1				1	3
Lithuania			1				1
Moldova	1			1	1		3
Netherlands			1	1			2
Poland		2	1	2	2	1	8
Romania	1	6	2	24			33
Russia	6	6		8		2	22
Turkey	2	1	2			3	8
Ukraine		3	1		5	1	10
The United Kingdom		2	1			1	4
Total	18 (10.9%)	47 (28.5%)	17 (10.3%)	59 (35.7%)	11 (6.6%)	13 (7.8%)	165

Table 2 Pilot and leading judgments related to overcrowding and poor material conditions in prisons

Countries	Pilot procedure (yes/no)	Pilot judgment(s)	Number of cases grouped with pilot judgment(s)	Leading cases grouped together under enhanced supervision	Number of cases grouped together	Number of additional cases pending before the ECtHR
Russia	Yes	*Kalashnikov v. Russia* (2002); *Ananyev and Others v. Russia* (2012)	83			250 +[a]
Ukraine	No			*Yakovenko v. Ukraine* (2014); *Nevmerzhitsky v. Ukraine* (2005); *Logvinenko v. Ukraine* (2011); *Isayev v. Ukraine* (2009)	15 cases grouped together with the leading cases	
Poland	No			*Orchowski v. Poland* (2009); *Norbert Sikorski v. Poland* (2009); *Kaprykowski v. Poland* (2009)	Eight cases with *Orchowski and Sikorski*; Nine cases with *Kaprykowski*	
Italy	Yes	*Torreggiani and Others v. Italy* (2013)	7	*Sulejmanovic v. Italy* (2009)		
Greece				*Nisiotis v. Greece* (2011)	10 cases grouped under *Nisiotis*;	of the *Nisiotis* group of cases, *Taggatidis and others v. Greece* involves 47 petitions

(*continued*)

Table 2 (continued)

Countries	Pilot procedure (yes/no)	Pilot judgment(s)	Number of cases grouped with pilot judgment(s)	Leading cases grouped together under enhanced supervision	Number of cases grouped together	Number of additional cases pending before the ECtHR
Hungary	Yes	*Varga and Others v. Hungary* (2015)		*István Gábor Kovács*	Six cases grouped under the *István Gábor Kovács*	450[a]
Bulgaria	Yes	*Neshkov and Others v. Bulgaria* (2015)		*Kehayov v. Bulgaria* (2005)	24 cases grouped under the *Kehayov*	40 more applications related to detention conditions are currently pending before the ECtHR
Romania	Yes	*Bragadireanu v. Romania* (2008)	44			93 cases altogether concerning prison conditions are pending for execution before the CoM as of February 2015; in 2014, the ECtHR communicated 64 new applications concerning prison conditions

[a]Data from ECtHR factsheet on pilot judgments, July 2015

areas (Russia, Hungary, Ukraine, Greece, France, Poland). At the same time, some countries reveal a particularly problematic issue area that has given rise to a large number of violations, such as prisoners' health-related issues in France, prison overcrowding in Russia, Romania, and Greece, and violations related to special prison regimes in Ukraine. In France, studies have shown that people with mental health problems are over-represented in French prisons—an outcome of a variety of organizational and penal law changes since the 1980s—where appropriate and adequate care is woefully insufficient (Chantraine 2015: 38–39).

Across countries, the most problematic issue area is by far prison over-crowding and poor material conditions overall (with 35.7% of our sam-ple of violations), with health-related violations—evidenced as much in long-standing members such as France and Belgium as in more recent CoE members from the ex-communist world such as Georgia, Romania, and Russia—coming second (28.5%). Prison overcrowding directly con-nected with issues such as personal privacy, hygiene, recreation space and time, and so on make up the material preconditions that shape the expe-rience of incarceration; they both reflect and in turn reinforce the enhanced or conversely reduced ability of a penitentiary system to ensure basic human rights standards for detainees. Substandard conditions of detention in pre-trial or remand centres (issue area 1) can be considered as a subset of overcrowding and poor material conditions (issue area 4). Together, they show that the decrepit physical infrastructure that falls below minimum human rights standards is a widespread feature of European prisons where persons are detained for short or longer periods of time.

Domestic Implementation of Human Rights Judgments Related to Prison

This section provides an overview of how different states fare in imple-menting the ECtHR's judgments related to prison conditions and deten-tion more broadly. We take a specific measure as a yardstick for assessing state implementation, namely, length of time in months. Anagnostou

and Mungiu-Pippidi (2014) have used time to implementation as a measure of state performance in conjunction with the percentage of the respective ECtHR judgments that have been implemented by each state. The assumption is that the length of time that it takes states to give practical effect to an unfavourable judgment in tandem with the number of adverse judgments a state has implemented at each point in time captures a key parameter of human rights implementation—namely, foot- dragging. Reluctance to comply often takes the form of procrastination or purposeful neglect on the part of national authorities. Lengthy periods of implementation in the meantime lead to recurrence of similar viola-tions, and thus of adverse judgments. As a measure, length of time to implementation is also used offhand by PACE and the CoM to distin-guish states that are better implementers from those that are more prob-lematic. According to Voeten (2014), though, time to implementation is directly connected to the complexity of the remedial measures and the difficulty of the implementation tasks required to redress particular human rights violations.

On the basis of time to implementation and percentage of executed cases, Table 3 provides a summary of state implementation of prison-related judgments. Length of time is counted in number of months from the delivery of a judgment by the ECtHR until the CoM terminates its supervision over it by issuing a final resolution (for closed cases), or number of months that a case is pending (for open, until March 2016). We see in the last three columns of Table 3 that prison-related violations are largely repetitive violations (45.5%). Another 31.5% are leading judgments, and a 3.6% are pilot judgments and are under enhanced supervision by the CoM (the remaining 19.4% of our sample is not classified because they were issued before the latest changes in the rules of the CoM that introduced this distinction).

Overall, Table 3 shows that state implementation of prison-related judgments is highly problematic: only in 23.6% of the judgments has the CoM terminated its supervision by March 2016, while implementation was still pending in the remaining 76.4% of the judgments. Average time to implementation for closed cases is a bit more than five years, while in open cases, state compliance is on average pending for nearly six years. There are apparently significant differences across states. However, in

Table 3 Status of execution of prison-related judgments across countries (closed vs. open; time to implementation, leading, repetitive, pilot judgments)

Country against which complaint is lodged	Closed	open	Grand total	Average of time for which implementation has been pending (in months, until March 2016), if case is open	Average of time to implementation (in months) if case is closed	Percentage of cases that have been closed (%)	Leading case	Repetitive case	Pilot judgments
Albania		2	2	85.5		0	2		
Armenia	1	1	2	66	78	50	1		
Belgium	1	5	6	34.5	82	16.6	4	2	
Bulgaria	1	3	4	52.7	71	25	2		1
Croatia		4	4	86.8		0	2	2	
Estonia	1	1	2	23	14	50		1	
France	12	2	14	21	48.5	85.7	5	1	
Georgia	7		7		36.3	100	1	6	
Greece	2	14	16	39.7	101.5	12.5	2	11	
Hungary		8	8	41.8		0	2	5	1
Italy	4	2	6	109	79	66.7	3		1
Latvia	1	2	3	69.5	22	33.3	1	1	
Lithuania	1		1		33	100			
Moldova	2	1	3	103	68.5	66.7		1	
Netherlands	1	1	2	121	79	50	1		

(*continued*)

Table 3 (continued)

Country against which complaint is lodged	Closed	open	Grand total	Average of time for which implementation has been pending (in months, until March 2016), if case is open	Average of time to implementation (in months) if case is closed	Percentage of cases that have been closed (%)	Leading case	Repetitive case	Pilot judgments
Poland	2	6	8	66.5	104.5	25	3	3	
Romania		33	33	67		0	4	27	1
Russia		22	22	89.9		0	7	10	2
Turkey		8	8	74.9		0	6	2	
Ukraine		10	10	123.3		0	7	3	
United Kingdom	5		5		67.6	100			
GRAND TOTAL	39 (23.6%)	126 (76.4%)	165 (100%)	70.8 (Average)	61.8 (Average)	39.3%	52	75	6

view of the highly unbalanced distribution of judgments (a couple of countries have less than a handful), we do not rely on these values for a statistical analysis. Still, failure to implement clearly stands out in some states, especially those with a high number of violations: Poland, Romania, Russia, Turkey, and Ukraine have not implemented any prison-related judgment against them and implementation is pending for more than five years (Poland, Romania) or more than six years (Turkey) or more than seven years (Russia, Ukraine).

Similarly, Hungary has not implemented any of the violating judgments against it in our sample, which, however, have been pending for 3.5 years. Greece also displays poor performance with only 12.5% of adverse judgments against it, and this after more than eight years. In most of the remaining judgments of our sample against Greece, which are more recent (mostly about prison overcrowding), implementation is pending for a little over three years. Similarly, Italy implemented some of the adverse judgments against it extremely slowly (after more than six years), while the remaining two are pending for more than eight years. By contrast, France and Georgia have a high percentage of judgments, in which execution was completed in a relatively shorter period of time (48.5 and 36.28 months, respectively) on average.

Time to implementation and percentage of closed cases by issue area complement cross-national variation and reveal some interesting and potentially significant patterns (Table 4).

What stands out is the very small portion of implemented judgments related to overcrowding and poor prison conditions (issue 4, only 7.27% closed) and those related to conditions of detention in remand centres (issue 1, 16.6% closed). It is not accidental that all six pilot judgments of our sample are related to these two issues, from which the most grave prison-related human rights problems stem. By contrast, a substantially larger percentage of adverse judgments are implemented in relation to violence, ill-treatment or suicide while in prison (issue 6), inhuman treat-ment while in detention (issue 3), and somewhat less judgments related to special prison regimes (issue 5) and health-related violations (issue 2). Generally, the open judgments in all issue areas are pending for imple-mentation for at least five years (on average for 78.9 months, see Table 4). Violations related to special prison regimes are on average pending for an

Table 4 Status of execution of prison-related judgments across issue areas (leading, repetitive, pilot; open, closed; time to implementation)

Main issue area	Leading	Not categorized	Pilot	Repetitive	Total violations	Open cases	Average time for which implementation has been pending (for open cases, until March 2016)	Closed cases	Average time to implementation (for closed cases, in months)	Percentage of cases that have been closed (%)
Issue 1: Conditions of detention in pre-trial/ remand centres	8	4	2	4	18 (10.9%)	15	78.4	3	84	16.6
Issue 2: Health-related issues (inmates with special health/ mental problems, or access to health care)	20	7		20	47 (28.5%)	32	71.1	15	47.5	31.9
Issue 3: Inhuman detention (i.e. solitary confinement, degrading treatment, strip searches)	6	9		2	17 (10.3%)	8	81	9	73	52.9

(*continued*)

Table 4 (continued)

Main issue area	Leading	Not categorized	Pilot	Repetitive	Total violations	Open cases	Average time for which implementation has been pending (for open cases, until March 2016)	Closed cases	Average time to implementation (for closed cases, in months)	Percentage of cases that have been closed (%)
Issue 4: Overcrowding and poor material conditions overall	10	4	4	41	59 (35.8%)	54	61	5	36.3	8.5
Issue 5: Special prison regime (high security, dangerous, or death-row inmates)	3	4		4	11 (6.7%)	7	122	4	60.5	36.4
Issue 6: Violence, ill-treatment, or suicide while in prison	5	4		4	13 (7.9%)	9	60	4	75.8	30.7
Total	52	32	6	75	165	126	78.9	39	62.8	31.8%

excessively long time (122 months), which, however, partly reflects the dismal implementation record of Ukraine, from which nearly half of these violations originate (see Table 1).

The tiny proportion of judgments related to overcrowded and dilapidated conditions in prisons and remand centres (issues 1 and 4) that have been implemented by states possibly reflects the complexity of the necessary remedial measures and the amount of financial resources that the construction of new prisons or the revamping of old ones requires. Most of these judgments have been pending for implementation for at least five years on average. By contrast, a large percentage of violations related to inhuman detention, such as solitary confinement and strip searches (issues 3), have been implemented. These often require primarily individualized remedial measures or limited legal reform or internal disciplinary measures (if stemming from administrative practices), which are easier—at least if the political will exists—to apply. This finding appears to concur with the point raised by Voeten (2014), and which is mentioned earlier, namely, that the more complex, demanding and financially exigent the general measures, the slower and more reluctant national authorities are in implementing them.

In order to redress overcrowding, far-reaching, organizationally complex, and fiscally burdensome reforms are required, which take a long time to complete. In response to the detected violations related to poor prison conditions and overcrowding, governments in the above-mentioned eight states have pursued four sets of measures and reforms: (a) the building of new prison facilities or the creation of additional space in existing ones with the goal of improving cell space per inmate, (b) administrative and organizational changes in prison units, (c) legislative and policy changes in criminal law aimed at reducing the number of prisoners, the use and length of pre-trial detention, as well as the use of alternative punitive measures not involving physical deprivation of liberty for persons sentenced by a court, and (d) the establishment of bodies or offices to continuously monitor prison space and population. In the frame of judgment execution, these sets of measures are almost always accompanied by the dissemination—translated in national language—of the respective judgment(s) to the competent authorities, as well as some

efforts to provide information and training to the prison staff and other administrative staff involved.

The construction of new prison facilities, or the reconstruction of existing facilities available in the penitentiary system into prisons, is among the reforms states initiate to address prison overcrowding. For example, already in the first decade of the 2000s (*Kalashnikov* group of cases), the Russian Ministry of Justice adopted a federal programme for reforming the country's penitentiary system. It included the building of new remand prisons and the reconstruction of existing ones. As a result of this, by 2010, the number of spaces available had increased by 13,100. Notwithstanding a perceptible trend of improvement, the Court found, in 2012, in the pilot judgment of *Ananyev and others v. Russia* that the problem persisted. The latest 2012 action plan of the Russian government contains numerous planned measures to improve the material conditions of detention, to establish effective domestic pre-ventive and compensatory remedies, and to ensure a more balanced approach towards the choice of preventive measures for suspects and the accused.[60]

In the context of implementing the ECtHR judgment of *István Gábor Kovács*, the Hungarian government estimated that the capacity of the Hungarian penal institutions would have to be increased by 70% in order to meet the CPT standards for personal space per inmate, and stated its intent to complete the construction of new facilities by 2018. The actual increase of new places that was accomplished in 2013, though, was only 160.[61] The target of expanding prison facilities is to increase the average space per inmate in line with existing standards in domestic law and in European Prison Rules and the CPT reports. In response to the recent *Neshkov v. Bulgaria* pilot judgment, Bulgarian authorities have recently advanced legislative proposals for a more flexible initial allocation of pris-oners, which are under consideration in order to place prisoners in facili-ties that are less rather than more crowded, with the ultimate goal of reaching the target of 4 m^2 per detainee.[62] Such measures, however, are viewed by the CPT and the CoM as largely ineffective because they tend to generate new problems for prison management, as well as to disregard other vital issues, such as proximity of prison to one's family.[63]

Together with the ECtHR, the CoM and the CPT have all underlined that the problem of unacceptable detention conditions is not solely or even mainly likely to be addressed through the construction of new prison facilities. Indeed, in its report on Hungary, the CPT stated that '…providing additional accommodation cannot on its own offer a lasting solution. The only viable way to control overcrowding is to adopt policies designed to limit or moderate the number of persons sent to prison' (CPT/Inf (2014)13, para 39). In this direction, the Court and the CoM strongly urge national authorities in countries with structural problems to pursue reform of criminal law and policy. Detention (whether at the pre-trial or the postconviction phase) must be a measure of last resort, and there should be greater use of alternative non-custodial sanctions. Adopted in response to the pilot judgment of *Bragadireanu v. Romania*, the new 2014 Criminal Code of Romania introduces new alternatives to detention on remand (house arrest and release under judicial supervision, extending the scope of pecuniary sentences). It also modifies the conditions for applying measures alter-native to imprisonment and it strengthens the role of the probation service—all these with the aim of redressing one of the worst problems of prison overcrowding in Europe.[64] Romania witnessed a steady increase in its prison population in 2007–2013, while the small decrease that was recorded in 2014 was not considered sufficient or sustainable by the CoM.[65]

A main cause of prison overcrowding is the all too facile resort to pre-trial custody, including for persons suspected for economic crimes (as in Russia) as well as to imprisonment, even for persons committing petty offences (as in Hungary). In the past few years, in Greece, measures to decrease prison overcrowding have focused primarily on limiting the number of persons sent to prison to execute a sentence (alternatives to imprisonment) and on ensuring a reduction of the population of con-victed inmates by means of suspension of prison terms or early release schemes.[66] In Italy, legislative reforms of criminal law and policy in 2013 aimed at reducing the prison entry flows have redefined the seriousness of a variety of offences and the conditions under which incarceration is nec-essary. They have also provided for early release in less serious cases, made

possible home arrest for some vulnerable individuals, and made it possi-ble to release offenders whose crime is less serious (i.e. drug addicts). Additional measures prepared by the Italian government to reduce prison overcrowding aim at reducing recourse to imprisonment through extend-ing the use of alternative measures such as probation, social services, and the use of electronic monitoring.[67]

A third important kind of reform promoted by the ECtHR and the CoM is the provision of an effective domestic remedy, which prisoners, whose human rights were violated, can use to seek redress and com-pensation. The issue arose as central in the pilot judgments of *Ananyev and others v. Russia* and *Torreggiani and others v. Italy*. In 2013, the Russian government presented a draft law that would empower domes-tic courts to order specific remedial measures, to set limits for enforce-ment of the orders, and to define the authority responsible for enforcement. In response to the *Torreggiani* judgments, Italy also established in 2013 a remedy allowing inmates to complain about vio-lations of their rights to a supervisory judge and introduced the legal means to enforce a relevant judicial order. Another Italian law that came into force in 2014 also provided the possibility for compensation of an inmate whose rights were violated due to prison conditions, in the form of pecuniary and non-pecuniary (i.e. reduction of his/her sentence) compensation.[68]

The CoM is particularly scrutinizing how and the extent to which such a domestic remedy is effective in practice. The Court has indicated that to be efficient, a remedial system must ensure a prompt and dili-gent handling of prisoners' complaints, secure their effective participa-tion in the examination of grievances, and dispose of a wide range of legal tools for the purpose of eradicating the identified breach of the Convention. Taking the input contained in the submission of the NGO 'Public Verdict Foundation' on board,[69] the CoM urged the Russian government to further consider various aspects of the draft law to ensure that the burden of proof shifts to the prison authorities once the claim-ant has established a prima facie case that s/he has suffered ill-treatment due to unacceptable prison conditions, as well as to ensure that court fees and other costs for the complainants do not have a dissuasive effect.[70] In Romania, the CoM was critical of the compensatory aspect

of the adopted remedy because it can succeed only if the applicant (pris-oner) can prove the defendant's (the prison) fault; overcrowding may very well be linked to penal law and policy rather than stem from the prison system itself.[71] Last but not least, the adoption of a domestic remedy compliant with the ECHR and the Court's case law involves not only legal reform and procedural rules, but it also requires substan-tial changes in judicial approach and practice.

Discussionand Conclusion

The preceding broad review of state implementation of ECtHR judg-ments pertaining to prison conditions shows that their impact is lim-ited, albeit far from insignificant. Prison-related human rights violations arose as early as the 1970s and 1980s in countries like the UK, Austria, Belgium, and Germany. The Strasbourg Court's judg-ments prompted significant reforms through the reluctant yet progres-sive recognition of prisoners' rights, in matters such as release procedures, communication of prisoners with the outside world, and formal discipline proceedings (Livingstone 2000: 321). Yet, the struc-tural problem of prison overpopulation and debased material condi-tions has emerged as far more pronounced and extensive in the new post-communist member states that acceded to the ECHR and the CoE in the 1990s. In both parts of Europe, the rising numbers of incarcerated persons have been related to a distinctive trend in penal law to impose stricter and longer sentences intended to establish crime control and to remove seemingly dangerous individuals from the soci-ety at large (Snacken 2015).

Tackling prison overcrowding and inhumane conditions of impris-onment is an exceedingly complex, time-consuming, and demanding process, which cannot be carried out by legislative reform alone. Besides the (re)construction of prisons in order to create more spaces, redress-ing the problem at its root further requires fundamental reform towards more moderate penal policies—politically and socially a highly contro-versial issue. It also requires the establishment of effective domestic remedies, which in turn presupposes some level of acceptance of

prisoners' rights, as well as a change in national judicial approach and culture. Where substantial or even dramatic reductions in imprison-ment rates have been achieved (as in Finland since the 1970s and 1980s), it has been the result of deliberate and long-term policy change based on firm political will and consensus to bring down the number of inmates (Coyle 2006: 106).

Besides the complexity of reforming Europe's penitentiary systems, time to implementation is further prolonged by the more scrutinizing approach and demanding supervision exercised by the CoM, especially in regard to violations considered to be of structural and systemic nature. At least in relation to such violations, which form the bulk of prison- related judgments in the former communist countries but also in countries like Greece and Italy, the observation that the Court takes a highly individualized approach (Foster 2015: 395) does not hold. In fact, the states, which the ECtHR has identified as the ones plagued by systemic problems of prison overcrowding and inhumane detention conditions more broadly, are under enhanced pressure to engage in reforms in different areas, in order to mount an effective response. The action plans that the national governments submit to the CoM, in which they outline and describe the various measures, are often thor-ough and detailed. They include projections about the effects that the planned reforms are going to have on prison populations. This is the case even for reluctant states like Russia, which has nonetheless intro-duced significant even if insufficient measures to reform the country's prisons (Parrott 2015). Still, these action plans may contain proposed or intended reforms that are subsequently not legislated or are not put into practice.

The ECtHR judgments that find European prison conditions and practices to infringe basic human rights standards do not—cannot—bring about fundamental reform of the penitentiary systems of states. It would be unrealistic to expect judicial decisions to have such an effect; they are only one factor among many that affect policy making in such a controversial and multi-actor field as penal law and penitentiary institu-tions. Yet, what Strasbourg judgments have over time managed to do is to enhance judicial oversight over imprisonment standards and conditions,

an area of largely administrative regulation, in which prison authorities had far-reaching (and still maintain considerable) discretion. By doing so, these judgments provide ample leverage to domestic prison reformers, among political elites but also state administrators, to pursue changes for improved conditions of incarceration.

The ECtHR judgments have also helped open up the closed nature of penitentiary institutions to independent supervisory bodies, such as ombudsman institutions. For example, the Bulgarian authorities reported that since 2012, the ombudsman is allowed to perform visits and inspections in detention facilities and to give recommendations on the treatment of detained persons. Along with civil society organizations, such as the Bulgarian Helsinki Committee and the Centre for the Study of Democracy as well as the NGO Bulgarian Lawyers for Human Rights, the ombudsman also takes part in the working group for the execution of the judgment *Neshkov and Others*, and in the drawing up of plans for improvement of conditions of detention in Bulgarian detention facilities.[72]

With the new rules and the greater transparency established in the supervision process by the CoM, NGOs are now actively engaged in following the ECtHR judgments and in drawing from them in the domestic contestation over penitentiary reform. The new role of NGOs in the process of execution of judgments appears to be highly signifi-cant. It tends to present a different and critical picture of the govern-ment's proposed and actual measures, substantiated by official data or by documentation obtained from NGO monitoring of prisons. For exam-ple, the report of the Association for the Defense of Human Rights in Romania—the Helsinki Committee (APADOR-CH) in the context of CoM supervision of execution in the pilot judgment of *Bragadireanu* was clearly influential in disputing the government's claim of improve-ment. On the basis of official data, APADOR-CH showed that the mea-sures adopted to ameliorate poor detention conditions were thoroughly insufficient to change the state of dilapidation in Romanian prisons, the degrading treatment of vulnerable prisoners such as minors, and the lack of appropriate health care, which falls well below ECHR and CPT standards.[73]

In sum, despite the fact that the ECtHR judgments have not influenced any evident shift in penal policy in European states, they have triggered a variety of reforms that do show some, even if limited, positive change. The slow decline of prison overcrowding that is recorded over the past few years is possibly one visible consequence of the domestically implemented measures (Aebi and Delgrande 2015).

Notes

1. On the significant prisoners' rights case law of the ECommHR and the ECtHR until the late 1990s, as well as their restrictive approach in this area, see Livingstone (2000).
2. The CPT draws this distinction between 'active' infliction of ill-treatment and 'passive' ill-treatment. See Murdoch (2006: 171).
3. *Ilhan v. Turkey*, App. No.22277/93, 27 June 2000; *Yakovenko v. Ukraine*, App. No. 15825/06, 25 January 2008.
4. Other kinds of violations of structural nature are the excessive length of proceedings and lack of domestic remedy, prolonged non-enforcement of court decisions and lack of domestic remedy, violations of the right to the protection of property, and exclusion of convicted prisoners from voting.
5. PPR is the rate of the registered prison population per 100,000 inhabitants in each country. For detailed data on prison population, see Walmsley (2013); Aebi and Delgrande (2015).
6. On the numbers and percentages of foreigners among inmates in the CoE states, see Aebi and Delgrande (2015: 90–91).
7. Rec(2006)2 of the CoM to member states on the European Prison Rules.
8. *Poltoratskiy v. Ukraine*, App. No. 38812/97, 29 April 2003; see Marochini (2009: 1115).
9. In some cases, when specific obstacles hamper implementation, the CoM may adopt as a form of pressure an interim resolution criticizing a state's failure to abide by a judgment and urging it to take further action.
10. The pilot procedure was first introduced in the case of *Broniowski v. Poland*, App. No. 31443/96, 22 June 2004.
11. The relevant procedure was codified in the Rules of Court in 2011 (Rule 61).
12. Other cardinal issues under enhanced supervision were actions by security forces (20%), excessive length of judicial proceedings (11%), and non-enforcement of domestic judicial decisions (7%), among others.

13. *Ilhan v. Turkey*, App. No. 22277/93, 27 June 2000.
14. *Aerts v. Belgium*, App. No. 25357/94, 30 June 1998.
15. *Kröcher and Möller v. Switzerland*, No. 8463/78, 9 July 1981.
16. *Hurtado v. Switzerland*, App. No. 17549/90, 28 January 1994.
17. *Kehayov v. Bulgaria*, App. No. 41035/98, 18 April 2005.
18. See *Moisejevs v. Latvia*, App. No. 64846/01, 23 October 2006.
19. See *Gülay Çetin v. Turkey*, App. No. 44084/10, 5 June 2013.
20. See *Fehér v. Hungary*, App. No. 69095/10, 2 October 2013; *Modârcă v. Moldova*, App. No. 14437/05, 10 August 2007.
21. See *Kalashnikov v. Russia*, App. No. 47095/99, 15 October 2002.
22. See *Kalashnikov v. Russia*, App. No. 47095/99, 15 October 2002.
23. See *Kehayov v. Bulgaria*, App. No. 41035/98, 18 April 2005; *Ramishvili and Kokhreidze v. Georgia*, App. No. 1704/06, 27 April 2009.
24. See *Modârcă v. Moldova*, App. No. 14437/05, 10 August 2007.
25. See *Kalashnikov v. Russia*, App. No. 47095/99, 15 October 2002.
26. See *Kehayov v. Bulgaria*, App. No. 41035/98, 18 April 2005; *Ramishvili and Kokhreidze v. Georgia*, App. No. 1704/06, 27 April 2009; *Ahmade v. Greece*, App. No. 50520/09, 25 December 2012; *Modârcă v. Moldova*, App. No. 14437/05, 10 August 2007; *Kalashnikov v. Russia*, App. No. 47095/99, 15 October 2002.
27. See *Kehayov v. Bulgaria*, App. No. 41035/98, 18 April 2005.
28. See *Modârcă v. Moldova*, App. No. 14437/05, 10 August 2007.
29. See *Ashot Harutyunyan v. Armenia*, App. No. 34334/04, 15 September 2010; *Yoh-Ekale Mwanje v. Belgium*, App. No. 10486/10, 20 March 2012; *Lankester v. Belgium*, App. No. 22283/10, 9 April 2014; *Claes v. Belgium*, App. No. 43418/09, 10 April 2013; *Poghossian v. Georgia*, App. No. 9870/07, 24 May 2009; *Kotsaftis v. Greece*, App. No. 39780/06, 12 September 2008; *Cirillo v. Italy*, App. No. 36276/10, 29 April 2013; *Kucheruk v. Ukraine*, App. No. 2570/04, 6 December 2007; *Melnik v. Ukraine*, App. No. 72286/01, 28 June 2006; *Grori v. Albania*, App. No. 7 October 2009; *V.D. v. Romania*, App. No. 7078/02, 28 June 2010.
30. See *Kotsaftis v. Greece*, App. No. 39780/06, 12 September 2008.
31. See *Dybeku v. Albania*, App. No. 41153/06, 2 June 2008; *Dobri v. Romania*, App. No. 25153/04, 20 June 2011.
32. See *Dobri v. Romania*, App. No. 25153/04, 20 June 2011.
33. See *L.B. v. Belgium*, App. No. 22831/08, 2 January 2013; *Riviere v. France*, App. No. 33834/03, 11 October 2006; *Mouisel v. France*, App. No. 67263/01, 21 May 2003; *Renolde v. France*, App. No. 5608/05, 16 January 2009.

34. See *Vincent v. France*, App. No. 6253/03, 26 March 2007; *Helhal v. France*, App. No. 10401/12, 19 May 2015; *Raffray Taddei v. France*, App. No. 36435/07, 21 March 2011; *Z.H. v. Hungary*, App. No. 28973/11, 8 February 2013; *Kaprykowski v. Poland*, App. No. 23052/05, 3 May 2009; *Flamînzeanu v. Romania*, App. No. 56664/08, 12 July 2011; *Price v. UK*, App. No. 33394/96, 10 October 2001.
35. See *Renolde v. France*, App. No. 5608/05, 16 January 2009.
36. See *Kaprykowski v. Poland*, App. No. 23052/05, 3 May 2009.
37. See *Vincent v. France*, App. No. 6253/03, 26 March 2007.
38. See *Orchowski v. Poland*, App. No. 17885/04, 22 January 2010; *Norbert Sikorski v. Poland*, App.No. 17599/05, 22 January 2010; *Szel v. Hungary*, App. No. 30221/06, 7 September 2011; *Nisiotis v. Greece*, App. No. 34704/08, 20 June 2011.
39. See *Szel v. Hungary*, App. No. 30221/06, 7 September 2011.
40. See *Torreggiani and others v. Italy*, App. No. 43517/09, 35315/10, 37818/10, 46882/09, 55400/09, 57875/09, 61535/09, 27 May 2013.
41. See *Moiseyev v. Russia*, App. No. 62936/00, 6 April 2009; *Alver v. Estonia*, App. No. 64812/01, 8 February 2006; *Sulejmanovic v. Italy*, App. No. 22635/03, 6 November 2009; *Vasilescu v. Belgium*, App. No. 64682/12, 20 April 2015; *Neshkov and others v. Bulgaria*, App. No. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12, 9717/13, 1 June 2015; *Brânduşe v. Romania*, App. No. 6586/03, 7 July 2009.
42. See *Moiseyev v. Russia*, App. No. 62936/00, 6 April 2009.
43. See *Vasilescu v. Belgium*, App. No. 64682/12, 20 April 2015.
44. See *Neshkov and others v. Bulgaria*, App. No. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12, 9717/13, 1 June 2015.
45. See *Bragadireanu v. Romania*, App. No. 22088/04, 6 March 2008; *Canali v. France*, App. No. 40119/09, 25 July 2013; *Martzaklis and Others v. Greece*, 20378/13, 9 October 2015; *Ţicu v. Romania*, App. No. 24575/10, 1 January 2014.
46. See *Plathey v. France*, App. No. 48337/09, 10 February 2012; *Csüllög v. Hungary*, App. No. 30042/08, 7 September 2011; *X v. Turkey*, App. No. 24626/09, 27 May 2013; *Nevmerzhitsky v. Ukraine*, App. No. 54825/00, 12 October 2005.
47. See *X v. Turkey*, App. No. 24626/09, 27 May 2013.
48. See *Csüllög v. Hungary*, App. No. 30042/08, 7 September 2011.
49. See *El Shennawy v. France*, App. No. 51246/08, 20 April 2011; *Frerot v. France*, App. No. 70204/01, 12 September 2007; *Valasinas v. Lithuania*,

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50. See *Valasinas v. Lithuania*, App. No. 44558/98, 24 October 2001.
51. See *Elefteriadis v. Romania*, App. No. 38427/05, 25 April 2011; *Öcalan v. Turkey (no. 2)*, App. No. 24069/03, 197/04, 6201/06, 10464/07, 13 October 2014; *Nevmerzhitsky v. Ukraine*, App. No. 54825/00, 12 October 2005; *McGlinchey and Others v. the United Kingdom*, App. No. 50390/99, 29 July 2003.
52. See *McGlinchey and Others v. the United Kingdom*, App. No. 50390/99, 29 July 2003.
53. See *Nazarenko v. Ukraine*, App. No. 39483/98, 29 July 2003; *Dankevich v. Ukraine*, App. No. 40679/98, 29 July 2003; *Kuznetsov v. Ukraine*, App. No. 39042/97, 29 April 2003; *Poltoratskiy v. Ukraine*, App. No. 38812/97, 29 April 2003; *Iorgov v. Bulgaria*, App. No. 40653/98, 7 July 2004.
54. See *Piechowicz v. Poland*, App. No. 20071/07, 17 July 2012; *Horych v. Poland*, App. No. 13621/08, 17 July 2012; *Payet v. France*, App. No. 19606/08, 20 April 2011; *Khider v. France*, App. No. 39364/05, 9 October 2009.
55. See *Piechowicz v. Poland*, App. No. 20071/07, 17 July 2012; *Horych v. Poland*, App. No. 13621/08, 17 July 2012.
56. See *Tarariyeva v. Russia*, App. No. 4353/03, 14 March 2007; *Jasinska v. Poland*, App. No. 28326/05, 1 September 2010; *Ketreb v. France*, App. No. 38447/09, 19 October 2012; *De Donder and De Clippel v. Belgium*, App. No. 8595/06, 6 March 2012; *Keenan v. the United Kingdom*, App. No. 27229/95, 2 April 2001; *Kilavuz v. Turkey*, App. No. 8327/03, 21 January 2009; *Coselav v. Turkey*, App. No. 1413/07, 18 March 2013; *Yuriy Illarionovich Shchokin v. Ukraine*, App. No. 4299/03, 3 January 2014.
57. See *Premininy v. Russia*, App. No. 44973/04, 20 June 2011; *D.F. v. Latvia*, App. No. 11160/07, 29 January 2014; *Indelicato v. Italy*, App. No. 31143/96, 18 January 2002.
58. See *Coselav v. Turkey*, App. No. 1413/07, 18 March 2013.
59. *Premininy v. Russia*, App. No. 44973/04, 20 June 2011.
60. Action plan on execution of the pilot judgment of the ECHR on application nos. 42525/07 and 60800/08 *Ananyev and Others v. Russia*, distributed by the Secretariat of the CoM, DH-DD(2012)1009, 29 October 2012.

61. See status of execution of *István Gábor Kovács*, CoM, last examined at its 1236th meeting (22–24 September 2015).
62. See Action Plan, communication from Bulgaria concerning the case of *Neshkov and Others* and the *Kehayov* group of cases against Bulgaria (Applications No. 36925/10, 41035/98), DH-DD(2015)755 rev, submitted on 8 August 2015, p. 6.
63. See status of execution of *István Gábor Kovács*, CoM, last examined at its 1236th meeting (22–24 September 2015).
64. Memorandum prepared by the Department for the Execution of Judgments of the ECtHR, H/Exec(2015)7, group of cases *Bragadireanu v. Romania*, 12 February 2015, p. 4. On the basis of data supplied by Romania's National Prison Administration, the NGO APADOR-CH indicates that the average living space available is a little over 2 m^2 per prisoner.
65. Memorandum prepared by the Department for the Execution of Judgments of the ECtHR, H/Exec(2015)7, Group of cases *Bragadireanu v. Romania*, 12 February 2015, pp. 5–6.
66. CoM, status of execution, *Nisiotis v. Greece* (App. No. 34704/08, 20 June 2011), last examined by the CoM at its 1230th meeting (9–11 June 2015).
67. CoM, communication from Italy concerning the case of *Torreggiani and others against Italy* (App. No. 43517/09), 27 May 2013, Action Plan presented by the Italian government, 27 November 2013.
68. CoM, status of execution of the *Torreggiani v. Italy* pilot judgment, last examined at the CoM 1214th meeting (2–4 December 2014).
69. Communication from an NGO (Public Verdict Foundation) in the *Ananyev and Others v. Russia*, 7 October 2013, CoM, considered at its 1193 meeting (4–6 March 2014), DH-DD(2014)44.
70. CoM, status of execution of the *Ananyev and Others v. Russia* judgment, last examined at the CoM 1201st meeting (3–5 June 2014).
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72. See Action Plan, communication from Bulgaria concerning the case of *Neshkov and Others* and the *Kehayov* group of cases against Bulgaria, submitted on 8 August 2015, p. 13.
73. Communication from an NGO (APADOR-CH) in the *Bragadireanu* group of cases against Romania, 26 May 2014, CoM, DH-DD(2014)752.

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