

Pre-trial detention:

It's time for EU action to end excessive use

THE PROBLEM

Across the continent, there are over 100,000 people who have not been convicted of any crime being held in pre-trial detention. They are imprisoned and trapped in a legal limbo for months or years. The human toll can be immense.

"Excessively long periods of pre-trial detention are detrimental to the individual, can prejudice judicial cooperation and do not represent the values for which the EU stands."

– 2011 European Commission Green Paper

Pre-trial detention is intended to be used only when proportionate and needed. Sometimes it is necessary to hold a person before a trial, but it should be reserved for a few cases where it is really justified.

"Remand in custody is used systematically, which, combined with poor prison conditions, entails a violation of the fundamental rights of prisoners."

– 2017 European Parliament resolution

However, the unjustified and excessive use of pre-trial detention is all too common in the EU. It is something that is needlessly wasting huge amounts of public funds, and contributing to prison overcrowding and adding to inhumane conditions.

This situation threatens to undermine mutual trust and judicial cooperation among EU member states. Flagship measures needed to fight crime in Europe, like the European Arrest Warrant, are at risk, because poor detention conditions can lead to refusal of extradition.

"Legislation in this area must be introduced without delay."

– MEP Birgit Sippel with cross-party support in 2016

THE EU'S PRE-TRIAL DETENTION CRISIS



On any given day over 100,000 people are in pre-trial detention in the EU.



1 in 6 of all prisoners in the EU haven't been found guilty of any crime.



Only 1 in 3 arrest warrants result in surrender: human rights are a growing reason for refusal.

€1.6bn

Annual cost of pre-trial detention in the EU.

Percentage of prison population who are pre-trial detainees





Daniela Tarău was accused of fraud and placed in pre-trial detention in Romania for 1 year and 9 months. She was eventually found innocent.

“The cell looked like a cave. It was underground, and it scared me. It took me 15 years to get my life back to normality.”

“After I was released, I became apathetic and lost social skills. I had to adapt to real life again, without any preparation.”

Nahuel was a member of an antifascist group in Madrid. He was accused of six attacks and held in pre-trial detention for 16 months until he was eventually found innocent.



IT'S TIME TO ACT

The EU has an opportunity to set human rights standards, which ensure that pre-trial detention is used fairly and only when it is really justified.

We ask the European Commission to table legislation on pre-trial detention that protects the right to liberty and the presumption of innocence, and the European Parliament and Council should ensure that it:

- contains key procedural protections;
- requires the use of alternatives to detention;
- excludes minor offences and considers the proportionality of detention;
- ensures that reviews are regular, meaningful, and evidence-based;
- includes time limits protecting defendants against excessive pre-trial detention;
- provides a right to challenge unlawful pre-trial detention and compensation for innocent people.

Further resources

Report: A Measure of Last Resort?

The practice of pre-trial detention decision making in the EU.

<https://bit.ly/2TfJduc>

Film: Pre-trial detention: barriers to legal assistance in Europe.

<https://bit.ly/2GM85Ve>

About JUSTICIA

JUSTICIA a network of leading civil society organisations from across Europe working on the promotion of the right to a fair trial. JUSTICIA is coordinated by Fair Trials.

About Fair Trials

Fair Trials is an international human rights NGO that works to improve respect for the human right to a fair trial.