Penal Issues

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Prison Entries and Length of Detention. The Diversity of the Correctional Systems Situation in Europe

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Of all the sources providing data on penal matters, prison statistics stand first for their regular use in European comparisons. The prison population rate (see definitions) is usually considered as less sensitive to specific legal and institutional features than other indicators. This rate is calculated annually through a survey conducted under the auspices of the Council of Europe, and produces a relatively stable classification of countries over the years. The Scandinavian countries have the lowest rates, ranging from 40 per 100,000 inhabitants for Iceland to 78 for Sweden. The highest rates are found in the former Soviet Union countries, with up to 577 for the Federation of Russia. Eastern European countries formerly under Soviet domination have high rates as well. Western European countries are somewhere in between, on the whole, but with some significant differences: Belgium has a prison population rate of 90 per 100,000 whereas the Netherlands are at 134 and England and Wales at 143 per 100,000. This brief summary of findings that may be further accentuated by mapping should not conceal the fact that some countries outside Scandinavia have also relatively low rates, such as Switzerland (82), Slovenia (57) and even Greece (87).

Chart 1: Prison population rate per 100,000 inhabitants in 2005

Source : SPACE1-2005, Aebi and Stadnic, Conseil de l'Europe
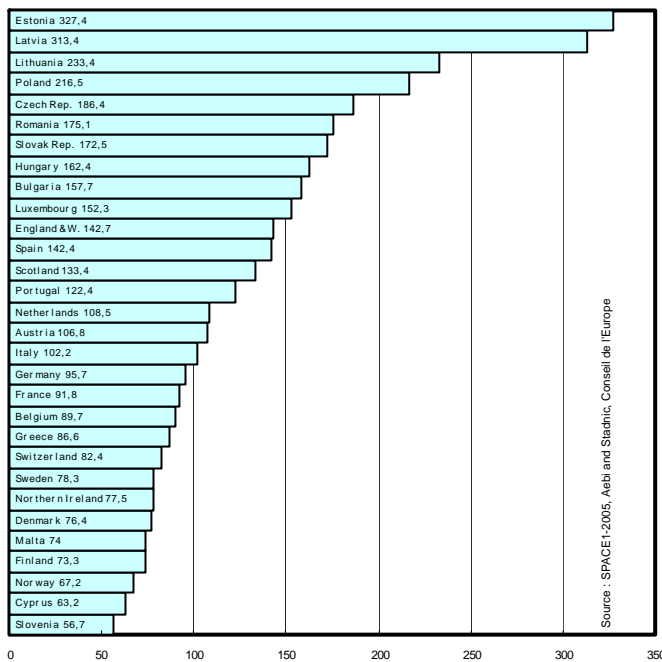
The Council of Europe Annual Penal Statistics (SPACE) were created in 1983 under the auspices of the Council of Europe (CoE). The project was coordinated by Pierre V. Tournier from 1983 to 2001 and from 2002 on by Marcelo F. Aebi. The main purpose of SPACE is to achieve data comparability on penal institutions and prison populations of all member countries of the Council of Europe. Information is collected annually from the regional representatives of ministries of Justice and/or correctional administrations. SPACE has two parts: SPACE I provides general information on a series of indicators touching on the particularities of sentence-serving systems and the characteristics of prison populations; SPACE II completes this information with data on the sanctions and measures available in each of the 46 member countries of the CoE. 47 countries and independent administrative entities responded to the 2005 SPACE I survey, the only exceptions being the Republic of Ireland and Andorra. SPACE questionnaires have been improved over the years in accordance with the development of and changes in the criminal justice systems of CoE member states. In this context, it is worth noting that the CoE had 21 members in 1983 as against 46 in 2007. The last significant additions to the questionnaire date back to 2004 and 2005, and pertain to specific features of each country's counting system and to alien prisoners. The charts and data synthesis tables show the 26 EU member countries other than the Republic of Ireland, plus Norway and Switzerland. Great Britain is covered by three legally and statistically distinct entries – England and Wales, Northern Ireland and Scotland.

Which Prisoners are Counted ?

The revised questionnaire introduced since the 2004 SPACE survey gives a better idea of variations in the field covered by statistics in different countries. The category « prison population » should include all individuals, be they pre-trial or sentenced prisoners, present on a given day of the year in all

facilities run by the prison administration of the country. However, the detailed questions included in the questionnaire show that, even if this « standard » definition is, on the whole, pertinent, there are some exceptions to it.

For instance, individuals held by the police on premises officially under their supervisory administration (typically, the ministry of the Interior) should not be included in the prison population. This is practically always the case, except in Switzerland. The outcome, in terms of « stock » is almost the same (because this situation concerns only 50 individuals out of about 6,000 on a given moment), but may considerably affect the number of people entering prison for a given period, over the year, for example.

Whether or not juveniles are included is probably more consequential, even in terms of stock. In some countries, juvenile offenders are placed in closed establishments that are not under the prison administration – except in some rare cases, such as Belgium and Germany – whereas, in others, juveniles are treated like other offenders even when they are subjected to special arrangements or special prisons (this is true in England). Statistically speaking, the situation is even more complex, since in the former case the juvenile « prisoners » may or may not be added to the adults' prison population. The same problem is encountered for other categories of prisoners, for whom some European countries have set up specific detention institutions: these include drug addicts and mentally ill prisoners in particular. In this case, however, the comparability of findings does not seem to be affected as much, since these special categories of prisoners are counted with the others.

On the other hand, another category of prisoners has a visible impact for certain countries: that is illegal aliens and political asylum seekers detained for administrative reasons. In some countries they are not included in the figures provided for the SPACE I survey. France, for example, had an approximate capacity of one thousand places in administrative detention centers in 2005, and the number of persons that went through them was estimated at 30,000 over the same year. In other countries, this kind of detention facilities belong to the prison administration and these persons are therefore included in the overall figures, with no specific information as to their number (in Belgium for instance). In still others, figures indicating the number of these aliens are given: for example, for Switzerland, as of September 7, 2005, 368 – or 6% – of the 6,111 prisoners were asylum seekers or illegal aliens detained for administrative reasons. However, this information is too scarce and does not allow accurate calculations of the proportions of illegal residents held for administrative and for penal reasons.

The outcome of these inclusions and exclusions of certain categories is unclear and therefore we will be cautious in our interpretations. Sometimes, the data provided by SPACE I show some traces of these difficulties within a given country. For the Netherlands, for example, the overall prison population rate includes all the above mentioned categories (21,826 prisoners), but the subcategories – *i.e.* distribution by legal status, sex, nationality and length of sentence – do not include juveniles detained in

special institutions for minors (2,459) and persons held in institutions for mentally ill offenders (1,615). Without these categories, the Netherlands have a total of 17,692 prisoners, corresponding to a rate of 108.5 per 100,000 (instead of 134), which will be used for subsequent analyses. However, this figure includes 2,302 illegal aliens detained for administrative reasons. Deduction of the latter, which would be logical to obtain better comparability with France, for example, would leave us with a rate of 94. Were these corrections to be made, the two countries would have very similar prison population rates (92 for France).

From a Single Indicator to a Finer Understanding

As of March 1, 2007, France (metropolitan and overseas) had about 60,000 prisoners[1]; with a population of some 64 million, the rate is then 94 per 100,000. What does this measure? Let us assume that all inmates are detained for two months and that the flow of prison-entering and prison-leaving is regular. In that case, 360,000 persons will enter (or leave) prison in the course of the year, representing a rate of 562 per 100,000, which includes double counts for those who do more than one entry during the year. But with a length of imprisonment of two years, and under the same conditions, 30,000 individuals would enter prison, yielding the rate to 47 per 100,000. Clearly, these two situations do not represent the same use of prison. The prison population rate alone is unable to distinguish between an intensive use of short sentences and the use of long sentences for a much smaller proportion of the population (the ratio is one to twelve in our fictitious example).

To differentiate these various situations, an indicator of average length of imprisonment is used, based on the ratio of stock to flow, expressed in months. This requires knowing the annual number of entries into prison and the average stock (or at least the stock on a given day). The SPACE I survey collects this information. As of September 1, 2004, Portugal reported a stock of 13,560 prisoners for 5,670 entries during the year, leading to an evaluation of the average length of imprisonment of 28.7 months (12 x 13,560 / 5,670). The Netherlands reported a stock of 16,173 prisoners for their ordinary prison institutions and 47,910 entries, representing an average length of detention assessed at 4 months. Thus, with relatively similar prison population rates, Portugal and the Netherlands have highly contrasting situations: the average time spent in prison is seven times higher for Portuguese inmates than for those in the Netherlands, but that only affects 54 annually entries per 100,000 inhabitants as against 294 (*i.e.* 5.4 times fewer entries in Portugal).

Nevertheless, considerable difficulties are encountered when calculating the average length of imprisonment. First, the same type of non-

[1] On that date, the prison population of committed prisoners was 59,892 persons, and 2,312 individuals were imprisoned but not « lodged » (1,925 on electronic monitoring and 387 « in care » outside of prison). The latter are no longer counted among the prison population in France. However, in the 2005 SPACE I survey, they are counted together with the prisoners (755 persons under electronic monitoring as of September 1, 2005).

comparability that affects counts of those present on a given day affects also counts of entries, and this effect is sometimes amplified in the categories of persons imprisoned for a short term. Next, the very notion of prison-entering is not easy to implement: counting entries in each penal institution do not necessarily distinguish between entries of previously free individuals – the only ones that should be counted – and entries of persons coming from another facility, and even entries following temporary legal short leaves from the establishment. For some countries, the entries figure becomes useless for calculating average length: thus, in Switzerland, the 2005 SPACE I survey yields an average length of 1.2 months because transfers are counted as entries, which would give that country the highest prison-entry rate. For Scotland, the estimated average length is also very low (2.2 months), since each sentence pronounced in the course of the year by different courts or by a same court on different dates is counted as an « entry » even if the offender is already in prison. These data have not been included here.

Lastly, the calculation of the average length of imprisonment indicator is based on a postulated stability of flows and lengths of stays, which is generally not corroborated, since observed situations tend to be variable, occasionally with rather sudden changes of magnitude. The outcome of the calculation is always meaningful, but it does not indicate the average length of imprisonment of a given population group, strictly speaking. In fact, an unchanged average length, as produced by this calculation, does not imply an unchanged situation, since two opposite trends may balance out. But international comparisons are still unable to take into account this kind of details; therefore, this estimation is useful for a first approach.

Prisoners' Status: Pre-trial, Sentenced and Others

The SPACE I survey also collects data on the capacity of penal institutions, the legal status of prisoners (or prison-enterers), the proportion of women and aliens in prison, the main offense justifying the detention of sentenced prisoners, the length of the sentences imposed, and the number of escapes and deaths. Thus, the map of prison population rates, with its rather simplified vision of the differences between European countries, is replaced by a much more complex picture, partially summed up in **Table 1**, below.

In all European countries, a fraction of the prison population has not received a final sentence yet. Whenever it is possible to analyze the details of these « pre-trial » prisoners, we find that for most of them no court decision has been reached yet, but there are always some who are in the appeal stage for a sentence pronounced in a court of first instance, and in some countries there are others who, having been found guilty, are awaiting a sentencing decision. The concept of « prisoners without a final sentence » allows for the comparison of extremely varied situations. France has the justified reputation of being a country with a rather large proportion of prisoners without a final sentence among those present in prison at a given time. But in 2005, with a rate of 35 %, it was not alone in this category: the rates are equivalent in Belgium and Italy

and even higher in Switzerland and the Netherlands. Conversely, some countries have a much lower proportion. England, with half that rate (17%), is often held up as an example, but the comparison involves extremely different legal systems. Instead, the comparison with Germany, with its 20% of prisoners without a final sentence, is more relevant: in spite of this lower proportion of prisoners without a final sentence, the prison population rate is not lower there. A comparison of these two indicators (prison population rate and proportion of prisoners without a final sentence) shows that they are not correlated, at least within the 27 European countries studied here: a higher proportion of « pre-trial » prisoners does not lead to a larger prison population.

This lack of correlation is corroborated when the extent of the use of pre-trial detention is measured at the prison-entry level. Few countries are able to provide this information, either because entries are not accurately – or not at all – measured, or because they are not classified according to their legal status. It is difficult to come to any conclusion in this case. Those Scandinavian countries that are able to provide this information (Finland and Norway) actually do have a low proportion of entries without a final sentence. But conversely, the highest proportions (Belgium, France and Italy) do not coincide with the highest prison population rates. The case of England leads us to take the length of imprisonment into account again: this country presents a low proportion of persons without a final sentence among the prisoners present at a given time, but that proportion is high among persons entering into prison. This situation may be explained by a most likely low length of pre-trial imprisonment. In France, on the other hand, the national data available definitely show that the weight of pre-trial detention, measured in terms of stock, is mostly due to the long stays in prison for this category of prisoners[2]. Unfortunately, the heterogeneity of the categories of prisoners according to their legal status makes it impossible to calculate indicators for the average length of pre-trial detention in order to perform cross-European comparisons.
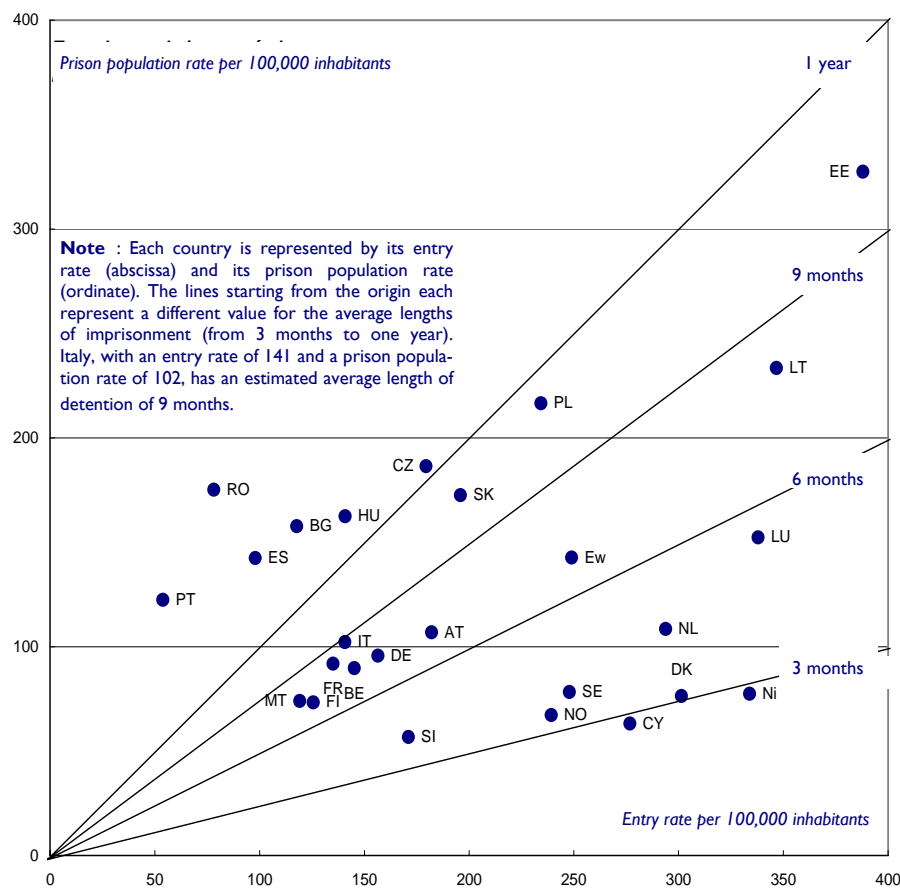
The Weight of the Length of Imprisonment

Finally, the total average length of detention definitely has the most visible link to the overall prison population rate. The eight countries with the lowest prison population rates (from Slovenia to Sweden in **Table I**) have lower average lengths of imprisonment than other countries (under 7 months and often under 5 months). Conversely, countries with higher average lengths (over 8 months) are those with a prison population rate above the median (the lower half of **Table I**). However, the statistical correlation is not very strong, since there are some outstanding counter-examples: in Western Europe, England and the Netherlands have high stocks although their average lengths of imprisonment are relatively low, and the longest average lengths (Portugal, Spain and

[2] In spite of a sharp drop in entries following committal orders in the course of an investigation, the proportion of pre-trial prisoners did not decline very much, owing to a constant increase in average length of pre-trial imprisonment.

Romania) do not produce the highest prison population rates.

Even if the relationship between the prison population rate and the average length is not strong, the latter may at least give us a glimpse of the various patterns of use of prison in different European countries, along the same lines as the two fictitious examples given above. But the average length does not sum up

all of our information. This is suggested by **Chart 2**, in which countries are placed according to their entry rate on the abscissa and to their prison population rate on the ordinate axis. The average length of detention, representing the link between these two rates, is then shown by the slope of the line connecting the country point to the point of origin[3].

Chart 2: Flows, lengths and stocks

Prison population rate per 100,000 inhabitants

Note : Each country is represented by its entry rate (abscissa) and its prison population rate (ordinate). The lines starting from the origin each represent a different value for the average lengths of imprisonment (from 3 months to one year). Italy, with an entry rate of 141 and a prison population rate of 102, has an estimated average length of detention of 9 months.

Entry rate per 100,000 inhabitants

The Scandinavian countries are not the only ones with low prison population rates: the same is true for Slovenia and Northern Ireland. Switzerland is only slightly above Sweden (and was even underneath it in 2003 and 2004), but is not shown here because of its unreliable measurement of entries. These countries are on the bottom of **Chart 2**. The average lengths are low and the entries in proportion to the population rather high. But Finland differs from the others in that its average length of detention is 6.3 months; it differs from Denmark, for example, where there are twice as many prison entries in proportion to the population, for an average length of imprisonment of 2.8 months. Slovenia is in between. Aside from Finland, the Scandinavian countries therefore have a much higher prison entry rate in relation to the population than those countries with a « medium-sized » overall prison population rate, such as Germany, Austria, Belgium, France and Italy. These countries have quite similar figures for all three indicators. The Netherlands, with a same stock level, has a far higher entry rate and a lower average length of detention. Above this median group with respect to stocks, countries with a high prison population rate are divided into cases where this is definitely due to long lengths of

imprisonment with relatively few prison entries in proportion to the population (Portugal, Spain, Bulgaria, Hungary, Romania) and countries where high entry figures prevail despite low or moderate average lengths of imprisonment (essentially England, then Luxembourg, with the Czech Republic and Slovakia in between). Still further up on the chart we find Poland, Lithuania and Estonia, with long lengths and high rates of entries. This brief overview shows the need to consider the variety of possible combinations between flow, length and stock of detention for any analysis of the prison situation and its evolution in Europe.

Trends over Time

Overall, the European prison population rate is rising: between 2000 and 2005, 18 out of 30 countries showed an average annual growth rate – estimated through a logarithmic adjustment – exceeding 2%. Some former communist countries (Romania, Czech Republic,

[3] This presentation applies the method used by Pierre V. Tournier in *Statistiques sur les populations carcérales dans les Etats-membres du Conseil de l'Europe – situation au 1er septembre 1983. Note de conjoncture n° 21, janvier 2004*, direction de l'Administration pénitentiaire, ministère de la Justice.

Lithuania, and Latvia) have experienced significant decreases, whereas a rise was also experienced in others (Bulgaria, Slovakia and Poland). For the 19 countries for which calculations could be done, the increase seems to be fed by a rise in the average lengths of imprisonment (13 cases of rises), since entry rates are usually stable or decreasing (16 cases). Detailed analysis shows growth of stocks fed by longer average lengths of detention with stable prison-entry rates as definitely the most frequent pattern (7 cases: Austria, Spain, Finland, Northern Ireland, Luxemburg, Norway, and Poland). This applies to countries with a wide range of prison population rates and is therefore not specific to countries with high rates of it.

An increase in the average length of detention does not necessarily translate into an equivalent rise of the prison population rate. An even greater decline in the prison-entry rate may cause stocks to drop (in Romania and Lithuania), or produce stability (in Slovenia and Hungary), or even a slighter increase (in the Slovak Republic and England).

When the estimated average length of imprisonment did not show any rise between 2000 and 2004 (6 cases), stocks remained stable in 2 countries (Belgium and Italy). In another country (the Czech Republic), a drop in the average length caused the stock to drop, while for three countries an increase in the prison entry rate produced an increase of the prison population rate (Bulgaria, France, and the Netherlands). Over this four-year period, no country showed a combined drop or a com-

bined rise in the average length and in the prison entry rate.

This rather simplified description of the demography of European prisons shows how delicate it is to sum up trends. Belgium and Italy show a degree of stability, the Netherlands are experiencing an enormous growth in their prison population linked to an increase in the number of entries into prison

(despite a quota policy) and France seems to be returning to an evolution of this type following a long period of decreasing entries. Austria, Spain, Finland, Norway, and Poland are expe-riencing an increase in prison populations provoked exclusively by a rise in their average lengths of imprisonment. This is also true for England, but with a declining entry rate. Although rises in prison populations are increasingly the rule in Europe, the tremendous variety between countries seems to indicate, *a priori*, that they are not produced by a uniformed correctional model.

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Definition and Calculation of Indicators

The ***prison population rate*** is the ratio between the number of prisoners (including pre-trial prisoners) present on a given date (September 1st) in the prison institutions and the number of inhabitants of the country (on January 1st, according to the available figures). The CoE finally preferred this term to « rate of detention » often used, especially by the CESDIP, but it is definitely the same indicator of « stock », in a statistical sense.

The ***prison entry rate*** is the ratio between the number of annual entries into prison and the number of inhabitants; it is an indicator of « flow ». As a rule, it does not include entries following transfer from one prison to another, returns following a prisoner's appearance before a judicial authority, and re-entries following a prison leave or an escape from prison. The same person may be counted for several entries during a given year.

The ***average length of imprisonment*** is estimated on the basis of the ratio between the preceding two rates and it is expressed in months.

The legal status of the prisoners (pre-trial, convicted but not yet sentenced, prisoners who have appealed or who are within the statutory limit for doing so, prisoners awaiting recourse, prisoners sentenced by a final sentence, other) allows us to construct the categories of « ***prisoners not serving a final sentence*** » and « ***entries before final sentence*** ». Data published in SPACE I in this respect show their proportion to the total number of prisoners. For these analyses, we have removed the category « other » from the total when calculating proportions, in order to avoid introducing a bias produced by some categories of prisoners that are not directly affected by a penal procedure (these are mostly aliens in administrative detention and fine defaulters).

Table 2: Diversity of European correctional situations, based on SPACE I findings

	Country	Prison population rate	2004 Prison entry rate	2004 Average length of imprisonment	2005 Percentage of prisoners without a final sentence	2005 Percentage of entries of persons without a final sentence	Trend Prison population rate Adjusted annual variation 2000-2005	Trend Average length Variation 2000-2004	Trend Entry rate Variation 2000-2004
SI	Slovenia	56,7	o	- -	+	-	-0,4%	+	-
CY	Cyprus	63,2	+	- -	-	-	9,6%	...	+
NO	Norway	67,2	+	- -	-	-	2,9%	+	o
FI	Finland	73,3	-	-	-	-	6,0%	+	o
MT	Malta	74	-	-	+	+	2,1%	...	+
DK	Denmark	76,4	+	- -	o	...	4,8%	...	...
Ni	Northern Ireland	77,5	+ +	- -	+	o	7,9%	+	o
SE	Sweden	78,3	+	- -	o	...	4,6%	...	...
CH	Switzerland	82,4	...	...	+ +	...	0,1%	...	+
GR	Greece	86,6	...	...	...	...	2,3%	...	...
BE	Belgium	89,7	-	o	+	+	0,9%	o	o
FR	France	91,8	-	o	+	+	3,6%	o	+
DE	Germany	95,7	o	o	-	o	0,1%	...	...
IT	Italy	102,2	-	o	+	+	1,6%	o	o
AT	Austia	106,8	o	-	o	+	5,8%	+	o
NL	Netherlands	108,5	+	- -	+ +	o	8,5%	o	+
PT	Portugal	122,4	- -	+ +	o	o	-1,8%	...	o
Sc	Scotland	133,4	...	...	-	o	3,0%	...	...
ES	Spain	142,4	- -	+ +	o	...	5,1%	+	o
Ew	England & W.	142,7	+	-	-	+	3,0%	+	-
LU	Luxembourg	152,3	+ +	- -	+ +	o	12,4%	+	o
BG	Bulgaria	157,7	-	+ +	o	...	6,6%	-	+
HU	Hungary	162,4	-	+ +	o	-	-0,2%	+	-
SK	Slovak Rep.	172,5	o	+	+	o	6,4%	+	-
RO	Romania	175,1	- -	+ +	-	...	-5,2%	+	-
CZ	Czech Rep.	186,4	o	+	-	...	-3,5%	-	o
PL	Poland	216,5	+	-	-	-	3,7%	+	o
LT	Lithuania	233,4	+ +	o	-	+	-2,8%	+	-
LV	Latvia	313,4	...	...	o	...	-2,5%	...	...
EE	Estonia	327,4	+ +	+	o	o	-0,2%	...	...

Legend	- -	...	o	+	+ +
			missing or unreliable data		
Average rates per 100,000 inhabitants	below 100	from 100 to 150	from 150 to 200	from 200 to 330	over 330
Average length of imprisonment	under 5 months	from 5 to months	from 7 to 8 months	from 8 to 12 months	over 1 year
Proportion of prisoners without a final sentence		under 20%	from 20 to 30%	from 30 to 40%	over 40%
Proportion of entries without a final sentence		under 45%	from 45 to 55%	over 55%	
Average length variation 2000-2004		drop 10% or more	from -10% to +10%	rise of 10% or more	
Entry rate variation 2000-2004		drop 10% or more	from -10% to +10%	rise of 10% or more	