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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Council for Penological Co-operation
(PC-CP)

**MEMBER STATES' COMMENTS ON THE DRAFT EUROPEAN
CODE OF ETHICS FOR PRISON STAFF**

COMMENTS OF THE FOLLOWING COUNTRIES ARE INCLUDED:

1. Czech Republic
2. Denmark
3. Italy
4. Norway
5. Russian Federation
6. Sweden
7. Switzerland

GENERAL COMMENTS

Czech Republic: The Prison Service of the Czech Republic considers the Draft European Code of Ethics for Prison Staff as incomplete and, in some parts, terminologically and conceptually inaccurate. The Prison Service of the Czech Republic adopted its own Code of Professional Ethics of Employees.

The strengthening of confidence in impartiality, principle of equality and justice was the main objective of the new Code. The Code expressed in relation to the public that prison service employees are obliged to execute the duty legally, rightly, ponderously and humanely. The Prison Service has always been aware of the fact that its efficiency depends on cooperation and support of the community.

As well as the Draft European Code of Ethics for Prison Staff, the Code reflected adequately the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) provisions and especially worked-out some of CPT paragraphs. The objective was to support the prevention of persons deprived of liberty from bad treatment. Another source of information for the Code was the European Prison Rules and the United Nations Code of Conduct for Law Enforcement Officials.

Obviously, the material intention, approach philosophy of both codexes (Draft European Code of Ethics for Prison Staff, as well as the Code of Professional Ethics of Employee) is essentially identical.

Denmark: Denmark agrees with Norway in reference to the using of the term “correctional staff” instead of “prison staff”.

Italy: l’Italie tient à signaler qu’elle partage largement les finalités et le contenu du projet de Code d’éthique qui s’inspire par ailleurs largement sur la Recommandation Rec(2006)2 sur les règles pénitentiaires européennes (RPE) et la Recommandation n°R(97)12.

Norway : We do not share the view that the text should only be applicable to Prison Staff. Norway suggests that the current text be applicable to “correctional staff”.

Switzerland: Focalisé sur le personnel, le projet de Code d’éthique repose largement sur la Recommandation Rec(2006)2 sur les règles pénitentiaires européennes (RPE), ainsi que sur toute une série d’autres recommandations, notamment la Recommandation n°R(97)12. Nous constatons que le présent projet ne contient pas fondamentalement de nouvelles recommandations.

Nous tenons à signaler, à cet égard, qu’en Suisse les RPE ont été traduites et distribuées à tous les collaborateurs des établissements d’exécution des peines et mesures et que chaque nouveau collaborateur travaillant dans le domaine de l’exécution reçoit une formation appropriée sur la base des RPE.

Il ne nous semble pas être suffisamment clair, quelle sera la plus-value pratique de ce Code d’éthique. Quels besoins concrets du personnel ce nouvel instrument doit-il couvrir? Nous sommes de l’avis que le PC-CP doit préalablement répondre, de la manière la plus précise possible, à cette question.

Pour notre part, nous estimons que la plus-value pourrait consister à mettre à la disposition du personnel un instrument qui résume en quelques points (douze au maximum) les principes éthiques les plus importants. Par sa concision, il serait immédiatement compréhensible pour l’ensemble des collaborateurs travaillant dans le domaine de l’exécution. Lesdits principes pourraient ainsi être présentés en différents endroits des établissements pénitentiaires, par exemple sous forme d’affiche, ou distribués sous forme de carte «aide-mémoire», que les collaborateurs porteraient constamment sur eux.

La structure et le contenu d’une telle compilation concise pourrait s’inspirer au chiffre IV du présent projet « Lignes directrices concernant le comportement du personnel pénitentiaire ».

Draft Recommendation CM/Rec (2012)XX of the Committee of Ministers to member states on the European Code of Ethics for Prison Staff

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Recalling that the aim of the Council of Europe is to achieve greater unity between its members;

Bearing in mind that it is also the purpose of the Council of Europe to promote the rule of law, which constitutes the basis of all genuine democracies;

Considering that the criminal justice system plays a key role in safeguarding the rule of law and that prison staff have an essential role within that system;

Having regard to the European Convention on Human Rights and the case law of the European Court of Human Rights;

Having regard also to the work carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and in particular the standards it has developed in its general reports;

Reiterating that no one shall be deprived of liberty save as a measure of last resort and in accordance with a procedure prescribed by law;

Stressing that the enforcement of custodial sentences and the treatment of prisoners necessitate taking account of the requirements of safety, security and good order, while also ensuring prison conditions which do not infringe human dignity and which offer meaningful occupational activities and treatment programmes to prisoners, thus preparing them for their reintegration into society;

Considering it important that Council of Europe member states continue to update and observe common principles regarding their prison policies;

Considering, moreover, that the observance of such common principles will enhance international co-operation in this field;

Considering that the achievement of a number of the objectives of the prison service depend on public involvement and cooperation and that the efficiency of the prison service is dependent on public support;

Noting the significant social changes which have influenced important developments in the penal field in Europe in the course of the last two decades;

Endorsing once again the standards contained in the recommendations of the Committee of Ministers of the Council of Europe, which relate to penitentiary policy and practice and in particular:

Recommendation n° R (89) 12 on education in prison;

Recommendation n°R (93) 6 concerning prison and criminological aspects of the control of transmissible diseases including AIDS and related health problems in prison;

Recommendation n° R (97) 12 on staff concerned with the implementation of sanctions and measures;

Recommendation n° R (98) 7 concerning the ethical and organisational aspects of health care in prison;

Recommendation n° R (99) 22 concerning prison overcrowding and prison population inflation

Recommendation Rec(2003)22 on conditional release (parole);

Recommendation Rec(2003)23 on the management by prison administrations of life sentence and other long-term prisoners;

Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules;

Recommendation Rec (2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse;

Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures;

Bearing in mind the United Nations Code of Conduct for Law Enforcement Officials, United Nations Standard Minimum Rules for the Treatment of Prisoners and the United Nations Standard Minimum Rules for the Treatment of Women Prisoners and Non-custodial measures for Women Offenders (Bangkok Rules);

Considering the need to establish common European principles and guidelines for the overall objectives, performance and accountability of prison staff to safeguard security and individual's rights in democratic societies governed by the rule of law,

Recommends that the governments of member states be guided in their internal legislation, practice and codes of conduct of prison staff by the principles set out in the text of the European Code of Ethics for Prison Staff, appended to the present recommendation, which should be read in conjunction with the European Prison Rules, with a view to their implementation, and to give the widest possible circulation to this text.

Appendix to Recommendation CM/Rec (2012) XX

I. Definition of the Scope of the Code

This Code applies to prison staff at all levels .

In this Code the term “prison” is used to describe institutions reserved for holding persons who have been remanded in custody by a judicial authority or who have been deprived of their liberty following conviction.

Nothing in this Code ought to be interpreted as precluding the application of any relevant international human rights instruments and standards, especially the European Prison Rules, as well as other professional Codes of Ethics applicable to specialised groups of staff.

II. Objectives of Prison Staff

1. The main objectives of prison staff in a democratic society governed by the rule of law shall be:

- to protect and respect the fundamental rights and freedoms of individuals as enshrined, in particular, in the European Convention on Human Rights;
- to ensure that all prisoners are safe and held in conditions that comply with relevant international standards and in particular the European Prison Rules;¹
- to respect and protect the right of the public to be safeguarded from criminal activity;
- to work towards the social reintegration of prisoners on release, by providing them with the opportunity to use their time in prison positively.

PROPOSED CHANGES on II

Sweden: “The main objectives of prison staff in a democratic society governed by the rule of law shall - **in addition to their task to respect and protect the right of the public to be safeguarded from criminal activity and to work towards the social reintegration of prisoners on release, by providing them with the opportunity to use their time in prison positively** - be to protect and respect the fundamental rights and freedoms of individuals as enshrined, in particular, in the European Convention on Human Rights and to ensure that all prisoners are safe and held in conditions that comply with relevant international standards and in particular the European Prison Rules.”

III. Prison Staff and the Criminal Justice System

2. Prison staff shall have roles and duties different from those of the police, the military, the prosecution and the judiciary in respect of prisoners.

COMMENTS on 2

Italy: Le projet semble s'inspirer du point 71 des RPE qui prévoit que “ Les prisons doivent être placées sous la responsabilité des autorités publiques et être séparées des services de l'armée, de police et d'enquête pénale“. Bien que le système italien respecte pleinement la dite Règle 71 en prévoyant déjà et depuis longtemps une nette séparation de rôle et fonctions entre le personnel pénitentiaire et tous les autres corps mentionnés, les Gardes des prisons (« Polizia Penitenziaria ») sont également dotés, afin de pouvoir

¹ Recommendation Rec(2006) 2 of the Committee of Ministers to member states on the European Prison Rules (Adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies)

exploiter les fonctions qui leur sont attribués de la manière la plus efficace, des pouvoirs dits de « police judiciaire » au sens du Code de Procédure Pénale, pouvoirs qui leur permettent notamment de prendre connaissance des éventuels faits délictueux et d'en assurer les éléments de preuve. Nous estimons donc que l'attribution aux Gardes des dites pouvoirs puisse ne pas être considérée comme incompatible ou en violation de la Règle III.2 ou, en cas de doute, que une précision puisse être apportée dans le texte, tout en soulignant que cette précision ne serait d'application que pour le seul personnel de « polizia penitenziaria » et non pour le reste du personnel pénitentiaire.

3. Prison staff shall cooperate appropriately with relevant institutions of the criminal justice system, including with probation services, where they exist.

IV. Guidelines for Prison Staff Conduct

A. Accountability

4. Prison staff shall carry out all their duties in accordance with national law and international standards.

5. Prison staff at all levels shall be personally responsible and accountable for their own actions or omissions or for orders to subordinates; they shall always verify the lawfulness of their intended actions.

B. Integrity

6. Prison staff shall maintain and promote high standards of personal honesty and integrity.

7. Prison staff shall maintain positive professional relationships with prisoners and members of their families.

8. Prison staff shall not allow their private, financial or other interests to conflict with their position. It is the responsibility of all prison staff to avoid such conflicts of interest and to request guidance in case of doubt.

9. Prison staff shall oppose all forms of corruption within the prison service. They shall inform superiors and other appropriate bodies of any corruption within the prison service.

10. Prison staff shall carry out instructions properly issued by their superiors, but they shall have a duty to refrain from carrying out any instructions which are clearly illegal and to report such instructions, without fear of sanction.

C. Respect and Protection of Human Dignity

11. Prison staff shall at all times respect and protect everyone's right to life.

12. In the performance of their daily tasks, prison staff shall respect and protect human dignity and maintain and uphold the human rights of all persons.

13. Prison staff shall not inflict, instigate or tolerate any act of torture or other inhuman or degrading treatment or punishment, under any circumstances, including when ordered by a superior.

14. Prison staff shall respect and protect the physical, sexual and psychological integrity of all prisoners, including against assault by fellow prisoners.

PROPOSED CHANGES on 14

Norway: "Correctional staff shall (...) prisoners. Special measures should be taken to protect prisoners against assault by fellow prisoners."

15. Prison staff shall at all times treat prisoners, visitors and colleagues with politeness and respect.

PROPOSED CHANGES on 15

Czech Republic: "(...) with politeness and correctness."

Norway: "Correctional staff shall at all times treat prisoners, visitors, colleagues and all other persons with whom they interact whilst on duty with politeness and respect."

COMMENTS on 15

Czech Republic: We don't agree with the word „respect“, as it is not authoritative enough, and we recommend substituting it with the word „correctness“.

16. Prison staff shall only interfere with individual's right to privacy when strictly necessary and only to obtain a legitimate objective.

17. Prison staff shall not use force against prisoners except in self-defence or in cases of attempted escape or active or passive physical resistance to a lawful order and always as a last resort.

PROPOSED CHANGES on 17

Czech Republic: “Prison staff **may only** use force against prisoners **exceptionally, and always in the limits of legal act and always as the last resort.**”

Russian Federation: “Prison staff shall not use force, **including use of weapon,** against prisoners except in self-defence or in cases of attempted escape or active or passive physical resistance to a lawful order **and in other cases provided by national legislation and always as a last resort.**”

COMMENTS on 17

Czech Republic: We suggest defining the use of force against prisoners only exceptionally, but always in limits of legal act and always as the last resort.

18. Prison staff shall carry out personal searches only when strictly necessary and shall not humiliate prisoners in the process.

PROPOSED CHANGES on 18

Czech Republic: “Prison staff **may** carry out personal searches **if the law stipulates so and in limits of legal act and must** not humiliate prisoners in the process.”

Russian Federation: “Prison staff shall carry out personal searches only when strictly **and in accordance with national legislation** necessary and shall not humiliate prisoners in the process.”

COMMENTS on 18

Czech Republic: In our view the suggested text infringes on the national legal order, regards to the national legislation and exceeds the legal frame given by the European Prison Rules, the part of which 54.2. stipulates that situations, in which personal searches may be carried out, are defined by the national legislation. We suggest changing the text in order to correspond the rule n. 54.4 of the European Prison Rules, accordingly that physical persons must not be humiliated during personal searches.

19. Prison staff shall use instruments of restraint only as provided for by the European Prison Rules.² In particular they shall never use them on women during labour, during birth and immediately after birth.

PROPOSED CHANGES on 19

Czech Republic: “Prison staff shall use instruments of restraint only **upon the extension and conditions, given by the law.**”

COMMENTS on 19

Czech Republic: Conditions of use of instruments of restraint and their limitation of use, including obligations connected with use of restraint instruments, are stipulated by the law.

D. Care and Assistance

² Rule 68

20. Prison staff shall be sensitive to the special needs of individuals, such as juveniles, women, minorities, foreign prisoners, elderly and disabled prisoners, and any prisoner who might be vulnerable for other reasons, and make every effort to provide for their needs.

PROPOSED CHANGES on 20

Denmark: “**Correctional staff should** be sensitive to the special needs of individuals, such as juveniles, women, minorities, foreign prisoners, elderly and disabled prisoners, and any prisoner who might be vulnerable for other reasons, **and do their best to provide for their needs.**”

COMMENTS on 20

Denmark: Denmark suggests a softening of the text.

21. Prison staff shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

22. Prison staff shall provide for the safety, hygiene and appropriate nourishment of persons in the course of their custody. They shall make every effort to ensure that conditions in prison comply with the requirements of relevant international standards, in particular the European Prison Rules.

23. Prison staff shall work towards facilitating the social reintegration of prisoners through a programme of constructive activities, individual interactions and assistance.

E. Fairness, Impartiality and Non-Discrimination

24. Prison staff shall respect plurality and diversity and not discriminate against any prisoner on the basis of sex, age, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status or the type of offence alleged or committed by that prisoner.

COMMENTS on 24

Czech Republic: This is typical antidiscrimination provision, the formulation of which should be precised. In comparison with the Czech Anti-discriminating Law no. 198/2009, it restricts exactly named reasons for discrimination. A person has right for equal treatment regardless of his/her race, ethnic origin, nationality, gender, sexual orientation, age, health handicap, religion, faith or a world view. The gender discrimination includes discrimination against the reasons of pregnancy, maternity, paternity and the sexual identification. In this consequence, we consider the suggested version of the point 25 is redundant. The expression „sexual harassment“ seems unbalanced in the context of the whole Codex. In our opinion, the sexual harassment means undesirable behaviour connected with reasons stated in the point 24, which results to decreasing of a person’s dignity and creation of intimidating, hostile, humiliating or offending environment; or a determining condition influencing exercise of rights in certain relations.

25. Prison staff shall take full account of the need to challenge and combat racism and xenophobia, as well as to promote gender sensitivity and prevent sexual harassment of any form both in relation to other staff and to prisoners.

26. Prison staff shall carry out their tasks in a fair manner, with objectivity and consistency.

27. Prison staff shall apply objective and fair disciplinary procedures as provided for by the European Prison Rules³. Moreover they shall respect the principle that prisoners charged with a disciplinary offence shall be considered innocent until proven guilty.

F. Cooperation

COMMENTS on F

Czech Republic: The Draft European Code of Ethics for Prison Staff reflects the importance of cooperation with other bodies. The purpose of this cooperation is regular and useful contact with outdoor world. Nevertheless, in the text there is no reference to the necessity of respecting the religious freedom standards,

³ Rules 56-63

which include, for example, the possibility to attend religious services or to have access to literature in order to meet one's religious needs.

28. Prison staff shall ensure that prisoners have regular and adequate access to their lawyers and families throughout their imprisonment.

PROPOSED CHANGES on 28

Russian Federation: "Prison staff **in accordance with national legislation** shall ensure that prisoners have regular and adequate access to their lawyers and families throughout their imprisonment."

COMMENTS on 28

Czech Republic: The proposed rule is too broad and excludes the possibility of court to limit an intimate contact between lawyer and prisoner in exceptional cases (for example, the Campbell vers. UK, adjudication of ECHR senate of 25. March 1992); in order to prevent a serious crime or a principal violation of security in the prison. The suggested version oversimplifies the fact that, according to the European Prison Rules, the prison administration must ensure appropriate possibilities of access to law consulting, as prisoners have the right to access to legal consulting (consultation or other communication including correspondence, regarding legal issues between prisoners and their lawyers, should be considered confidential. According to the European Prison Rules, in the national legislation there should be stipulated national and international bodies and representatives, who must not be affected with communication restrictions. We cannot support the wording as it is.

29. Prison staff shall promote cooperation with governmental or non-governmental organisations and community groups working for the welfare of prisoners.

30. Prison staff shall promote a spirit of cooperation, support, mutual trust and understanding among colleagues.

G. Confidentiality and Data Protection

31. Information of a confidential nature in the possession of prison staff shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

32. Particular attention shall be paid to the obligation to respect principles of medical confidentiality.

PROPOSED CHANGES on 32

Russian Federation: "Particular attention shall be paid to the obligation to respect principles of medical confidentiality. **The fact that the prisoner asked for medical treatment, his or her diagnosis and the results of medical treatment shall be confidential, unless otherwise provided by national law.**"

33. The collection, storage, and use of personal data by the prison staff shall be carried out in accordance with international data protection principles and, in particular, shall be limited to the extent necessary for the performance of lawful, legitimate and specific purposes.

V. General

34. Prison staff shall respect the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of it.

35. Prison staff who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities.

36. Codes of ethics for prison staff, based on the above principles, shall be developed in member states and shall be overseen by appropriate bodies.