

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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# COMPENDIUM OF CONVENTIONS, RECOMMENDATIONS AND RESOLUTIONS RELATING TO PRISONS AND COMMUNITY SANCTIONS AND MEASURES

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*Compendium des conventions, recommandations et résolutions relatives aux questions pénitentiaires et aux sanctions et mesures appliquées dans la communauté*

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The following recommendations and resolutions were not included because fully covered by more recent recommendations

Recommendation Rec (2000) 22 on improving the implementation of the European rules on community sanctions and measures

*Formally replaced by Recommendation CM/Rec (2017) 3 on the European Rules on community sanctions and measures*

Recommendation N°R (92) 16 on the European rules on community sanctions and measures

*Formally replaced by Recommendation CM/Rec (2017) 3 on the European Rules on community sanctions and measures*

Recommendation N° R (87) 3 on the European prison rules

*Formally replaced by Recommendation Rec (2006) 2 on the European prison Rules.*

Recommendation N° R (84) 12 concerning foreign prisoners

*Formally replaced by Recommendation CM/Rec (2012) 12 concerning foreign prisoners.*

Recommendation N° R (82) 17 on the custody and treatment of dangerous prisoners

*Formally replaced by Recommendation CM/Rec (2014) 3 concerning dangerous offenders*

Recommendation N° R (80) 11 concerning custody pending trial

*Formally replaced by 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.*

Resolution (76) 2 on the treatment of long-term prisoners

*Covered by Recommendation Rec (2003) 23 on the management of life-sentence and other long-term prisoners.*

Resolution (73) 5 on the standard minimum rules for the treatment of prisoners

*Implicitly replaced by Recommendation N° R (87) 3 on the European Prison Rules which claim to have "reformulated" them.*

Resolution (65) 11 on remand in custody

*Formally replaced by 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.*

The following recommendations and resolutions were not included because they are outdated and/or largely covered by other recommendations

Resolution (76) 10 on certain alternative penal measures to imprisonment

*Largely covered by Recommendation N° R (99) 22 concerning prison overcrowding and prison population inflation.*

Resolution (75) 25 on prison labour

*Very brief resolution which does not add much to Recommendation Rec (2006) on the European Prison Rules which deal relatively fully with prison labour.*

Resolution (73) 24 on group and community work with offenders

*This is a very brief resolution. Modern programmes of restorative justice (see EPR 103.7) cover part of this area and should probably be developed instead.*

Resolution (73) 17 on short-term treatment of adult offenders

*Most of it is covered by Recommendation N° R (99) 22 concerning prison overcrowding and prison population inflation. The penal policy emphasis has also changed.*

Resolution (68) 24 on the status, selection and training of governing grades of staff of penal establishments

*Governing grades are not covered directly by Recommendation Rec (2006) 2 but management concerns are addressed broadly its Rule 72. In addition it is largely covered by Recommendation N° R (97) 12 on staff concerned with the implementation of sanctions and measures which refers to updating this Resolution.*

Resolution (66) 26 on the status, recruitment and training of prison staff

*Most of these recommendations are covered by Recommendation Rec (2006) 2. The distinction between basic grade custodial staff and "directing staff" in respect of selection and training was deliberately not used in Rec (2006) 2. There are also some other inconsistencies. For example, the notion that full time medical officers should be civil servants stands in contradiction to the integration of prison medical services in national health systems. In addition it is largely covered by Recommendation N° R (97) 12 on staff concerned with the implementation of sanctions and measures which refers to updating this Resolution.*

Resolution (66) 25 on the short-term treatment of young offenders of less than 21 years

*New European Rules for juvenile offenders subject to community sanctions or measures or deprived of their liberty are under preparation and are expected to be adopted by the Committee of Ministers.*

Resolution (65) 1 on suspended sentence, probation and other alternatives to imprisonment

*Very largely covered by Recommendation N° R (99) 22 concerning prison overcrowding and prison population inflation.*

*"The mood and temper of the public with regard to the treatment of crime and criminals is one of the unfailing tests of the civilisation of a country."*

*Winston Churchill*

# CONVENTIONS

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# European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (ETS N° 51)

*Strasbourg, 30 November 1964*

## Preamble

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve greater unity among its members;

Being resolved to take concerted action to combat crime;

Considering that, to this end, they are in duty bound to ensure, in the territory of the other Contracting Parties, either the social rehabilitation of offenders given suspended sentences or released conditionally by their own courts, or the enforcement of the sentence when the prescribed conditions are not fulfilled,

Have agreed as follows:

## Part I - Basic principles

### Article 1

1. The Contracting Parties undertake to grant each other in the circumstances set out below the mutual assistance necessary for the social rehabilitation of the offenders referred to in Article 2. This assistance shall take the form of supervision designed to facilitate the good conduct and readaptation to social life of such offenders and to keep a watch on their behaviour with a view, should it become necessary, either to pronouncing sentence on them or to enforcing a sentence already pronounced.

2. The Contracting Parties shall, in the circumstances set out below and in accordance with the following provisions, enforce such detention order or other penalty involving deprivation of liberty as may have been passed on the offender, application of which has been suspended.

### Article 2

1. For the purposes of this Convention, the term "offender" shall be taken to mean any person, who, in the territory of one of the Contracting Parties, has:

- a. been found guilty by a court and placed on probation without sentence having been pronounced;
- b. been given a suspended sentence involving deprivation of liberty, or a sentence of which the enforcement has been conditionally suspended, in whole or in part, either at the time of the sentence or subsequently.

2. In subsequent articles, the term "sentence" shall be deemed to include all judicial decisions taken in accordance with sub-paragraphs a and b of paragraph 1 above.

### Article 3

The decisions referred to in Article 2 must be final and must have executive force.

### Article 4

The offence on which any request under Article 5 is based shall be one punishable under the legislation of both the requesting and the requested State.

### Article 5

1. The State which pronounced the sentence may request the State in whose territory the offender establishes his ordinary residence:

- a. to carry out supervision only, in accordance with Part II;
- b. to carry out supervision and if necessary to enforce the sentence, in accordance with Parts II and III;
- c. to assume entire responsibility for applying the sentence, in accordance with the provisions of Part IV.

2. The requested State shall act upon such a request, under the conditions laid down in this Convention.

3. If the requesting State has made one of the requests mentioned in paragraph 1 above, and the requested State deems it preferable, in any particular case, to adopt one of the other courses provided for in that paragraph, the requested State may refuse to accede to such a request, at the same time declaring its willingness to follow another course, which it shall indicate.

### Article 6

Supervision, enforcement or complete application of the sentence, as defined in the preceding article, shall be carried out, at the request of the State in which sentence was pronounced, by the State in whose territory the offender establishes his ordinary residence.

### Article 7

1. Supervision, enforcement or complete application shall be refused:

- a. if the request is regarded by the requested State as likely to prejudice its sovereignty, security, the fundamentals of its legal system, or other essential interests;
- b. if the request relates to a sentence for an offence which has been judged in final instance in the requested State;
- c. if the act for which sentence has been passed is considered by the requested State as either a political offence or an offence related to a political offence, or as a purely military offence;
- d. if the penalty imposed can no longer be exacted, because of the lapse of time, under the legislation of either the requesting or the requested State;

- e. if the offender has benefited under an amnesty or a pardon in either the requesting or the requested State.
2. Supervision, enforcement or complete application may be refused:
    - a. if the competent authorities in the requested State have decided not to take proceedings, or to drop proceedings already begun, in respect of the same act;
    - b. if the act for which sentence has been pronounced is also the subject of proceedings in the requested State;
    - c. if the sentence to which the request relates was pronounced *in absentia*;
    - d. to the extent that the requested State deems the sentence incompatible with the principles governing the application of its own penal law, in particular, if on account of his age the offender could not have been sentenced in the requested State.
  3. In the case of fiscal offences, supervision or enforcement shall be carried out, in accordance with the provisions of this Convention, only if the Contracting Parties have so decided in respect of each such offence or category of offences.

## Article 8

The requesting and requested State shall keep each other informed in so far as it is necessary of all circumstances likely to affect measures of supervision or enforcement in the territory of the requested State.

## Article 9

The requested State shall inform the requesting State without delay what action is being taken on its request

In the case of total or partial refusal to comply, it shall communicate its reasons for such refusal.

## Part II - Supervision

### Article 10

The requesting State shall inform the requested State of the conditions imposed on the offender and of any supervisory measures with which he must comply during his period of probation.

### Article 11

1. In complying with a request for supervision, the requested State shall, if necessary, adapt the prescribed supervisory measures in accordance with its own laws.
2. In no case may the supervisory measures applied by the requested State, as regards either their nature or their duration, be more severe than those prescribed by the requesting State.

## Article 12

When the requested State agrees to undertake supervision, it shall proceed as follows:

1. It shall inform the requesting State without delay of the answer given to its request;
2. It shall contact the authorities or bodies responsible in its own territory for supervising and assisting offenders;
3. It shall inform the requesting State of all measures taken and their implementation.

## Article 13

Should the offender become liable to revocation of the conditional suspension of his sentence referred to in Article 2 either because he has been prosecuted or sentenced for a new offence, or because he has failed to observe the prescribed conditions, the necessary information shall be supplied to the requesting State automatically and without delay by the requested State.

## Article 14

When the period of supervision expires, the requested State shall, on application by the requesting State, transmit all necessary information to the latter.

## Article 15

The requesting State shall alone be competent to judge, on the basis of the information and comments supplied by the requested State, whether or not the offender has satisfied the conditions imposed upon him, and, on the basis of such appraisal, to take any further steps provided for by its own legislation.

It shall inform the requested State of its decision.

## Part III - Enforcement of sentences

### Article 16

After revocation of the conditional suspension of the sentence by the requesting State, and on application by that State, the requested State shall be competent to enforce the said sentence.

### Article 17

Enforcement in the requested State shall take place in accordance with the law of that State, after verification of the authenticity of the request for enforcement and its compatibility with the terms of this Convention.

### Article 18

The requested State shall in due course transmit to the requesting State a document certifying that the sentence has been enforced.

## Article 19

The requested State shall, if need be, substitute for the penalty imposed in the requesting State, the penalty or measure provided for by its own legislation for a similar offence. The nature of such penalty or measure shall correspond as closely as possible to that in the sentence to be enforced. It may not exceed the maximum penalty provided for by the legislation of the requested State, nor may it be longer or more rigorous than that imposed by the requesting State.

## Article 20

The requesting State may no longer itself take any of the measures of enforcement requested, unless the requested State indicates that it is unwilling or unable to do so.

## Article 21

The requested State shall be competent to grant the offender conditional release. The right of pardon may be exercised by either the requesting or the requested State.

## Part IV - Relinquishment to the requested State

### Article 22

The requesting State shall communicate to the requested State the sentence of which it requests complete application.

### Article 23

1. The requested State shall adapt to its own penal legislation the penalty or measure prescribed as if the sentence had been pronounced for the same offence committed in its own territory.
2. The penalty imposed by the requested State may not be more severe than that pronounced in the requesting State.

### Article 24

The requested State shall ensure complete application of the sentence thus adapted as if it were a sentence pronounced by its own courts.

### Article 25

The acceptance by the requested State of a request in accordance with the present Part IV shall extinguish the right of the requesting State to enforce the sentence.

## Part V - Common provisions

### Article 26

1. All requests in accordance with Article 5 shall be transmitted in writing. They shall indicate:
  - a. the issuing authority;

- b. their purpose;
- c. the identity of the offender and his place of residence in the requested State.

2. Requests for supervision shall be accompanied by the original or a certified transcript of the Court findings containing the reasons which justify the supervision and specifying the measures imposed on the offender. They should also certify the enforceable nature of the sentence and of the supervisory measures to be applied. So far as possible, they shall state the circumstances of the offence giving rise to the sentence of supervision, its time and place and legal destination and, where necessary, the length of the sentence to be enforced. They shall give full details of the nature and duration of the measures of supervision requested, and include a reference to the legal provisions applicable together with necessary information on the character of the offender and his behaviour in the requesting State before and after pronouncement of the supervisory order.

3. Requests for enforcement shall be accompanied by the original, or a certified transcript, of the decision to revoke conditional suspension of the pronouncement or enforcement of sentence and also of the decision imposing the sentence now to be enforced. The enforceable nature of both decisions shall be certified in the manner prescribed by the law of the State in which they were pronounced.

If the judgment to be enforced has replaced an earlier one and does not contain a recital of the facts of the case, a certified copy of the judgment containing such recital shall also be attached.

4. Requests for complete application of the sentence shall be accompanied by the documents mentioned in paragraph 2 above.

#### Article 27

1. Requests shall be sent by the Ministry of Justice of the requesting State to the Ministry of Justice of the requested State and the reply shall be sent through the same channels.

2. Any communications necessary under the terms of this Convention shall be exchanged either through the channels referred to in paragraph 1 of this article, or directly between the authorities of the Contracting Parties.

3. In case of emergency, the communications referred to in paragraph 2 of this article may be made through the International Criminal Police Organisation (Interpol).

4. Any Contracting Party may, by declaration addressed to the Secretary General of the Council of Europe, give notice of its intention to adopt new rules in regard to the communications referred to in paragraphs 1 and 2 of this article.

#### Article 28

If the requested State considers that the information supplied by the requesting State is inadequate to enable it to apply this Convention, it shall ask for the additional information required. It may fix a time-limit for receipt of such information.

## Article 29

1. Subject to the provisions of paragraph 2 of this article, no translation of requests, or of the supporting documents, or of any other documents relating to the application of this Convention, shall be required.
2. Any Contracting Party may, when signing this Convention or depositing its instrument of ratification, acceptance or accession, by a declaration addressed to the Secretary General of the Council of Europe, reserve the right to require that requests and supporting documents should be accompanied by a translation into its own language, or into one of the official languages of the Council of Europe, or into such one of those languages as it shall indicate. The other Contracting Parties may claim reciprocity.
3. This article shall be without prejudice to any provision regarding translation of requests and supporting documents that may be contained in agreements or arrangements now in force or that may be concluded between two or more of the Contracting Parties.

## Article 30

Documents transmitted in application of this Convention shall not require authentication.

## Article 31

The requested State shall have powers to collect, at the request of the requesting State, the cost of prosecution and trial incurred in that State.

Should it collect such costs, it shall be obliged to refund to the requesting State experts' fees only.

## Article 32

Supervision and enforcement costs incurred in the requested State shall not be refunded.

## Part VI - Final provisions

## Article 33

This Convention shall be without prejudice to police regulations relating to foreigners.

## Article 34

1. This Convention shall be open to signature by the member States of the Council of Europe. It shall be subject to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.
2. This Convention shall enter into force three months after the date of the deposit of the third instrument of ratification or acceptance.
3. In respect of a signatory State ratifying or accepting subsequently, the Convention shall come into force three months after the date of the deposit of its instrument of ratification or acceptance.

## Article 35

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any non-member State to accede thereto.
2. Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.

## Article 36

1. Any Contracting Party may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, specify the territory or territories to which this Convention shall apply.
2. Any Contracting Party may, when depositing its instrument of ratification, acceptance or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Convention to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down in Article 39 of this Convention.

## Article 37

1. This Convention shall not affect the undertakings given in any other existing or future international Convention, whether bilateral or multilateral, between two or more of the Contracting Parties, on extradition or any other form of mutual assistance in criminal matters.
2. The Contracting Parties may not conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, except in order to supplement its provisions or facilitate application of the principles embodied in it.
3. Should two or more Contracting Parties, however, have already established their relations in this matter on the basis of uniform legislation, or instituted a special system of their own, or should they in future do so, they shall be entitled to regulate those relations accordingly, notwithstanding the terms of this Convention.

Contracting Parties ceasing to apply the terms of this Convention to their mutual relations in this matter shall notify the Secretary General of the Council of Europe to that effect.

## Article 38

1. Any Contracting Party may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, declare that it avails itself of one or more of the reservations provided for in the annex to this Convention.
2. Any Contracting Party may wholly or partly withdraw a reservation it has made in accordance with the foregoing paragraph by means of a declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.



3. A Contracting Party which has made a reservation in respect of any provision of this Convention may not claim the application of that provision by any other Party; it may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

4. Any Contracting Party may, on signing the present Convention, or on depositing its instrument of ratification, acceptance or accession, notify the Secretary General of the Council of Europe that it considers ratification, acceptance or accession as entailing an obligation, in international law, to introduce into municipal law measures to implement the said Convention.

#### Article 39

1. This Convention shall remain in force indefinitely.

2. Any Contracting Party may, in so far as it is concerned, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

3. Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.

#### Article 40

The Secretary General of the Council of Europe shall notify the member States of the Council, and any State that has acceded to this Convention of:

- a. any signature;
- b. any deposit of an instrument of ratification, acceptance or accession;
- c. any date of entry into force of this Convention in accordance with Article 34;
- d. any notification or declaration received in pursuance of the provisions of paragraph 4 of Article 27, of paragraph 2 of Article 29, of paragraph 3 of Article 37 and of paragraph 4 of Article 38;
- e. any declaration received in pursuance of the provisions of paragraphs 2 and 3 of Article 36;
- f. any reservation made in pursuance of the provisions of paragraph 1 of Article 38;
- g. the withdrawal of any reservation carried out in pursuance of the provisions of paragraph 2 of Article 38;
- h. any notification received in pursuance of the provisions of Article 39, and the date on which denunciation takes effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention. Done at Strasbourg this 30th day of November 1964, in English and French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States.

## *ANNEX*

Any Contracting Party may declare that it reserves the right to make known:

1. that it does not accept the provisions of the Convention as related to the enforcement of sentences or their complete application;
2. that it accepts only part of these provisions;
3. that it does not accept the provisions of paragraph 2 of Article 37.

## Convention on the Transfer of Sentenced Persons (ETS N° 112)

*Strasbourg, 21 March 1983*

The member States of the Council of Europe and the other States, signatory hereto,

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

Desirous of further developing international co-operation in the field of criminal law;

Considering that such co-operation should further the ends of justice and the social rehabilitation of sentenced persons;

Considering that these objectives require that foreigners who are deprived of their liberty as a result of their commission of a criminal offence should be given the opportunity to serve their sentences within their own society; and

Considering that this aim can best be achieved by having them transferred to their own countries,

Have agreed as follows:

### Article 1 - Definitions

For the purposes of this Convention:

- a. "sentence" means any punishment or measure involving deprivation of liberty ordered by a court for a limited or unlimited period of time on account of a criminal offence;
- b. "judgment" means a decision or order of a court imposing a sentence;
- c. "sentencing State" means the State in which the sentence was imposed on the person who may be, or has been, transferred;
- d. "administering State" means the State to which the sentenced person may be, or has been, transferred in order to serve his sentence.

### Article 2 - General principles

1. The Parties undertake to afford each other the widest measure of co-operation in respect of the transfer of sentenced persons in accordance with the provisions of this Convention.
2. A person sentenced in the territory of a Party may be transferred to the territory of another Party, in accordance with the provisions of this Convention, in order to serve the sentence imposed on him. To that end, he may express his interest to the sentencing State or to the administering State in being transferred under this Convention.
3. Transfer may be requested by either the sentencing State or the administering State.

### Article 3 - Conditions for transfer

1. A sentenced person may be transferred under this Convention only on the following conditions:
  - a. if that person is a national of the administering State;
  - b. if the judgment is final;
  - c. if, at the time of receipt of the request for transfer, the sentenced person still has at least six months of the sentence to serve or if the sentence is indeterminate;
  - d. if the transfer is consented to by the sentenced person or, where in view of his age or his physical or mental condition one of the two States considers it necessary, by the sentenced person's legal representative;
  - e. if the acts or omissions on account of which the sentence has been imposed constitute a criminal offence according to the law of the administering State or would constitute a criminal offence if committed on its territory; and
  - f. if the sentencing and administering States agree to the transfer.
2. In exceptional cases, Parties may agree to a transfer even if the time to be served by the sentenced person is less than that specified in paragraph 1.c.
3. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, indicate that it intends to exclude the application of one of the procedures provided in Article 9.1.a and b in its relations with other Parties.
4. Any State may, at any time, by a declaration addressed to the Secretary General of the Council of Europe, define, as far as it is concerned, the term "national" for the purposes of this Convention.

### Article 4 - Obligation to furnish information

1. Any sentenced person to whom this Convention may apply shall be informed by the sentencing State of the substance of this Convention.
2. If the sentenced person has expressed an interest to the sentencing State in being transferred under this Convention, that State shall so inform the administering State as soon as practicable after the judgment becomes final.
3. The information shall include:
  - a. the name, date and place of birth of the sentenced person;
  - b. his address, if any, in the administering State;
  - c. a statement of the facts upon which the sentence was based;
  - d. the nature, duration and date of commencement of the sentence.

4. If the sentenced person has expressed his interest to the administering State, the sentencing State shall, on request, communicate to the State the information referred to in paragraph 3 above.
5. The sentenced person shall be informed, in writing, of any action taken by the sentencing State or by the administering State under the preceding paragraphs, as well as of any decision taken by either State on a request for transfer.

#### Article 5 - Requests and replies

1. Requests for transfer and replies shall be made in writing.
2. Requests shall be addressed by the Ministry of Justice of the requesting State to the Ministry of Justice of the requested State. Replies shall be communicated through the same channels.
3. Any Party may, by a declaration addressed to the Secretary General of the Council of Europe, indicate that it will use other channels of communication.
4. The requested State shall promptly inform the requesting State of its decision whether or not to agree to the requested transfer.

#### Article 6 - Supporting documents

1. The administering State, if requested by the sentencing State, shall furnish it with:
  - a. a document or statement indicating that the sentenced person is a national of that State;
  - b. a copy of the relevant law of the administering State which provides that the acts or omissions on account of which the sentence has been imposed in the sentencing State constitute a criminal offence according to the law of the administering State, or would constitute a criminal offence if committed on its territory;
  - c. a statement containing the information mentioned in Article 9.2.
2. If a transfer is requested, the sentencing State shall provide the following documents to the administering State, unless either State has already indicated that it will not agree to the transfer:
  - a. a certified copy of the judgment and the law on which it is based;
  - b. a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission, and any other factor relevant to the enforcement of the sentence;
  - c. a declaration containing the consent to the transfer as referred to in Article 3.1.d; and
  - d. whenever appropriate, any medical or social reports on the sentenced person, information about his treatment in the sentencing State, and any recommendation for his further treatment in the administering State.
3. Either State may ask to be provided with any of the documents or statements referred to in paragraphs 1 or 2 above before making a request for transfer or taking a decision on whether or not to agree to the transfer.

## Article 7 - Consent and its verification

1. The sentencing State shall ensure that the person required to give consent to the transfer in accordance with Article 3.1.d does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the sentencing State.
2. The sentencing State shall afford an opportunity to the administering State to verify through a consul or other official agreed upon with the administering State, that the consent is given in accordance with the conditions set out in paragraph 1 above.

## Article 8 - Effect of transfer for sentencing State

1. The taking into charge of the sentenced person by the authorities of the administering State shall have the effect of suspending the enforcement of the sentence in the sentencing State.
2. The sentencing State may no longer enforce the sentence if the administering State considers enforcement of the sentence to have been completed.

## Article 9 - Effect of transfer for administering State

1. The competent authorities of the administering State shall:
  - a. continue the enforcement of the sentence immediately or through a court or administrative order, under the conditions set out in Article 10, or
  - b. convert the sentence, through a judicial or administrative procedure, into a decision of that State, thereby substituting for the sanction imposed in the sentencing State a sanction prescribed by the law of the administering State for the same offence, under the conditions set out in Article 11.
2. The administering State, if requested, shall inform the sentencing State before the transfer of the sentenced person as to which of these procedures it will follow.
3. The enforcement of the sentence shall be governed by the law of the administering State and that State alone shall be competent to take all appropriate decisions.
4. Any State which, according to its national law, cannot avail itself of one of the procedures referred to in paragraph 1 to enforce measures imposed in the territory of another Party on persons who for reasons of mental condition have been held not criminally responsible for the commission of the offence, and which is prepared to receive such persons for further treatment may, by way of a declaration addressed to the Secretary General of the Council of Europe, indicate the procedures it will follow in such cases.

## Article 10 - Continued enforcement

1. In the case of continued enforcement, the administering State shall be bound by the legal nature and duration of the sentence as determined by the sentencing State.
2. If, however, this sentence is by its nature or duration incompatible with the law of the administering State, or its law so requires, that State may, by a court or administrative order,

adapt the sanction to the punishment or measure prescribed by its own law for a similar offence. As to its nature, the punishment or measure shall, as far as possible, correspond with that imposed by the sentence to be enforced. It shall not aggravate, by its nature or duration, the sanction imposed in the sentencing State, nor exceed the maximum prescribed by the law of the administering State.

#### Article 11 - Conversion of sentence

1. In the case of conversion of sentence, the procedures provided for by the law of the administering State apply. When converting the sentence, the competent authority:
  - a. shall be bound by the findings as to the facts insofar as they appear explicitly or implicitly from the judgment imposed in the sentencing State;
  - b. may not convert a sanction involving deprivation of liberty to a pecuniary sanction;
  - c. shall deduct the full period of deprivation of liberty served by the sentenced person; and
  - d. shall not aggravate the penal position of the sentenced person, and shall not be bound by any minimum which the law of the administering State may provide for the offence or offences committed.
2. If the conversion procedure takes place after the transfer of the sentenced person, the administering State shall keep that person in custody or otherwise ensure his presence in the administering State pending the outcome of that procedure.

#### Article 12 - Pardon, amnesty, commutation

Each Party may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws.

#### Article 13 - Review of judgment

The sentencing State alone shall have the right to decide on any application for review of the judgment.

#### Article 14 - Termination of enforcement

The administering State shall terminate enforcement of the sentence as soon as it is informed by the sentencing State of any decision or measure as a result of which the sentence ceases to be enforceable.

#### Article 15 - Information on enforcement

The administering State shall provide information to the sentencing State concerning the enforcement of the sentence:

- a. when it considers enforcement of the sentence to have been completed;
- b. if the sentenced person has escaped from custody before enforcement of the sentence has been completed; or

c. if the sentencing State requests a special report.



## Article 16 - Transit

1. A Party shall, in accordance with its law, grant a request for transit of a sentenced person through its territory if such a request is made by another Party and that State has agreed with another Party or with a third State to the transfer of that person to or from its territory.
2. A Party may refuse to grant transit:
  - a. if the sentenced person is one of its nationals, or
  - b. if the offence for which the sentence was imposed is not an offence under its own law.
3. Requests for transit and replies shall be communicated through the channels referred to in the provisions of Article 5.2 and 3.
4. A Party may grant a request for transit of a sentenced person through its territory made by a third State if that State has agreed with another Party to the transfer to or from its territory.
5. The Party requested to grant transit may hold the sentenced person in custody only for such time as transit through its territory requires.
6. The Party requested to grant transit may be asked to give an assurance that the sentenced person will not be prosecuted, or, except as provided in the preceding paragraph, detained, or otherwise subjected to any restriction on his liberty in the territory of the transit State for any offence committed or sentence imposed prior to his departure from the territory of the sentencing State.
7. No request for transit shall be required if transport is by air over the territory of a Party and no landing there is scheduled. However, each State may, by a declaration addressed to the Secretary General of the Council of Europe at the time of signature or of deposit of its instrument of ratification, acceptance, approval or accession, require that it be notified of any such transit over its territory.

## Article 17 - Language and costs

1. Information under Article 4, paragraphs 2 to 4, shall be furnished in the language of the Party to which it is addressed or in one of the official languages of the Council of Europe.
2. Subject to paragraph 3 below, no translation of requests for transfer or of supporting documents shall be required.
3. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, require that requests for transfer and supporting documents be accompanied by a translation into its own language or into one of the official languages of the Council of Europe or into such one of these languages as it shall indicate. It may on that occasion declare its readiness to accept translations in any other language in addition to the official language or languages of the Council of Europe.
4. Except as provided in Article 6.2.a, documents transmitted in application of this Convention need not be certified.

5. Any costs incurred in the application of this Convention shall be borne by the administering State, except costs incurred exclusively in the territory of the sentencing State.

#### Article 18 - Signature and entry into force

1. This Convention shall be open for signature by the member States of the Council of Europe and non-member States which have participated in its elaboration. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2. This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which three member States of the Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 1.

3. In respect of any signatory State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

#### Article 19 - Accession by non-member States

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe, after consulting the Contracting States, may invite any State not a member of the Council and not mentioned in Article 18.1 to accede to this Convention, by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee.

2. In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

#### Article 20 - Territorial application

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

## Article 21 - Temporal application

This Convention shall be applicable to the enforcement of sentences imposed either before or after its entry into force.

## Article 22 - Relationship to other Conventions and Agreements

1. This Convention does not affect the rights and undertakings derived from extradition treaties and other treaties on international co-operation in criminal matters providing for the transfer of detained persons for purposes of confrontation or testimony.

2. If two or more Parties have already concluded an agreement or treaty on the transfer of sentenced persons or otherwise have established their relations in this matter, or should they in future do so, they shall be entitled to apply that agreement or treaty or to regulate those relations accordingly, in lieu of the present Convention.

3. The present Convention does not affect the right of States party to the European Convention on the International Validity of Criminal Judgments to conclude bilateral or multilateral agreements with one another on matters dealt with in that Convention in order to supplement its provisions or facilitate the application of the principles embodied in it.

4. If a request for transfer falls within the scope of both the present Convention and the European Convention on the International Validity of Criminal Judgments or another agreement or treaty on the transfer of sentenced persons, the requesting State shall, when making the request, indicate on the basis of which instrument it is made.

## Article 23 - Friendly settlement

The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of this Convention and shall do whatever is necessary to facilitate a friendly settlement of any difficulty which may arise out of its application.

## Article 24 - Denunciation

1. Any Party may at any time denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

3. The present Convention shall, however, continue to apply to the enforcement of sentences of persons who have been transferred in conformity with the provisions of the Convention before the date on which such a denunciation takes effect.

## Article 25 - Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the non-member States which have participated in the elaboration of this Convention and any State which has acceded to this Convention of:

a. any signature;

- b. the deposit of any instrument of ratification, acceptance, approval or accession;
- c. any date of entry into force of this Convention in accordance with Articles 18.2 and 3, 19.2 and 20.2 and 3;
- d. any other act, declaration, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this 21st day of March 1983, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, and to any State invited to accede to it.

Additional Protocol to the European Convention on the Transfer of Sentenced Persons  
(ETS N° 167)

*Strasbourg, 18 December 1997*

Preamble

The member States of the Council of Europe, and the other States signatory to this Protocol,

Desirous of facilitating the application of the Convention on the Transfer of Sentenced Persons opened for signature at Strasbourg on 21 March 1983 (hereinafter referred to as "the Convention") and, in particular, pursuing its acknowledged aims of furthering the ends of justice and the social rehabilitation of sentenced persons;

Aware that many States cannot extradite their own nationals;

Considering it desirable to supplement the Convention in certain respects,

Have agreed as follows:

Article 1 - General provisions

1. The words and expressions used in this Protocol shall be interpreted within the meaning of the Convention.
2. The provisions of the Convention shall apply to the extent that they are compatible with the provisions of this Protocol.

Article 2 - Persons having fled from the sentencing State

1. Where a national of a Party who is the subject of a sentence imposed in the territory of another Party as a part of a final judgment, seeks to avoid the execution or further execution of the sentence in the sentencing State by fleeing to the territory of the former Party before having served the sentence, the sentencing State may request the other Party to take over the execution of the sentence.
2. At the request of the sentencing State, the administering State may, prior to the arrival of the documents supporting the request, or prior to the decision on that request, arrest the sentenced person, or take any other measure to ensure that the sentenced person remains in its territory, pending a decision on the request. Requests for provisional measures shall include the information mentioned in paragraph 3 of Article 4 of the Convention. The penal position of the sentenced person shall not be aggravated as a result of any period spent in custody by reason of this paragraph.
3. The consent of the sentenced person shall not be required to the transfer of the execution of the sentence.

Article 3 - Sentenced persons subject to an expulsion or deportation order

1. Upon being requested by the sentencing State, the administering State may, subject to the provisions of this Article, agree to the transfer of a sentenced person without the consent of that person, where the sentence passed on the latter, or an administrative decision consequential to

that sentence, includes an expulsion or deportation order or any other measure as the result of which that person will no longer be allowed to remain in the territory of the sentencing State once he or she is released from prison.

2. The administering State shall not give its agreement for the purposes of paragraph 1 before having taken into consideration the opinion of the sentenced person.

3. For the purposes of the application of this Article, the sentencing State shall furnish the administering State with:

- a. a declaration containing the opinion of the sentenced person as to his or her proposed transfer, and
- b. a copy of the expulsion or deportation order or any other order having the effect that the sentenced person will no longer be allowed to remain in the territory of the sentencing State once he or she is released from prison.

4. Any person transferred under the provisions of this Article shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order, for any offence committed prior to his or her transfer other than that for which the sentence to be enforced was imposed, nor shall he or she for any other reason be restricted in his or her personal freedom, except in the following cases:

- a. when the sentencing State so authorises: a request for authorisation shall be submitted, accompanied by all relevant documents and a legal record of any statement made by the convicted person; authorisation shall be given when the offence for which it is requested would itself be subject to extradition under the law of the sentencing State or when extradition would be excluded only by reason of the amount of punishment;
- b. when the sentenced person, having had an opportunity to leave the territory of the administering State, has not done so within 45 days of his or her final discharge, or if he or she has returned to that territory after leaving it.

5. Notwithstanding the provisions of paragraph 4, the administering State may take any measures necessary under its law, including proceedings *in absentia*, to prevent any legal effects of lapse of time.

6. Any contracting State may, by way of a declaration addressed to the Secretary General of the Council of Europe, indicate that it will not take over the execution of sentences under the circumstances described in this Article.

#### Article 4 - Signature and entry into force

1. This Protocol shall be open for signature by the member States of the Council of Europe and the other States signatory to the Convention. It shall be subject to ratification, acceptance or approval. A Signatory may not ratify, accept or approve this Protocol unless it has previously or simultaneously ratified, accepted or approved the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the deposit of the third instrument of ratification, acceptance or approval.

3. In respect of any signatory State which subsequently deposits its instrument of ratification, acceptance or approval, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit.

#### Article 5 - Accession

1. Any non-member State which has acceded to the Convention may accede to this Protocol after it has entered into force.

2. In respect of any acceding State, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of accession.

#### Article 6 - Territorial application

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply.

2. Any Contracting State may, at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

#### Article 7 - Temporal application

This Protocol shall be applicable to the enforcement of sentences imposed either before or after its entry into force.

#### Article 8 - Denunciation

1. Any Contracting State may at any time denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

3. This Protocol shall, however, continue to apply to the enforcement of sentences of persons who have been transferred in conformity with the provisions of both the Convention and this Protocol before the date on which such denunciation takes effect.

4. Denunciation of the Convention automatically entails denunciation of this Protocol.

## Article 9 - Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, any Signatory, any Party and any other State which has been invited to accede to the Convention of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance, approval or accession;
- c. any date of entry into force of this Protocol in accordance with Articles 4 or 5;
- d. any other act, declaration, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this eighteenth day of December 1997, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the other States signatory to the Convention and to any State invited to accede to the Convention.



Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced Persons (ETS N° 222)

*Strasbourg, 22 November 2017*

Preamble

The member States of the Council of Europe, and the other States signatory to this Protocol,

Desirous of facilitating the application of the Additional Protocol to the Convention on the Transfer of Sentenced Persons (ETS No. 167) opened for signature in Strasbourg on 18 December 1997 (hereinafter referred to as "the Additional Protocol"), and in particular pursuing its acknowledged aims of furthering the ends of justice and the social rehabilitation of sentenced persons;

Considering it desirable to modernise and improve the Additional Protocol, taking into account the evolution in international co-operation on the transfer of sentenced persons since its entry into force,

Have agreed to amend the Additional Protocol as follows:

Article 1

The title of Article 2 and paragraph 1 of this article shall be amended to read as follows:

"Article 2 - Persons having left the sentencing State before having completed the execution of their sentence

1. Where a national of a Party is the subject of a final sentence, the sentencing State may request the State of nationality to take over the execution of the sentence under the following circumstances:

- a. when the national has fled to or otherwise returned to the State of his or her nationality being aware of the criminal proceedings pending against him or her in the sentencing State; or
- b. when the national has fled to or otherwise returned to the State of his or her nationality being aware that a judgment has been issued against him or her."

Article 2

Paragraphs 1, 3.a and 4 of Article 3 shall be amended to read as follows:

"Article 3 - Sentenced persons subject to an expulsion or deportation order

1. Upon being requested by the sentencing State, the administering State may, subject to the provisions of this article, agree to the transfer of a sentenced person without the consent of that person, where the sentence or an administrative decision passed on him or her includes an expulsion or deportation order or any other measure as the result of which that person will no longer be allowed to remain in the territory of the sentencing State once he or she is released from prison.

2. [unchanged]
3. For the purposes of the application of this article, the sentencing State shall furnish the administering State with:
  - a. a declaration containing the opinion of the sentenced person as to his or her proposed transfer, or a statement that the sentenced person refuses to provide an opinion in this regard; and
  - b. [unchanged]
4. Any person transferred under the provisions of this article shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order, for any offence committed prior to his or her transfer, other than that for which the sentence to be enforced was imposed, nor shall he or she for any other reason be restricted in his or her personal freedom, except in the following cases:
  - a. when the sentencing State so authorises: a request for authorisation shall be submitted, accompanied by all relevant documents and a legal record of any statement made by the convicted person; authorisation shall be given when the offence for which it is requested would itself be subject to extradition under the law of the sentencing State or when extradition would be excluded only by reason of the amount of punishment. The decision shall be taken as soon as possible and no later than 90 days after receipt of the request for consent. Where it is not possible for the sentencing State to comply with the period provided for in this paragraph, it shall inform the administering State, providing the reasons for the delay and the estimated time needed for the decision to be taken;
  - b. when the sentenced person, having had an opportunity to leave the territory of the administering State, has not done so within 30 days of his or her final discharge, or if he or she has returned to that territory after leaving it."

## Final provisions

### Article 3 - Signature and ratification

1. This Protocol shall be open for signature by the Parties to the Additional Protocol. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. After the opening for signature of this Protocol and before its entry into force, a Party to the Convention may not ratify, accept, approve or accede to the Additional Protocol unless it has simultaneously ratified, accepted or approved this Protocol.

### Article 4 - Entry into force

This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which all Parties to the Additional Protocol have expressed their consent to be bound by this Protocol, in accordance with the provisions of Article 3.

## Article 5 - Provisional application

Pending the entry into force of this Protocol according to the conditions set under Article 4, a Party to the Additional Protocol may at the time of ratification, acceptance or approval of this Protocol or at any later moment, declare that it will apply the provisions of this Protocol on a provisional basis. In such cases, the provisions of this Protocol shall apply only with respect to the other Parties which have made a declaration to the same effect. Such a declaration shall take effect on the first day of the second month following the date of its receipt by the Secretary General of the Council of Europe.

## Article 6 - Term of provisional application

This Protocol shall cease to be applied on a provisional basis from the date of its entry into force.

## Article 7 - Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, any Signatory, any Party and any other State which has been invited to accede to the Convention of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance or approval;
- c. the date of entry into force of this Protocol in accordance with Article 4;
- d. any declaration made under Article 5;
- e. any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 22nd day of November 2017, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the other Parties to the Convention and to any State invited to accede to the Convention.

## RECOMMENDATIONS

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Recommendation CM/Rec (2018) 5 of the Committee of Ministers to member States concerning children with imprisoned parents

*(Adopted by the Committee of Ministers on 4 April 2018 at the 1312<sup>th</sup> meeting of the Ministers' Deputies)*

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

Considering that the aim of the Council of Europe is to achieve greater unity between its members, in particular through harmonising laws on matters of common interest;

Considering the significant number of children whose parents are detained in the prisons of the member States;

Reaffirming that children with imprisoned parents are entitled to the same rights as all children;

Recognising the obstacles to maintaining ordinary family relationships caused by the imprisonment of a parent and the difficulties which these children and their parents may face on account of such factors as a lack of quality family contact, stigma and financial, practical and psychological consequences of imprisonment;

Acknowledging the impact of imprisonment of a parent on children and the fact that prison can be a difficult environment for children;

Also taking into account that child-parent relationships are not always positive and healthy;

With a view to alleviating the avoidable adverse impact of a parent's imprisonment on children and on parental competency, with a view to protecting child development and fostering family reunification, where appropriate; and recognising that children with imprisoned parents are vulnerable and that consideration of their needs and rights forms part of the Council of Europe Strategy for the Rights of the Child (2016-2021) and should form part of cross-sectorial, multidisciplinary national child protection and welfare strategies;

Convinced that contact between children and their imprisoned parent can positively impact the child, the imprisoned parent, prison staff and environment, and ultimately society in general, and that respect for the rights and needs of individual children and the quality of contact with their imprisoned parents is compatible with ensuring safety, security and good order in prison;

Considering that account should be taken of the special needs of children and their imprisoned parents in order to provide them with opportunities comparable to those of other children and parents;

Taking into account the following Council of Europe legal instruments:

- Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5);
- Convention on Contact concerning Children (ETS No. 192);
- Convention on the Transfer of Sentenced Persons (ETS No. 112);
- Additional Protocol to the Convention on the Transfer of Sentenced Persons (ETS No. 167);
- Recommendation [Rec\(92\)17](#) of the Committee of Ministers to member States concerning consistency in sentencing;

- Recommendation [Rec\(93\)6](#) of the Committee of Ministers to member States concerning prison and criminological aspects of the control of transmissible diseases including Aids and related health problems in prison;
- Recommendation [Rec\(97\)12](#) of the Committee of Ministers to member States on staff concerned with the implementation of sanctions and measures;
- Recommendation 1469 (2000) of the Parliamentary Assembly of the Council of Europe "Mothers and babies in prison";
- Recommendation [Rec\(2003\)22](#) of the Committee of Ministers to member States on conditional release (parole);
- Recommendation [Rec\(2006\)2](#) of the Committee of Ministers to member States on the European Prison Rules;
- Recommendation [Rec\(2006\)13](#) of the Committee of Ministers to member States on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse;
- Recommendation [CM/Rec\(2008\)11](#) of the Committee of Ministers to member States on the European Rules for juvenile offenders subject to sanctions or measures;
- Recommendation [CM/Rec\(2010\)1](#) of the Committee of Ministers to member States on the Council of Europe Probation Rules;
- Recommendation [CM/Rec\(2012\)12](#) of the Committee of Ministers to member States concerning foreign prisoners;
- Recommendation [CM/Rec\(2014\)4](#) of the Committee of Ministers to member States on electronic monitoring;
- Recommendation [CM/Rec\(2017\)3](#) of the Committee of Ministers to member States on the European Rules on community sanctions and measures;

Taking also into account the relevant case law of the European Court of Human Rights;

Bearing in mind:

- the United Nations Convention on the Rights of the Child (1989);
- the United Nations Model Agreement on the Transfer of Foreign Prisoners and Recommendations on the Treatment of Foreign Prisoners (1985);
- the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (Resolution 2010/16 of the Economic and Social Council);
- the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules, 2015);
- the United Nations Committee on the Rights of the Child report and recommendations of the day of general discussion on "Children of incarcerated parents" (2011);
- the Charter of Fundamental Rights of the European Union (2009);
- the European Union Council Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union;
- the European Union Council Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions;
- the European Union Council Framework Decision 2009/829/JHA on the application, between member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention;

Considering that penal policy, sentencing practice and the overall management of prisons in member States need to be guided by commonly agreed standards and principles related to the support and protection of children with imprisoned parents;

Agreeing that additional ethical and professional standards need to be developed in order to guide the national authorities, in particular judges, prosecutors, prison administrations, probation services, police and child welfare and other support agencies in respecting the rights and needs of children and their imprisoned parents;

Taking into account the constitutional principles, legal traditions and the independence of the judiciary in the member States;

Recognising that a range of authorities and agencies are in contact with children who may be affected by the imprisonment of a parent and that such bodies are in need of a coherent set of guiding principles in line with Council of Europe standards,

Recommends that governments of member States:

- be guided in their legislation, policies and practice by the rules contained in the appendix to this recommendation;
- ensure that this recommendation and the explanatory report to its text are translated and disseminated as widely as possible and more specifically to all relevant authorities, agencies, professionals and associations, as well as being made accessible to children and their imprisoned parents.

#### *APPENDIX TO RECOMMENDATION CM/REC(2018)5*

##### I. Definitions, underlying values and scope

###### *Definitions*

For the purpose of this recommendation:

- a. "child" refers to any human being under the age of 18;
- b. "prison" refers to an institution reserved primarily for the detention of suspects or of sentenced persons;
- c. "imprisoned parent" refers to a parent (as recognised by national law) who is detained in prison;
- d. "infant in prison" refers to a very young child born and/or living with a parent in prison;
- e. "caregiver" refers to a person who looks after and takes responsibility for the child on a daily basis;
- f. "judicial authority" refers to a court, a judge or a prosecutor.

## *Underlying values*

This recommendation is written on the basis that:

- in all matters concerning children, children's rights and best interests should be of primary consideration, also bearing in mind that children with imprisoned parents have committed no crime and should not be treated as being in conflict with the law as a result of the actions, or alleged actions, of their parents;
- all children, without discrimination and regardless of the legal status of their parents, are guaranteed the enjoyment of all rights covered by the United Nations Convention on the Rights of the Child, including the right to have their best interests protected, the right to development, the right to have their views respected, and the right to maintain personal relations and direct contact with their parents on a regular basis;
- it is necessary to protect the child's right to, and need for, an emotional and continuing relationship with their imprisoned parent, who has a duty and right to play their parental role and to promote positive experiences for their children;
- children, family, the child-parent relationship and the imprisoned parent's role in this relationship need support before, during and after detention. All interventions and measures in support of children with a parent in prison and their relationship with that parent should ensure they create no stigma and discrimination against these children;
- awareness-raising, cultural change and social integration are necessary to overcome prejudices and discrimination arising from the imprisonment of a parent.

## *Scope*

This recommendation applies to all children whose parents are in prison, including infants living with their parent in prison.

## II. Basic principles

1. Children with imprisoned parents shall be treated with respect for their human rights and with due regard for their particular situation and needs. These children shall be provided with the opportunity for their views to be heard, directly or indirectly, in relation to decisions which may affect them. Measures that ensure child protection, including respect for the child's best interests, family life and privacy shall be integral to this, as shall be the measures which support the role of the imprisoned parent from the start of detention and after release.
2. Where a custodial sentence is being contemplated, the rights and best interests of any affected children should be taken into consideration and alternatives to detention be used as far as possible and appropriate, especially in the case of a parent who is a primary caregiver.
3. Whenever a parent is detained, particular consideration shall be given to allocating them to a facility close to their children.
4. When deciding to transfer sentenced persons to or from a State in which their children reside due regard shall be given to the best interests of the child when considering the rehabilitation purpose of the transfer.



5. The prison administration shall endeavour to collect and collate relevant information at entry regarding the children of those detained.

6. National authorities shall endeavour to provide sufficient resources to State agencies and civil society organisations to support children with imprisoned parents and their families to enable them to deal effectively with their particular situation and specific needs, including offering logistic and financial support, where necessary, in order to maintain contact.

7. Appropriate training on child-related policies, practices and procedures, shall be provided for all staff in contact with children and their imprisoned parents.

### III. Police detention, judicial orders and sentences

8. Due consideration should be given by the police to the impact that arrest of a parent may have on any children present. In such cases, where possible, arrest should be carried out in the absence of the child or, at a minimum, in a child-sensitive manner.

9. Enforcing restrictions on contact of an arrested or a remanded parent shall be done in such a way as to respect the children's right to maintain contact with them.

10. Without prejudice to the independence of the judiciary, before a judicial order or a sentence is imposed on a parent, account shall be taken of the rights and needs of their children and the potential impact on them. The judiciary should examine the possibility of a reasonable suspension of pre-trial detention or the execution of a prison sentence and their possible replacement with community sanctions or measures.

11. Significant events in a child's life - such as birthdays, first day of school or hospitalisation - should be considered when granting prison leave to imprisoned parents.

### IV. Conditions of imprisonment

#### *Admission*

12. Prior to, or on admission, individuals with caregiving responsibilities for children shall be enabled to make arrangements for those children, taking into account the best interests of the child.

13. At admission, the prison administration should record the number of children a prisoner has, their ages, and their current primary caregiver, and shall endeavour to keep this information up-to-date.

14. On admission and on a prisoner's transfer, prison authorities shall assist prisoners who wish to do so in informing their children (and their caregivers) of their imprisonment and whereabouts or shall ensure that such information is sent to them.

15. Support and information shall be provided by the prison, as far as possible, about contact and visiting modalities, procedures and internal rules in a child-friendly manner and in different languages and formats as necessary.

### *Allocation, communication, contact and visits*

16. Apart from considerations regarding requirements of administration of justice, safety and security, the allocation of an imprisoned parent to a particular prison, shall, where appropriate, and in the best interests of their child, be done such as to facilitate maintaining child-parent contact, relations and visits without undue burden either financially or geographically.

17. Children should normally be allowed to visit an imprisoned parent within a week following the parent's detention and, on a regular and frequent basis, from then on. Child-friendly visits should be authorised in principle once a week, with shorter, more frequent visits allowed for very young children, as appropriate.

18. Visits shall be organised so as not to interfere with other elements of the child's life, such as school attendance. If weekly visits are not feasible, proportionately longer, less frequent visits allowing for greater child-parent interaction should be facilitated.

19. In cases where the current caregiver is not available to accompany a child's visit, alternative solutions should be sought, such as accompanying by a qualified professional or representative of an organisation working in this field or another person as appropriate.

20. A designated children's space shall be provided in prison waiting and visiting rooms (with a bottle warmer, a changing table, toys, books, drawing materials, games, etc.) where children can feel safe, welcome and respected. Prison visits shall provide an environment conducive to play and interaction with the parent. Consideration should also be given to permitting visits to take place in the vicinity of the detention facility, with a view to promoting, maintaining and developing child-parent relationships in as normal a setting as possible.

21. Measures should be taken to ensure that the visit context is respectful to the child's dignity and right to privacy, including facilitating access and visits for children with special needs.

22. When a child's parent is imprisoned far away from home, visits shall be arranged in a flexible manner, which may include allowing prisoners to combine their visit entitlements.

23. Any security checks on children shall be carried out in a child-friendly manner that respects children's dignity and right to privacy, as well as their right to physical and psychological integrity and safety. Any intrusive searches on children, including body cavity searches, shall be prohibited.

24. Any searches of prisoners prior to visits shall be conducted in a manner which respects their human dignity in order to enable them to interact positively with their children during visits. As far as possible, children shall be authorised to leave the visiting area prior to the imprisoned parent, as this can be traumatic for some children. Where prisoners are provided with clothes by prison authorities, this clothing shall not offend their dignity, particularly during visits with their children.

25. In accordance with national law and practice, the use of information and communication technology (video-conferencing, mobile and other telephone systems, internet, including webcam and chat functions, etc.) shall be facilitated between face-to-face visits and should not involve excessive costs. Imprisoned parents shall be assisted with the costs of communicating with their children if their means do not allow it. These means of communication should never be seen as an alternative which replaces face-to-face contact between children and their imprisoned parents.

26. Rules for making and receiving telephone calls and other forms of communication with children shall be applied flexibly to maximise communication between imprisoned parents and their children. When feasible, children should be authorised to initiate telephone communications with their imprisoned parents.

27. Arrangements should be made to facilitate an imprisoned parent, who wishes to do so, to participate effectively in the parenting of their children, including communicating with school, health and welfare services and taking decisions in this respect, except in cases where it is not in the child's best interests.

28. Child-parent activities should include extended prison visits for special occasions (Mother's Day, Father's Day, end of year holidays, etc.) and other visits to further the child-parent relationship, in addition to regular visits. Consideration on such occasions should be given to prison and other staff in visiting areas being dressed less formally, in an effort to normalise the atmosphere.

29. Children shall be offered the opportunity, when feasible and in the child's best interests, and with the support of an appropriate adult, to visit or receive information (including images) about areas in which their imprisoned parent spends time, including the parent's prison cell.

30. Special measures shall be taken to encourage and enable imprisoned parents to maintain regular and meaningful contact and relations with their children, thus safeguarding their development. Restrictions imposed on contact between prisoners and their children shall be implemented only exceptionally, for the shortest period possible, in order to alleviate the negative impact the restriction might have on children and to protect their right to an emotional and continuing bond with their imprisoned parent.

31. A child's right to direct contact shall be respected, even in cases where disciplinary sanctions or measures are taken against the imprisoned parent. In cases where security requirements are so extreme as to necessitate non-contact visits, additional measures shall be taken to ensure that the child-parent bond is supported.

#### *Prison leave*

32. With a view to protecting children from the frequently harsh prison environment, preparing them for their parent's return, and having their parents present at significant events in their lives, home leave for prisoners should be granted and facilitated, where possible. This is especially important during the period before their release, providing more opportunities for them to prepare for resuming fully their parental role and its responsibilities on release.

#### *Good order, safety and security*

33. To ensure child protection and well-being, every effort shall be made to enhance mutual respect and tolerance and prevent potentially harmful behaviour between prisoners, their children and families, prison staff or other persons working in or visiting the prison. Good order, safety and security, in particular dynamic security, underpin all efforts to maintain a friendly and positive atmosphere in prison.

#### *Infants in prison*

34. In order to ensure the right of a child to the highest attainable standard of health, appropriate pre-natal and post-natal health care, support and information shall be provided for

imprisoned mothers. Pregnant women shall be allowed to give birth in a hospital outside prison. Instruments of restraint shall never be used on women during labour, during birth and immediately after birth. Arrangements and facilities for pre-natal and post-natal care in prison shall respect, as far as practicable, cultural diversity.

35. A child born to an imprisoned mother shall be registered and issued with a birth certificate without delay, free of charge and in line with applicable national and international standards. The birth certificate shall not mention that the child was born in prison.

36. Infants may stay in prison with a parent only when it is in the best interests of the infant concerned and in accordance with national law. Relevant decisions to allow infants to stay with their parent in prison shall be made on a case-by-case basis. Infants in prison with a parent shall not be treated as prisoners and shall have the same rights and, as far as possible, the same freedoms and opportunities as all children.

37. Arrangements and facilities for the care of infants who are in prison with a parent, including living and sleeping accommodation, shall be child-friendly and shall:

- ensure that the best interests and safety of infants are a primary consideration, as are their rights, including those regarding development, play, non-discrimination and the right to be heard;
- safeguard the child's welfare and promote their healthy development, including provision of ongoing health-care services, and arranging for appropriate specialists to monitor their development in collaboration with community health services;
- ensure that infants are able to freely access open-air areas in the prison, and can access the outside world with appropriate accompaniment and attend nursery schools;
- promote attachment between a child and their parent, allowing the child-parent relationship to develop as normally as possible, enabling parents to exercise appropriate parental responsibility for their child and providing maximum opportunities for imprisoned parents to spend time with their children;
- support imprisoned parents living with their infants and facilitate the development of their parental competency, ensuring that they are provided with opportunities to look after their children, cook meals for them, get them ready for nursery school and spend time playing with them, both inside the prison and in open-air areas;
- as far as possible, ensure that infants have access to a similar level of services and support to that which is available in the community, and that the environment provided for such children's upbringing shall be as close as possible to that of children outside prison;
- ensure that contact with the parent, siblings and other family members living outside the prison facility is enabled, except if it is not in the infant's best interests.

38. Decisions as to when an infant is to be separated from their imprisoned parent shall be based on individual assessment and the best interests of the child within the scope of the applicable national law.

39. The transition of the infant to life outside prison shall be undertaken with sensitivity, only when suitable alternative care arrangements for the child have been identified and, in the case of foreign-national prisoners, in consultation with consular officials, where appropriate.

40. After infants are separated from their parent in prison and they are placed with family or relatives or in other alternative care, they shall be given the maximum opportunity possible and appropriate facilities to meet with their imprisoned parent, except when it is not in their best interests.

#### *Sentence planning and preparation for release*

41. In order to promote positive parenting, consideration shall be given in sentence planning to include programmes and other interventions that support and develop a positive child-parent relationship. Specific support and learning objectives include preserving, and exercising as far as possible, their parental role during imprisonment, minimising the impact of imprisonment on their children, developing and strengthening constructive child-parent relationships, and preparing them and their children for family life after release.

42. In order to enhance child-parent relationships, prison authorities shall utilise options such as home leave, open prisons, halfway houses, electronic monitoring and community-based programmes and services to the maximum possible extent, to ease transition from prison to liberty, to reduce stigma, to re-establish contact with families at the earliest possible stage and to minimise the impact of a parent's imprisonment on children.

43. For the same purpose, decisions regarding early release shall take into account prisoners' caregiving responsibilities, as well as their specific family reintegration needs.

#### *Through-care*

44. In order to promote healthy child development and to help former prisoners reintegrate with their children and families, support and care shall be provided by prison, probation or other agencies specialising in assisting prisoners, as appropriate. Prison authorities, in co-operation with probation and/or social welfare services, local community groups and civil society organisations, shall design and implement pre- and post-release reintegration programmes which take into account the specific needs of prisoners resuming their parental role in the community.

#### *Policy development*

45. Any new policies or measures designed by or for the prison administration which may impact child-parent contact and relations shall be developed with due regard to children's rights and needs.

#### V. Staff working with, and for, children and their imprisoned parents

46. Staff who come into contact with children and their imprisoned parents shall respect their rights and dignity. Prison administrations should select, appoint and resource designated "children's and/or family officers" whose role should include support for children and their imprisoned parents, facilitate visits in child-friendly settings, provide guidance and information, in particular to children newly confronted with the prison environment, and liaise with relevant agencies, professionals and associations on matters related to children and their imprisoned parents.

47. Staff who come into contact with children and their imprisoned parents shall receive training in areas including how to respect children's needs and rights, the impact of imprisonment and the prison setting on children and the parental role, how to support imprisoned parents and their children and better understand the specific problems they face, how to make visits child-friendly and to search children in a child-friendly manner.

48. In order to ensure efficiency and quality of the support, protection and care provided to children and their imprisoned parents, staff training programmes shall be evidence-based, reflect current national law and practices and international and regional human rights law and standards relating to children, and shall be revised regularly.

#### *A multidisciplinary and multi-agency approach*

49. The relevant national authorities should adopt a multi-agency and cross-sectoral approach in order to effectively promote, support and protect the rights of children with imprisoned parents, including their best interests. This involves co-operation with probation services, local communities, schools, health and child welfare services, the police, the children's ombudsperson or other officials with responsibility for protecting children's rights, as well as other relevant agencies, including civil society organisations offering support to children and their families.

#### VI. Monitoring

50. The competent ministries, as well as children's ombudspersons or other national human rights bodies with responsibility for protecting children's rights, shall monitor, report regularly on and take any appropriate measures regarding the recognition and implementation of the rights and interests of children with imprisoned parents, including infant children living in prison with their parent.

#### VII. Research and evaluation of child-friendly practices and policies

51. Multi-disciplinary and multi-agency expert groups, involving children with imprisoned parents, should be established in order to assess how children experience parental imprisonment, contact and relations with their imprisoned parent and to suggest improvements to current policies and practices.

52. Statistical data from prison and child welfare sources should be systematically collected and published together with information on children with imprisoned parents and inventories of good practice.

53. Funding shall be made available to support research on children with imprisoned parents in order to contribute to policy development and to promote best practice in this area.

54. The implementation of child-friendly practices and policies, including international standards relating to children with imprisoned parents, shall be regularly reviewed and evaluated. This review may involve the relevant ministries, the prison administration, social services, children's ombudspersons and other human rights bodies with responsibility for protecting children's rights, as well as other relevant agencies, including civil society organisations.

## VIII. Work with the media and with public opinion

55. Information provided to, and by, the media should not violate the right to privacy and protection of children and their families, including data protection rules, and any media reporting should be carried out in a child-friendly manner.

56. The media, professionals and the general public should be provided with reliable and up-to-date data and good practice examples to increase their awareness regarding the numbers of children affected and the impact of parental imprisonment, and to avoid negative stereotyping and stigmatisation of children with imprisoned parents.

Recommendation CM/Rec (2017) 3 of the Committee of Ministers to member States on the European Rules on community sanctions and measures

*(Adopted by the Committee of Ministers on 22 March 2017, at the 1282<sup>nd</sup> meeting of the Ministers' Deputies)*

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

Considering the importance of establishing common principles regarding integrated penal policies among the member States of the Council of Europe in order to strengthen international co-operation in this field;

Noting the considerable development which has occurred in member States in the use of sanctions and measures whose enforcement takes place in the community;

Considering that these sanctions and measures constitute important ways of combating crime, of reducing the harm that it causes and of enhancing justice, and that they avoid the negative effects of remand in custody and of imprisonment;

Considering the importance attached to the development of international norms for the creation, imposition and implementation of these sanctions and measures;

Aware that with the passage of time, new possibilities for a more effective use of community sanctions and measures emerge and that imprisonment must therefore be used only as a measure of last resort;

Recognising furthermore that important developments and changing practice in the area of sanctions and measures enforced in the community and the issues identified by member States, call for regular updating of the provisions contained in the European Rules on community sanctions and measures;

Emphasising that the recourse to, and the implementation of these sanctions and measures shall always be guided by respect for fundamental legal safeguards as enshrined in the European Convention on Human Rights (ETS No. 5), and by the principles laid down in the European Rules on community sanctions and measures;

Recognising the relevance to the present recommendation of the following Committee of Ministers' Recommendations: [Rec\(92\)17](#) concerning consistency in sentencing, [Rec\(97\)12](#) on staff concerned with the implementation of sanctions and measures, [Rec\(99\)19](#) concerning mediation in penal matters, [Rec\(99\)22](#) concerning prison overcrowding and prison population inflation, [Rec\(2003\)22](#) concerning conditional release (parole), [CM/Rec\(2010\)1](#) on the Council of Europe Probation Rules and [CM/Rec\(2014\)4](#) on electronic monitoring;

Bearing in mind the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules);

Replaces by the text of the present recommendation:

- Recommendation [Rec\(2000\)22](#) on improving the implementation of the European Rules on community sanctions and measures; and



- Recommendation [Rec\(92\)16](#) on the European rules on community sanctions and measures

Recommends to the governments of member States to:

- be guided when reviewing their policy, legislation, and practice in relation to the creation, imposition and implementation of community sanctions and measures, by the standards and principles set out in the appendix to this recommendation;
- ensure that this recommendation and its accompanying commentary are translated into their national language(s) and disseminated as widely as possible and more specifically among judicial authorities, probation and social services, prison administrations, as well as the media and the general public.

## APPENDIX

### Scope and purpose

The present rules are intended to:

- a. establish a set of standards to help national legislators, deciding and implementing authorities and practitioners to provide a just and effective use of community sanctions and measures. This application must take into account the need to protect society and to maintain legal order and at the same time support social rehabilitation, while also enabling offenders to make reparation for the harm they have caused;
- b. provide member States with guidance on the introduction and use of community sanctions and measures to take full advantage of their benefits and to protect the fundamental rights of all concerned. Similarly, it is important to guard against any kind of abuse such as might, for example, result from their use to the detriment of particular social groups. Full consideration therefore needs to be given to the social advantages and disadvantages of, as well as the potential risks resulting from, or likely to result from, such sanctions and measures. Community sanctions and measures should only be applied where they are appropriate;
- c. propose clear rules of conduct to staff responsible for the implementation of community sanctions and measures and to all those in the community who are involved in this field in order to ensure that this implementation is in conformity with any conditions and obligations imposed, thereby conferring legitimacy upon the sanctions or measures. Implementation must not be thought of in a rigid or formalistic way, but should be undertaken with constant regard for individualisation, so that community sanctions and measures correspond with the offence and with the characteristics of the suspect or offender. Furthermore, the fact that reference can be made to a set of rules which have been established internationally should facilitate an exchange of experience, in particular concerning working methods.

These Rules apply to persons who are subject to community sanctions and measures. Convicted offenders may have community sanctions or measures imposed on them. The term 'suspects' refers to persons who have not been convicted, but who may have measures imposed on them by judicial authority or other authority as laid down by law. However, sanctions and measures which are specifically concerned with juveniles are covered by the Committee of Ministers' Recommendation [CM/Rec\(2008\)11](#) on the European Rules for juvenile offenders subject to sanctions or measures.

## Definitions

For the purposes of this recommendation:

The expression “*community sanctions and measures*” means sanctions and measures which maintain suspects or offenders in the community and involve some restrictions on their liberty through the imposition of conditions and/or obligations. The term designates any sanction imposed by a judicial or administrative authority, and any measure taken before or instead of a decision on a sanction, as well as ways of enforcing a sentence of imprisonment outside a prison establishment.

The expression “*deciding authorities*” means a judicial, administrative or other authority empowered by law to impose or revoke a community sanction or measure or to modify its conditions and obligations.

The expression “*implementing authorities*” means the body or bodies empowered to decide on, and with responsibility for, the practical implementation of a community sanction or measure. In many countries, the implementing authority is the probation service.

### Chapter I: Basic principles

1. Community sanctions and measures can provide just and effective supervision, guidance and assistance to suspects or offenders without resorting to deprivation of liberty. They can enhance the prospects of social inclusion on which desistance from crime usually depends.
2. National law shall provide for a sufficient range of suitably varied community sanctions and measures and these shall be made available to be used in practice.
3. The nature and the duration of community sanctions and measures shall both be in proportion to the seriousness of the offence for which persons have been sentenced or of which they have been accused and shall take into account their individual circumstances.
4. Community sanctions and measures shall be implemented in a manner that upholds human rights and enables and encourages suspects and offenders to meet their responsibilities as members of the community. No community sanction or measure shall be created or imposed if it is contrary to international standards concerning human rights and fundamental freedoms.
5. A community sanction or measure shall never involve medical or psychological treatment which is not in conformity with internationally adopted ethical standards.
6. There shall be no discrimination in the imposition and implementation of community sanctions and measures on grounds of race, colour, ethnic origin, nationality, gender, age, disability, sexual orientation, language, religion, political or other opinion, economic, social or other status or physical or mental condition. Account shall be taken of the diversity and of the distinct individual needs of suspects and offenders.
7. Community sanctions and measures shall be made available to foreign national suspects and offenders and implemented fairly and in accordance with the principles of these Rules, with due regard to relevant differences in their circumstances.

8. The nature, content and methods of implementation of community sanctions and measures shall respect the principles of dignity and the privacy of suspects and offenders, their families and others.
9. Whenever community sanctions and measures involve contact with victims, their rights shall be respected in accordance with internationally accepted ethical standards in this area.
10. In appropriate cases, and having due regard to the rights and needs of victims of crime, offenders should be enabled and encouraged to make reparation for their offences to the victims or to the community.
11. Community sanctions and measures shall be implemented in a way that does not aggravate their afflictive nature. Rights shall not be restricted in the implementation of any community sanction or measure to a greater extent than necessarily follows from the decision imposing it.
12. No provisions shall be made in law for the automatic conversion to imprisonment of a community sanction or measure in the case of failure to follow any condition or obligation attached to such a sanction or measure. This does not preclude the option of sending back to prison those offenders who have failed to meet their obligations under the terms of conditional release from imprisonment.
13. National law shall provide for the regular inspection and independent monitoring of the work of the implementing authorities. Inspection and monitoring shall be carried out by qualified and experienced persons.

## Chapter II: Legal framework

### *Legislation*

14. The use, as well as the types, duration and modalities of implementation of community sanctions and measures shall be regulated by law.
15. The conditions and obligations attached to the community sanctions and measures shall be defined by clear and explicit provisions, as shall be the consequences of non-compliance with these conditions and obligations.
16. The authorities responsible for deciding on the imposition, modification and revocation of community sanctions and measures shall be laid down in law, as will their powers and responsibilities.
17. The authorities responsible for the implementation of community sanctions and measures shall be laid down in law, as will their duties and responsibilities. The powers of these authorities to decide on methods of implementation, to delegate their implementing duties to third parties if necessary, or to enter into agreements concerning implementation, shall also be laid down in law.
18. National law shall allow for reducing recourse to sentences involving deprivation of liberty by providing for non-custodial sanctions or measures as the appropriate response for certain offences.

19. Any formal, including legal, obstacles that prevent the use of community sanctions and measures with serious and repeat offenders or in relation to certain types of offence or any other statutory limitations should be reviewed and removed so far as appropriate.

20. Rights to benefits in any existing social security system or any other civic right shall not be limited by the imposition or implementation of a community sanction or measure (apart from restrictions forming part of the sentence).

### *Imposition of community sanctions and measures*

21. The duration of a community sanction or measure shall be fixed by the authority empowered to make the decision as prescribed by law.

22. The nature and the duration of a community sanction or measure shall be in proportion to the seriousness of the offence and the harm done to victims, and shall take into account any risks assessed as well as the individual's needs and circumstances.

23. Ordinarily, a community sanction or measure shall be imposed with a fixed duration. Where, exceptionally, the law provides that the duration of the community sanction or measure may be extended, there shall be regular review by the deciding authority to assess if such exceptional circumstances still apply and, if not, to terminate the community sanction or measure.

24. Advice to the court or the public prosecutor concerning the preparation, imposition or implementation of a community sanction or measure shall only be provided by staff of an organisation provided for by law.

25. Suspects and offenders shall have the right to appeal to a judicial authority against a decision subjecting them to a community sanction or measure.

26. Deciding and implementing authorities should create channels of communication between them, which facilitate regular discussion of the practical aspects of imposing and implementing community sanctions and measures.

### *Chapter III: Community sanctions and measures: implementation and methods*

#### *General*

27. The imposition and implementation of community sanctions and measures shall seek to develop the individual's sense of responsibility to the community. Community sanctions and measures should therefore be made as meaningful as possible to suspects and offenders and shall seek to contribute to their personal and social development. Methods of supervision shall serve these aims.

28. The implementing authority shall ensure that information about the rights and obligations of those subject to community sanctions and measures is made available to them, and shall provide assistance to secure those rights and to enable them to meet these obligations. Staff of the implementing authority and participating organisations and individuals drawn from the community shall be made aware of their duties in these respects.

29. The implementation of community sanctions or measures shall seek to secure the co-operation of suspects and offenders and to enable them to see the community sanction or

measure as a just and reasonable reaction to the offence committed. They shall therefore have the right to make oral or written representations prior to any decision concerning the implementation of a community sanction or measure and should participate, as far as possible, in such decision making.

30. Decisions about the implementation of a community sanction or measure shall be explained clearly to the suspects or offenders in a language they understand. Instructions given to them by the implementing authority shall be practical and precise.

31. The implementation of community sanctions and measures shall be based on the development of working relationships between the suspect or the offender, the supervisor and any participating organisations or individuals drawn from the community, focused on reducing re-offending and on social reintegration.

32. Implementation methods shall be individually adapted to the particular circumstances of each case and the authorities and the staff responsible for implementation shall therefore enjoy a sufficient degree of discretion to enable this.

33. Where an individual is found to be in need of particular personal, social or material assistance in relation to the implementation, fair and proper provision shall be made to enable them to meet their obligations.

34. Controlling activities shall only be undertaken to the extent that they are necessary for the proper implementation of the sanction or measure imposed. They shall be in proportion to the offence committed or alleged, shall take into consideration the individual circumstances of the suspect or the offender, including risk and needs factors and the rights and interests of the victim. Such activities shall be limited by the aims of the sanction or measure imposed.

35. Implementing authorities shall use working methods which are evidence-based and consistent with established professional standards.

36. The direct costs of implementation of a community sanction or measure should not normally be borne by the suspect or the offender.

#### *Supervision and community service*

37. Community sanctions and measures shall always work to support desistance from crime even where they involve high levels of surveillance or control.

38. Programmes and interventions for rehabilitation shall be based on a variety of methods. The allocation of suspects or offenders to specific programmes and interventions shall be guided by explicit criteria.

39. Tasks assigned to offenders doing community service shall be socially useful and meaningful and make use of and/or enhance the offender's skills as much as possible.

40. Community service shall not be undertaken for the purpose of making profit for the implementing authorities, for their staff, or for commercial profit.

41. Working and occupational conditions of offenders carrying out community service shall be in accordance with all current health and safety regulations. Offenders shall be insured against accident, injury and public liability arising as a result of implementation.

### *Case records, data protection and confidentiality*

42. Individual case records shall be created by the implementing authority. They shall be kept up to date so that, *inter alia*, any necessary report can be prepared about the extent of the individual's compliance with the conditions or obligations of the sanction or measure.

43. Information in individual case records shall only encompass matters relevant to the sanction or measure imposed and its implementation. Such information shall be as reliable and objective as possible.

44. The supervisor shall ordinarily inform suspects or offenders of the content of the case record and of any reports made and explain the content to them.

45. The suspect or the offender, or a person acting on their behalf, shall have access to their individual case record to the extent that it does not infringe the right to privacy of others.

46. The suspect or the offender shall have the right to contest the content of the case record. The substance of any unresolved disagreement shall be written into the case record.

47. Information in any individual case record shall only be disclosed to those with a legal right to receive it. Any information disclosed shall be limited to what is relevant for the legitimate purposes of the authority requesting information.

48. At the end of the community sanction or measure, case records in the hands of the implementing authority shall be destroyed or kept in archives in accordance with national data protection legislation.

49. The kind and amount of information about individuals given to agencies which provide community service work placements or personal and social assistance of any kind shall be defined by, and be restricted to, the purpose of the particular action under consideration. In particular, it shall normally exclude information about the offence.

### Chapter IV: Community participation

50. As reintegration into the community is an important aim of community sanctions and measures, implementing authorities shall work actively in partnership with other public or private organisations and local communities to meet the needs of suspects or offenders, promote their social inclusion and to enhance community safety.

51. The community, including private individuals and private and public organisations and services, shall be encouraged to participate in the implementation of community sanctions and measures. Attempts shall be made to assist suspects and offenders in developing meaningful ties in the community, in broadening their opportunities for contact and support and to encourage the community to make a positive contribution to their social reintegration.

52. Community participation shall never be undertaken for the financial profit of individuals or organisations.

53. Participating organisations and individuals drawn from the community shall undertake supervision only in a capacity laid down in law or defined by the authorities responsible for the imposition or implementation of community sanctions or measures. In such circumstances, the deciding or implementing authorities shall preserve their overall responsibility for the proper

carrying out of the community sanction or measure and shall do all they can to ensure the probity, safety and integrity of all participants.

54. Participating organisations and individuals drawn from the community shall be bound by the demands of confidentiality and by respect for the rights of suspects and offenders.

55. Where the implementing authority engages directly with an organisation or individual to provide services for suspects or offenders subject to a community sanction or measure, an agreement should be drawn up which specifies, in particular, the nature of their duties and the way they are to be carried out.

#### Chapter V: Consent, co-operation and enforcement

56. A community sanction or measure shall only be imposed when the appropriate conditions or obligations have been decided upon and it is known that the suspect or the offender is likely to co-operate and comply with them.

57. Where the suspect's or the offender's consent is required, it shall be informed and explicit.

58. Such consent shall never have the consequence of depriving suspects or offenders of any of their fundamental rights.

59. The consent of a suspect shall be obtained before the imposition of any community measure to be applied before trial or instead of a decision on a sanction unless otherwise provided by law.

60. Any conditions or obligations specified in a community sanction or measure shall be determined taking into account the individuals' needs and circumstances, and their risks of reoffending (and in particular of causing serious harm).

61. In addition to formal documentation, suspects and offenders shall be clearly informed about the nature and purpose of the sanction or measure and the conditions or obligations that must be respected before the start of the implementation in a language they understand and, if necessary, in writing.

#### Chapter VI: Non-compliance and revocation

62. At the start of the implementation of a community sanction or measure, suspects and offenders shall be informed about the content of the sanction or measure and what is expected of them, of the consequences of non-compliance with the conditions and obligations stated in the decision and of the circumstances in which they may be brought back before the deciding authority in respect of non-compliance or inadequate compliance.

63. The implementing authority shall clearly define the procedures to be followed in the event of the suspect's or the offender's non-compliance or inadequate compliance with the requirements.

64. Minor transgressions which do not require the use of a procedure for revocation of the sanction or measure shall be promptly dealt with by discretionary means or, if necessary, by an administrative procedure. In such cases, the suspect or the offender must be given the opportunity to make comments. The procedure and outcome shall be written into the individual case record and explained promptly and clearly to the person concerned.

65. Any significant failure to comply with the conditions or obligations laid down in a community sanction or measure shall be promptly reported in writing to the deciding authority by the implementing authority.

66. Any written report on failure to comply with conditions or obligations shall give an objective and detailed account of the manner in which the failure occurred, and the circumstances in which it took place.

67. The decision to modify or revoke a community sanction or measure shall be taken by an authority defined by law. This deciding authority shall only give a ruling on the modification or the partial or total revocation after making a detailed examination of the facts reported by the implementing authority.

68. The decision to revoke a community sanction or measure shall not necessarily lead to a decision to impose imprisonment.

69. In deciding on the modification or partial or total revocation of a community sanction or measure, the deciding authority shall ensure that the suspect or the offender has had the opportunity to examine the relevant documents and to present their case regarding the alleged violation of any condition or obligation imposed. The suspect or the offender shall be entitled to legal assistance.

70. Where the revocation of a community sanction or measure is being considered, due account shall be taken of the manner in which and the extent to which any conditions and obligations laid down have been complied with. Where a breach of the sanction or the measure by an offender leads to a sentence of imprisonment, credit for any satisfactory compliance should be reflected in the length of the sentence.

71. Any condition or obligation laid down in a community sanction or measure may be modified by the deciding authority, having regard to changes in circumstances and/or to progress made by the suspect or the offender. An application to modify conditions or obligations may be made by the suspect or the offender or by the implementing authority, or otherwise as laid down in law.

72. In accordance with the law, the deciding authority shall be able to terminate a sanction or measure before it is due to end when it is established that the suspect or the offender has observed the conditions and obligations required and it appears no longer necessary to maintain them to achieve the purpose of the sanction or measure. The application to terminate a sanction or measure on these grounds may be made by the suspect or the offender or by the implementing authority.

## Chapter VII: Organisation, staff and resources

### *General*

73. The structure, status and resources of implementing agencies shall correspond to the volume and the complexity of the tasks and responsibilities they are entrusted with and shall reflect the importance of the services they provide.

74. Implementing authorities shall work in co-operation with other agencies of the justice system, with support agencies and with the wider civil society in order to carry out their tasks and duties effectively and fairly.



75. The work of authorities responsible for the implementation of community sanctions and measures shall be based on an explicit policy statement describing their function, purposes and basic values. The policy statement should be supplemented by written service plans and practical instructions and guidance.

76. Implementing authorities shall establish internal systems of scrutiny so that they can monitor their performance and that of their members of staff.

### *Staff*

77. Implementing authorities should have staff of high professional quality, recruited, trained and employed in accordance with the principles laid down in the relevant Council of Europe texts related to staff concerned with the implementation of sanctions and measures.

78. Staff shall be accountable to the implementing authority. This authority shall determine the duties, rights and responsibilities of its staff and shall arrange for the management and supervision of such staff and assessment of the fairness, efficiency and effectiveness of their work.

79. There shall be arrangements for management to consult with staff as a body on general matters and, especially, on matters to do with their conditions of employment.

80. There shall be no discrimination in the recruitment, selection and promotion of staff on grounds of race, colour, ethnic origin, gender, sexual orientation, religion, political or other opinion, economic or social status.

81. Staff recruitment and selection should take into consideration specific needs of particular categories of persons and the diversity of the suspects or the offenders to be supervised.

82. The staff responsible for implementation shall be sufficiently numerous to carry out their duties effectively. They shall possess the personal qualities and professional qualifications necessary for their functions.

83. The staff responsible for implementation shall have adequate training to enable them to have a sound understanding of their particular field of activity, their practical duties and the ethical requirements of their work. Their training should encourage them to contribute to an enhancement of their work. Their professional competence shall be regularly developed through further training and performance reviews and appraisals.

84. Salaries and conditions of service shall be commensurate with the staff's skills and responsibilities. Staff shall be appointed on such a legal, financial and working-hours basis that professional and personal continuity of development is ensured, that the employees' awareness of official responsibility will be strengthened and that their status in relation to conditions of service matches that of other professional staff with comparable functions.

### *Use of volunteers*

85. The implementing authority should consider the recruitment of individual volunteers to contribute to its work to enhance the involvement of the community in the implementation of sanctions and measures.

86. Volunteers can make an important contribution to the implementation of community sanctions and measures but should not undertake work which should be carried out by professional staff.

87. The implementing authorities shall define criteria and procedures according to which individual volunteers drawn from the community are selected, informed about their tasks, responsibilities, limits of competence, accountability and other issues. Suitable training shall be provided.

88. Volunteers shall be guided and supported by professional staff and enabled to perform duties appropriate to their skills and interest within the boundaries of their role.

89. Volunteers shall be insured against accident, injury and public liability when carrying out the duties assigned to them by the implementing authority. It is this authority's duty to make sure that they are adequately insured. They shall be reimbursed for necessary expenditures incurred in the course of their work.

#### *Financial resources*

90. Implementing authorities shall have adequate financial means provided from public funds. Third parties may make a financial or other contribution but implementing authorities shall never be financially dependent on them.

91. In cases where implementing authorities make use of third parties' financial contributions, there shall be rules defining the procedures to be followed, the persons invested with specific responsibilities in this matter and the means for auditing the use of funds.

#### *Chapter VIII: Inspection, monitoring and complaints procedures*

92. Implementing authorities shall be open to scrutiny and shall regularly submit general reports and feedback information regarding their work to the competent authorities. Implementing authorities shall also be subject to inspection and/or monitoring and shall co-operate fully with all such scrutiny. The findings of government inspections and of independent monitoring bodies shall be made public.

93. A fair, simple and impartial complaints procedure shall be available concerning a decision made by the implementing authority, or the failure to take such a decision or, in general, about the effect given to the sanction or measure.

94. The implementing authority in the first instance shall respond to and investigate complaints concerning the implementation of a sanction or measure. Complaints shall be examined and decided on without undue delay.

95. Those investigating the complaint shall obtain all necessary information to enable them to reach their decision. Careful consideration shall be given to the desirability of hearing the complainant in person, especially when such a wish has been expressed.

96. The decision of those investigating the complaint and the reasons for the decision shall be communicated in writing to the complainant, to the implementing authority and to the relevant members of staff.

97. A complainant may be advised or assisted by a person of their choice and if necessary shall receive legal assistance.

Chapter IX: Research, evaluation, work with media and the public

98. Research on community sanctions and measures shall be encouraged. They should be regularly evaluated. Programmes and interventions should be structured in accordance with knowledge derived from relevant research.

99. Criteria of effectiveness and performance should be laid down so as to make it possible to assess from various perspectives the benefits and disadvantages associated with programmes and interventions with the aim of maximising the quality of their results. Standards and performance indicators for the execution of programmes and interventions should be established.

100. New community sanctions and measures in accordance with internationally approved ethical standards may be introduced on a trial basis. Any pilot projects or experimentation undertaken should be carried out in accordance with the spirit of these Rules and be carefully monitored and evaluated.

101. Policy makers, legislators, judicial authorities and the general public should receive recurring information on the economic and social benefits accruing from a reduced recourse to imprisonment and on the advantages of community sanctions and measures. There should be a declared public relations policy.

102. Active efforts shall be made to make information available about the nature and content of community sanctions and measures, as well as the various ways in which they are implemented, so that the general public can understand them and perceive them as adequate and credible responses to criminal behaviour.

103. Judicial and other deciding authorities should be involved in the process of devising and revising policies on the use of community sanctions and measures, and should be informed about their results, with a view to ensuring widespread understanding of the strengths and limitations of community sanctions and measures.

104. Implementing authorities shall enable and encourage suspects and offenders to inform them of their experience of being supervised so that policies and practices can be improved. Where these authorities work with victims, their views shall also be sought.

Chapter X: Reviewing of the Rules

105. These Rules shall be reviewed regularly.

Recommendation CM/Rec (2014) 4 of the Committee of Ministers to member States on electronic monitoring

*(Adopted by the Committee of Ministers on 19 February 2014, at the 1192nd meeting of the Ministers' Deputies)*

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

Considering that the aim of the Council of Europe is to achieve greater unity among its members;

Agreeing that it is necessary to further develop international co-operation in the field of enforcement of penal sentences;

Considering that such co-operation should contribute to improving justice, to executing sanctions effectively and in full respect of human rights and dignity of offenders and to reducing the incidence of offending;

Agreeing that deprivation of liberty should be used as a measure of last resort and that the majority of suspects and offenders can be efficiently and cost-effectively dealt with in the community;

Considering that the continuing growth of prison populations can lead to detention conditions which are not in conformity with Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedom (ETS No. 5), as highlighted by the relevant case law of the European Court of Human Rights;

Reiterating that prison overcrowding and prison population growth are a major challenge to prison administrations and the criminal justice system as a whole, both in terms of human rights and of the efficient management of penal institutions;

Recognising that electronic monitoring used in the framework of the criminal justice process can help reduce resorting to deprivation of liberty, while ensuring effective supervision of suspects and offenders in the community, and thus helping prevent crime;

Recognising at the same time that electronic monitoring technologies should be used in a well-regulated and proportionate manner in order to reduce their potential negative effects on the private and family life of a person under electronic monitoring and of concerned third parties;

Agreeing therefore that rules about limits, types and modalities of provision of electronic monitoring technologies need to be defined in order to guide the governments of the members States in their legislation, policies and practice in this area;

Agreeing further that ethical and professional standards need to be developed regarding the effective use of electronic monitoring in order to guide the national authorities, including judges, prosecutors, prison administrations, probation agencies, police and agencies providing equipment or supervising suspects and offenders;

Taking into account:

- the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5);
- the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (ETS No. 51);
- Recommendation Rec(92)16 on the European rules on community sanctions and measures;
- Recommendation Rec(92)17 concerning consistency in sentencing;
- Recommendation Rec(97)12 on staff concerned with the implementation of sanctions and measures;
- Recommendation Rec(99)22 concerning prison overcrowding and prison population inflation;
- Recommendation Rec(2000)22 on improving the implementation of the European rules on community sanctions and measures;
- Recommendation Rec(2003)22 on conditional release (parole);
- Recommendation Rec(2006)2 on the European Prison Rules;
- Recommendation CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures;
- Recommendation CM/Rec(2010)1 on the Council of Europe Probation Rules;
- Recommendation CM/Rec(2012)5 on the European Code of Ethics for Prison Staff;

Bearing in mind:

- the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) (Resolution 45/110);
- the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (Resolution 2010/16);
- the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) (Resolution 40/33);
- the European Union Council Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions;
- the European Union Council Framework Decision 2009/829/JHA on the application, between member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention,

Recommends that the governments of member States:

- take all appropriate measures, when reviewing their relevant legislation and practice, to apply the principles set out in the appendix to this recommendation;
- ensure the dissemination of this recommendation and its commentary among the relevant authorities and agencies, above all among the relevant ministries, the prison administration, probation agencies, the police and other relevant law enforcement agencies, as well as among any other agency providing electronic monitoring equipment or supervising persons under electronic monitoring in the framework of the criminal justice process.

## *I. Scope*

The aim of this recommendation is to define a set of basic principles related to ethical issues and professional standards enabling national authorities to provide just, proportionate and effective use of different forms of electronic monitoring in the framework of the criminal justice process in full respect of the rights of the persons concerned.

It is also intended to bring to the attention of national authorities that particular care needs to be taken when using electronic monitoring not to undermine or replace the building of constructive professional relationships with suspects and offenders by competent staff dealing with them in the community. It should be underlined that the imposition of technological control can be a useful addition to existing socially and psychologically positive ways of dealing with any suspect or offender as defined by the relevant Committee of Ministers' recommendations and particularly by Recommendation Rec(92)16 on the European rules on community sanctions and measures; Recommendation Rec(97)12 on staff concerned with the implementation of sanctions and measures; Recommendation Rec(2006)2 on the European Prison Rules; Recommendation CM/Rec(2010)1 on the Council of Europe Probation Rules and Recommendation CM/Rec(2012)5 on the European Code of Ethics for Prison Staff.

## *II. Definitions*

"Electronic monitoring" is a general term referring to forms of surveillance with which to monitor the location, movement and specific behaviour of persons in the framework of the criminal justice process. The current forms of electronic monitoring are based on radio wave, biometric or satellite tracking technology. They usually comprise a device attached to a person and are monitored remotely.

Depending on the national jurisdictions, electronic monitoring may be used in one or more of the following ways:

- during the pre-trial phase of criminal proceedings;
- as a condition for suspending or of executing a prison sentence;
- as a stand-alone means of supervising the execution of a criminal sanction or measure in the community;
- in combination with other probation interventions;
- as a pre-release measure for those in prison;
- in the framework of conditional release from prison;
- as an intensive guidance and supervision measure for certain types of offenders after release from prison;
- as a means of monitoring the internal movements of offenders in prison and/or within the perimeters of open prisons;
- as a means for protecting specific crime victims from individual suspects or offenders.

In some jurisdictions, where electronic monitoring is used as a modality of execution of a prison sentence, those under electronic monitoring are considered by the authorities to be prisoners.

In some jurisdictions, electronic monitoring is directly managed by the prison, probation agencies, police services or other competent public agency, while in others it is implemented by private companies under a service-providing contract with a State agency.

In some jurisdictions, the suspect or offender carrying the device is required to contribute to the costs of its use, while in others the State alone covers the costs of electronic monitoring.

In some jurisdictions electronic monitoring may be used in the case of juvenile suspects and offenders, while in others the measure is not applicable to juveniles.

“Suspect” means any person who is alleged to have committed or who has been charged with having committed a criminal offence but who has not been convicted of it.

“Offender” means any person who has been convicted of a criminal offence.

“Agency providing electronic monitoring equipment”: usually a private company which produces, markets, sells, rents and maintains such equipment.

“Agency responsible for supervising persons under electronic monitoring”: a public agency or a private company which is entrusted by the competent authorities to supervise the location, movement or specific behaviour of a suspect or an offender for a specified period of time.

“Probation agency”: a body responsible for the execution in the community of sanctions and measures defined by law and imposed on an offender. Its tasks include a range of activities and interventions, which involve supervision, guidance and assistance aiming at the social inclusion of offenders, as well as at contributing to community safety. It may also, depending on the national legal system, implement one or more of the following functions: providing information and advice to judicial and other deciding authorities to help them reach informed and just decisions; providing guidance and support to offenders while in custody in order to prepare their release and resettlement; monitoring and assistance to persons subject to early release; restorative justice interventions; and offering assistance to victims of crime.

A probation agency may also be, depending on the national legal system, the “agency responsible for supervising persons under electronic monitoring”.

### *III. Basic principles*

1. The use, as well as the types, duration and modalities of execution of electronic monitoring in the framework of the criminal justice shall be regulated by law.
2. Decisions to impose or revoke electronic monitoring shall be taken by the judiciary or allow for a judicial review.
3. Where electronic monitoring is used at the pre-trial phase special care needs to be taken not to net-widen its use.
4. The type and modalities of execution of electronic monitoring shall be proportionate in terms of duration and intrusiveness to the seriousness of the offence alleged or committed, shall take into account the individual circumstances of the suspect or offender and shall be regularly reviewed.
5. Electronic monitoring shall not be executed in a manner restricting the rights and freedoms of a suspect or an offender to a greater extent than provided for by the decision imposing it.

6. When imposing electronic monitoring and fixing its type, duration and modalities of execution account should be taken of its impact on the rights and interests of families and third parties in the place to which the suspect or offender is confined.

7. There shall be no discrimination in the imposition or execution of electronic monitoring on the grounds of gender, race, colour, nationality, language, religion, sexual orientation, political or other opinion, national or social origin, property, association with a national minority or physical or mental condition.

8. Electronic monitoring may be used as a stand-alone measure in order to ensure supervision and reduce crime over the specific period of its execution. In order to seek longer term desistance from crime it should be combined with other professional interventions and supportive measures aimed at the social reintegration of offenders.

9. Where private sector organisations are involved in the implementation of decisions imposing electronic monitoring, the responsibility for the effective treatment of the persons concerned in conformity with the relevant international ethical and professional standards shall remain with public authorities.

10. Public authorities shall ensure that all relevant information regarding private sector involvement in the delivery of electronic monitoring is transparent and shall regulate the access to it by the public.

11. Where suspects and offenders are contributing to the costs for the use of electronic monitoring, the amount of their contribution shall be proportionate to their financial situation and shall be regulated by law.

12. The handling and shared availability and use of data collected in relation to the imposition and implementation of electronic monitoring by the relevant agencies shall be specifically regulated by law.

13. Staff responsible for the implementation of decisions related to electronic monitoring shall be sufficient in number and adequately and regularly trained to carry out their duties efficiently, professionally and in accordance with the highest ethical standards. Their training shall cover data protection issues.

14. There shall be regular government inspection and avenues for independent monitoring of the agencies responsible for the execution of electronic monitoring in a manner consistent with national law.

#### *IV. Conditions of execution of electronic monitoring at the different stages of the criminal process*

15. In order to ensure compliance, different measures can be implemented in accordance with national law. In particular, the suspect's or offender's consent and co-operation may be sought, or dissuasive sanctions may be established.

16. The modalities of execution and level of intrusiveness of electronic monitoring at the pre-trial stage shall be proportionate to the alleged offence and shall be based on the properly assessed risk of the person absconding, interfering with the course of justice, posing a serious threat to public order or committing a new crime.



17. National law shall regulate the manner in which time spent under electronic monitoring supervision at pre-trial stage may be deducted by the court when defining the overall duration of any final sanction or measure to be served.

18. Where there is a victim protection scheme using electronic monitoring to supervise the movements of a suspect or an offender, it is essential to obtain the victim's prior consent and every effort shall be made to ensure that the victim understands the capacities and limitations of the technology.

19. In cases where electronic monitoring relates to exclusion from, or limitation to, specific zones, efforts shall be made to ensure that such conditions of execution are not so restrictive as to prevent a reasonable quality of everyday life in the community.

20. Where substance abuse needs to be monitored, consideration shall be given to the respective intrusiveness and therapeutic and educative potential of electronic and traditional approaches when deciding which approach is to be used.

21. Electronic monitoring confining offenders to a place of residence without the right to leave it should be avoided as far as possible in order to prevent the negative effects of isolation, in case the person lives alone, and to protect the rights of third parties who may reside at the same place.

22. In order to prepare offenders for release, and depending on the type of offence and offender management programme, electronic monitoring may be used to increase the number of individual cases of short-term prison leave that are granted, or to give offenders the possibility to work outside prison or be given a placement in an open prison.

23. Electronic monitoring may be used as an alternative execution of a prison sentence, in which case its duration shall be regulated by law.

24. Electronic monitoring may be used, if needed, in case of early release from prison. In such a case, its duration shall be proportionate to the remainder of the sentence to be served.

25. If electronic monitoring is used, if needed, after the prison sentence has been served, as a post-release measure, its duration and intrusiveness shall be carefully defined, in full consideration of its overall impact on former prisoners, their families and third parties.

## V. Ethical issues

26. Age, disability and other relevant specific conditions or personal circumstances of each suspect or offender shall be taken into account in deciding whether and under what modalities of execution electronic monitoring may be imposed.

27. Under no circumstances may electronic monitoring equipment be used to cause intentional physical or mental harm or suffering to a suspect or an offender.

28. Rules regarding the use of electronic monitoring shall be periodically reviewed in order to take into account the technological developments in the area so as to avoid undue intrusiveness into the private and family life of suspects, offenders and other persons affected.

## VI. Data protection

29. Data collected in the course of the use of electronic monitoring shall be subject to specific regulations based on the relevant international standards regarding storage, use and sharing of data.

30. Particular attention shall be paid to regulating strictly the use and sharing of such data in the framework of criminal investigations and proceedings.

31. A system of effective sanctions shall be put in place in case of careless or intentional misuse or handling of such data.

32. Private agencies providing electronic monitoring equipment or responsible for supervising persons under electronic monitoring shall be subjected to the same rules and regulations regarding handling of the data in their possession.

## VII. Staff

33. All relevant rules of Recommendation Rec(92)16 on the European rules on community sanctions and measures, of Recommendation Rec(97)12 on staff concerned with the implementation of sanctions and measures, of Recommendation CM/Rec(2010)1 on the Council of Europe Probation Rules and of Recommendation CM/Rec(2012)5 on the European Code of Ethics for Prison Staff, which relate to staff, shall be applicable.

34. Staff shall be trained to communicate sensitively with suspects and offenders, to inform them in a manner and language they understand of the use of the technology, of its impact on their private and family lives and on the consequences of its misuse.

35. Staff shall be trained to deal with victims in cases where victim support schemes are used in the framework of electronic monitoring.

36. In establishing electronic monitoring systems, consideration shall be given to the respective merits of both human and automated responses to the data gathered by the monitoring centre, bearing in mind the advantages of each.

37. Staff entrusted with the imposition or execution of electronic monitoring shall be regularly updated and trained on the handling, use and impact of the equipment on the persons concerned.

38. Staff shall be trained to install and uninstall technology and provide technical assistance and support in order to ensure the efficient and accurate functioning of the equipment.

## VIII. Work with the public, research and evaluation

39. The general public shall be informed of the ethical and technological aspects of the use of electronic monitoring, its effectiveness, its purpose and its value as a means of restricting the liberty of suspects or offenders. Awareness shall also be raised regarding the fact that electronic monitoring cannot replace professional human intervention and support for suspects and offenders.

40. Research and independent evaluation and monitoring shall be carried out in order to help national authorities take informed decisions regarding the ethical and professional aspects of the use of electronic monitoring in the criminal process.

Recommendation CM/Rec (2014) 3 of the Committee of Ministers to member States concerning dangerous offenders

*(Adopted by the Committee of Ministers on 19 February 2014, at the 1192nd meeting of the Ministers' Deputies)*

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

Considering that the aim of the Council of Europe is to achieve greater unity between its members, in particular through harmonising laws on matters of common interest;

Considering the specific approach necessary with regard to dangerous offenders detained in the prisons in its member States;

Recognising the challenges which European States face in balancing the rights of dangerous offenders with the need to provide security in society;

Bearing in mind the relevance of the principles contained in previous conventions and recommendations and in particular:

- the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5);
- the Convention on the Transfer of Sentenced Persons (ETS No. 112);
- the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201);
- Recommendation Rec(82)17 of the Committee of Ministers to member States concerning custody and treatment of dangerous prisoners;
- Recommendation Rec(92)17 of the Committee of Ministers to member States concerning consistency in sentencing;
- Recommendation Rec(97)12 of the Committee of Ministers to member States on staff concerned with the implementation of sanctions and measures;
- Recommendation Rec(98)7 of the Committee of Ministers to member States concerning the ethical and organisational aspects of health care in prison;
- Recommendation Rec(2000)20 of the Committee of Ministers to member States on the role of early psychosocial intervention in the prevention of criminality;
- Recommendation Rec(2000)22 of the Committee of Ministers to member States on improving the implementation of European rules on community sanctions and measures;
- Recommendation Rec(2003)23 of the Committee of Ministers to member States on the management by prison administrations of life sentence and other long-term prisoners;
- Recommendation Rec(2004)10 of the Committee of Ministers to member States concerning the protection of the human rights and dignity of persons with mental disorder;
- Recommendation Rec(2006)2 of the Committee of Ministers to member States on the European Prison Rules;
- Recommendation CM/Rec(2008)11 of the Committee of Ministers to member States on the European Rules for juvenile offenders subject to sanctions or measures;
- Recommendation CM/Rec(2010)1 of the Committee of Ministers to member States on the Council of Europe Probation Rules;
- Recommendation Rec(2014)4 of the Committee of Ministers to member States on electronic monitoring;

Taking into account the constitutional principles, legal traditions and the independence of the judiciary in its member States;

Acknowledging that this recommendation does not contain any obligation to member States to introduce secure preventive detention or preventive supervision into national law;

Acknowledging that this recommendation could be applied in accordance with national law *mutatis mutandis* in other cases than those referred to in the recommendation;

Recognising that a range of authorities and agencies deal with dangerous offenders and that such bodies are in a need of a coherent set of guiding principles in line with Council of Europe standards,

Recommends that Council of Europe member States:

- be guided in their legislation, policies and practice by the rules contained in the appendix to this recommendation;
- ensure that this recommendation and its accompanying commentary are translated and disseminated to all relevant authorities, agencies, professionals and associations which deal with dangerous offenders, as well as to the offenders themselves.

#### *APPENDIX TO RECOMMENDATION CM/REC (2014) 3*

##### Part I - Definitions and basic principles

###### *Definitions*

1. For the purpose of this recommendation:

a. A dangerous offender is a person who has been convicted of a very serious sexual or very serious violent crime against persons and who presents a high likelihood of re-offending with further very serious sexual or very serious violent crimes against persons.

b. Violence may be defined as the intentional use of physical force, either threatened or actual, against persons, that either results in, or has a high likelihood of resulting in, injury, psychological harm or death. This definition identifies four means by which violence may be inflicted: physical, sexual and psychological attack and deprivation of liberty.

c. Risk is defined as the high likelihood of a further very serious sexual or very serious violent offence against persons.

d. Risk assessment is the process by which risk is understood: it examines the nature, seriousness and pattern of offences; it identifies the characteristics of the offenders and the circumstances that contribute to it; it informs appropriate decision making and action with the aim of reducing risk.

e. Risk management is the process of selecting and applying a range of intervention measures in custodial and community settings and in the post-release period or in the context of preventive supervision, with the aim of reducing the risk of very serious sexual or very serious violent crime against persons.

f. Treatment includes, but is not limited to, medical, psychological and/or social care for therapeutic purposes. It may serve to reduce the risk posed by the person and may include measures to improve the social dimension of the offender's life.

g. Secure preventive detention means detention imposed by the judicial authority on a person, to be served during or after the fixed term of imprisonment in accordance with its national law. It is not imposed merely because of an offence committed in the past, but also on the basis of an assessment revealing that he or she may commit other very serious offences in the future.

h. Preventive supervision means measures of control, monitoring, surveillance or restriction of movement imposed on a person after he or she has committed a crime and after he or she has served a prison sentence or instead of. It is not imposed merely because of an offence committed in the past, but also on the basis of an assessment revealing that he or she may commit other very serious offences in the future.

### *Scope, application and basic principles*

2. This recommendation shall not apply :

a. to children;

b. to persons with mental disorder who are not under the responsibility of the prison system.

3. Dangerous offenders, like all offenders, should be treated with respect for their human rights and fundamental freedoms, and with due regard for their particular situation and individual needs while at the same time protecting society effectively from them.

4. Any decision that could result in the deprivation or restriction of liberty of a dangerous offender shall be decided or agreed by the judicial authority. Restriction and intervention measures should not be disproportionate to the level of risk and the least restrictive measure consistent with the protection of the public and the reduction of risk should be applied.

5. Careful adherence to criteria for identifying the "dangerous offender" should take into account that this group is a small minority of the total offender population, without, however, compromising public safety. Such criteria should include evidence of previous serious violence, sexual offending, the characteristics of the offender or his/her offending that indicate the likelihood of substantial and continuing risk of violence, or sexual offending, as well as evidence of the inadequacy of lesser measures, such as the offender's previous failure to comply and persistent offending despite the application of lesser measures. The length of the sentence or the offender's general recidivism cannot constitute the only criteria for defining an offender as dangerous in this sense.

6. The risk management of dangerous offenders should, where appropriate, have the long-term aim of their safe reintegration into the community in a manner consistent with public protection from the risk posed by the offender. This should involve an individual plan that contains a staged process of rehabilitation through appropriate intervention.

7. Positive steps should be taken to avoid discrimination and stigmatisation and to address specific problems that dangerous offenders may face while in prison and while undergoing preventive supervision in the community.

8. The protection of the individual rights of dangerous offenders, with special regard to the legality of the execution of the measures (secure preventive detention, preventive supervision), should be secured by means of regular and independent monitoring, according to national rules, by a judicial authority or other independent body authorised to visit and not belonging to the prison administration.

9. Special risk-related needs of dangerous offenders should be addressed throughout the period of the intervention and sufficient resources should be allocated in order to deal effectively with the particular situation and specific needs.

10. Risk assessment and management practices should be evidence based.

11. The effectiveness of risk assessment and management of dangerous offenders should be evaluated by encouraging and funding research that will be used to guide policies and practices within the field. Risk assessment tools should be carefully evaluated in order to identify cultural, gender and social biases.

12. Appropriate training in assessing and dealing with dangerous offenders should be provided for the relevant authorities, agencies, professionals, associations and prison staff, to ensure that practice conforms to the highest national and international ethical and professional standards. Particular competencies are needed when dealing with offenders who suffer from a mental disorder.

## Part II - Judicial decisions for dangerous offenders

### *General provisions*

13. Risk assessment should be commissioned by the judicial authority.

14. The alleged dangerous offender should have the possibility of commissioning a separate expert report.

15. The judicial authorities should, where possible and appropriate, be provided with pre-sentence reports about the personal circumstances of the offender whose dangerousness is being evaluated.

### *Secure preventive detention*

16. The decision of a judicial authority to impose secure preventive detention against a dangerous offender should take into account a risk assessment report from the experts.

17. A dangerous offender should only be held in secure preventive detention on the basis of an assessment establishing that he or she may with high likelihood commit a very serious sexual or very serious violent crime against persons in the future.

18. Secure preventive detention is only justified when it is established as the least restrictive measure needed.

19. When secure preventive detention takes the form of detention beyond the period prescribed for punishment, it is essential that those detained are able to challenge their detention, or the limits on their freedom, before a court at least every two years after the expiry of the period prescribed for punishment.

20. Anyone held for preventive reasons should be entitled to a written plan which provides opportunities for him or her to address the specific risk factors and other characteristics that contribute to their current classification as a dangerous offender.

21. The aim of the relevant authorities should be the reduction of the restriction and release from secure preventive detention in a manner consistent with public protection from the risk posed by the offender.

22. Dangerous offenders in secure preventive detention should, after the expiry of the period prescribed for punishment, be held in appropriate conditions subject to the requirements of risk management, security and public protection. In any case, respect for human dignity should be guaranteed.

### *Preventive supervision*

23. Preventive supervision may be applied as an alternative to secure preventive detention, as a condition for release on probation, or after release, and should be reviewed on a regular basis.

24. Such supervision may consist of one or more of the following measures set up by the competent authority:

- i. regular reporting to a designated place;
- ii. the immediate communication of any change in place of residence, of work or position in the way and within the time limit set out;
- iii. prohibition from leaving the place of residence or of any territory without authorisation;
- iv. prohibition from approaching or contacting the victim, or his or her relatives or other identified persons;
- v. prohibition from visiting certain areas, places or establishments;
- vi. prohibition from residing in certain places;
- vii. prohibition from performing certain activities that may offer the opportunity to commit crimes of a similar nature;
- viii. participation in training programmes or professional, cultural, educational or similar activities;
- ix. the obligation to participate in intervention programmes and to undergo regular re-assessment as required;
- x. the use of electronic devices which enable continuous monitoring (electronic monitoring) in conjunction with one or some of the measures above;
- xi. other measures provided for under national law.

25. When considering indeterminate supervision or life-long supervision, suitable guarantees for a just application of this measure should be guided by the principles contained in



Recommendation Rec(2000)22 on improving the implementation of European rules on community sanctions and measures.

### Part III - Risk assessment principle during the implementation of a sentence

26. The depth of assessment should be determined by the level of risk and be proportionate to the gravity of the potential outcome.

27. Risk assessments should involve a detailed analysis of previous behaviours and the historical, personal and situational factors that led to and contributed to it. They should be based on the best reliable information.

28. Risk assessment should be conducted in an evidence-based, structured manner, incorporating appropriate validated tools and professional decision making. Those persons undertaking risk assessments should be aware of and state clearly the limitations of assessing violence risk and of predicting future behaviour, particularly in the long term.

29. Such risk assessment instruments should be used to develop the most constructive and least restrictive interpretation of a measure or sanction, as well as to an individualised implementation of a sentence. They are not designed to determine the sentence although their findings may be used constructively to indicate the need for interventions.

30. Assessments undertaken during the implementation of a sentence should be seen as progressive, and be periodically reviewed to allow for a dynamic re-assessment of the offender's risk:

- a. Risk assessments should be repeated on a regular basis by appropriately trained staff to meet the requirements of sentence planning or when otherwise necessary, allowing for a revision of the circumstances that change during the execution of the sentence.
- b. Assessment practices should be responsive to the fact that the risk posed by an individual's offending changes over time: such change may be gradual or sudden.

31. Assessments should be coupled with opportunities for offenders to address their special risk-related needs and change their attitudes and behaviour.

32. Offenders should be involved in assessment, and have information about the process and access to the conclusions of the assessment.

33. A clear distinction should be made between the offender's risks to the outside community and inside prison. These two risks should be evaluated separately.

### Part IV - Risk management

34. Interventions for the prevention of reoffending should be clearly linked to the ongoing risk assessment of the individual offender. It should be planned for both the custodial and community settings, ensuring continuity between the two contexts.

35. All plans developed with this aim in mind should include: rehabilitative and restrictive measures to reduce the likelihood of reoffending in the longer term, while affording the necessary level of protection to others; measures to support the individual to address personal

needs; contingency measures to respond promptly to indications of either deterioration or imminent offending; and appropriate mechanisms to respond to indications of positive changes.

36. Such a plan should facilitate effective communication, co-ordinate the actions of various agencies and support multi-agency co-operation between prison administration, probation workers, social and medical services and law enforcement authorities.

37. Plans should be realistic and have achievable objectives and should be structured in such a way as to allow the offender to understand clearly the purposes of the interventions and the expectations of him or her.

38. The above processes should be subject to regular review, with the capacity to respond to changes in risk assessment.

39. In addition to these recommendations, risk management in the community should be guided by the principles contained in Recommendation CM/Rec(2010)1 on the Council of Europe Probation Rules and Recommendation Rec(2000)22 on improving the implementation of European rules and community sanctions on measures.

## Part V - Treatment and conditions of imprisonment of dangerous offenders

### *Conditions of imprisonment*

40. Imprisonment, through the deprivation of liberty, is punishment in itself. The conditions of imprisonment and the prison regimes should be guided by the principles contained in Recommendation Rec(2006)2 on the European Prison Rules.

41. Security measures should be set to the minimum necessary, and the level of security should be revised regularly.

### *Treatment*

42. As soon as possible after admission and after an assessment of the risks, special risk-related needs and characteristics of the offender, appropriate treatment in a suitable institution should be prepared in the light of the knowledge obtained about individual special risk-related needs, capacities and dispositions. This should take into account proximity to relatives and specific conditions. The implementation should be supervised by a competent authority.

43. Treatment may include medical, psychological and/or social care.

44. Those who have, or develop, a mental disorder, should receive appropriate treatment. The guidance given in Recommendation Rec(98)7 concerning the ethical and organisational aspects of health care in prison should be followed. The medical or psychiatric service of the penal institutions should provide or facilitate the medical and psychiatric treatment of all dangerous offenders who are in need of such treatment.

45. The purpose of the treatment of dangerous offenders should be such as to sustain their health and self-respect and, so far as the length of sentence permits, to develop their sense of responsibility and encourage those attitudes and skills that will help them to lead law-abiding and self-supporting lives.

### *Work, education and other meaningful activities*

46. Persons under secure preventive detention should have access to meaningful activities and access to work and education guided by the principles contained in Recommendation Rec(2006)2 on the European Prison Rules.

### *Vulnerable people*

47. Special attention should be given by the prison administration to the special needs of elderly offenders and to the education of young adult offenders.

### Part VI - Monitoring, staff and research

48. Staff and agencies dealing with dangerous offenders should be subject to regular government inspection and independent monitoring.

49. All staff, including relevant authorities, agencies, professionals and associations involved in the assessment and treatment of dangerous offenders should be selected on the basis of defined skills and competences and professionally supervised. They should have sufficient resources and training in assessing and dealing with the specific needs, risk factors and conditions of this group. Particular competencies are needed when dealing with offenders who suffer from a mental disorder.

50. Training in multi-agency co-operation between staff inside and outside prisons should be arranged.

51. Research on the use and development of reliable risk and needs assessment tools should be undertaken with special reference to dangerous offenders.

52. Evaluative research should be conducted to establish the quality of risk assessment.

### Part VII - Follow-up

The European Committee on Crime Problems (CDPC) should play a significant role in the effective implementation of this recommendation. It should make proposals to facilitate or improve its valuable use. The CDPC should include the identification of any problems. It should also facilitate the collection, analysis and exchange of information, experience and good practice between States.

Recommendation CM/Rec (2012) 12 of the Committee of Ministers to member States concerning foreign prisoners

*(Adopted by the Committee of Ministers on 10 October 2012, at the 1152nd meeting of the Ministers' Deputies)*

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

Considering that the aim of the Council of Europe is to achieve greater unity between its members, in particular through harmonising laws on matters of common interest;

Considering the large number of foreign prisoners detained in the prisons in its member States;

Recognising the difficulties which these prisoners may face on account of such factors as differences in language, culture, customs and religion, and lack of family ties and contact with the outside world;

Desirous of alleviating any possible isolation of foreign prisoners and of facilitating their treatment with a view to their social reintegration;

Considering that such treatment should take into account the special needs of foreign prisoners, arising from the fact that they are detained in a State of which they are neither a national nor a resident, in order to provide them with opportunities equal to those of other prisoners;

Taking into account:

- the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS N° 5);
- the Convention on the Transfer of Sentenced Persons (ETS N° 112);
- the Additional Protocol to the Convention on the Transfer of Sentenced Persons (ETS N° 167);
- Recommendation Rec (92) 16 on the European rules on community sanctions and measures;
- Recommendation Rec (92) 17 concerning consistency in sentencing;
- Recommendation Rec (93) 6 concerning prison and criminological aspects of the control of transmissible diseases including AIDS and related health problems in prison;
- Recommendation Rec (97) 12 on staff concerned with the implementation of sanctions and measures;
- Recommendation Rec (98) 7 concerning the ethical and organisational aspects of health care in prison;
- Recommendation Rec (99) 22 concerning prison overcrowding and prison population inflation;
- Recommendation Rec (2003) 22 on conditional release (parole);
- Recommendation Rec (2006) 2 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;
- Recommendation CM/Rec (2008) 11 on the European Rules for juvenile offenders subject to sanctions or measures;
- Recommendation CM/Rec (2010) 1 on the Council of Europe Probation Rules;

Bearing in mind:

The United Nations Model Agreement on the Transfer of Foreign Prisoners and Recommendations on the Treatment of Foreign Prisoners (1985);

The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Resolution 2010/16);

The European Union Council Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union;

The European Union Council Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions;

The European Union Council Framework Decision 2009/829/JHA on the application, between member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention;

Considering that Recommendation Rec (84) 12 of the Committee of Ministers to member States concerning foreign prisoners needs to be replaced by a new recommendation reflecting the developments since then in penal policy, sentencing practice and the overall management of prisons in Europe;

Taking into account the constitutional principles, legal traditions and the independence of the judiciary in its member States;

Recognising that a range of authorities and agencies deal with foreign persons who are subject to criminal proceedings, sanctions or measures, and that such bodies are in need of a coherent set of guiding principles in line with Council of Europe standards,

Recommends that governments of member States:

- be guided in their legislation, policies and practice by the rules contained in the appendix to this recommendation, which replaces Recommendation Rec (84) 12 of the Committee of Ministers to member States concerning foreign prisoners;
- ensure that this recommendation and the accompanying commentary to its text are translated and disseminated as widely as possible and more specifically to all relevant authorities, agencies, professionals and associations which deal with foreign prisoners, as well as to the prisoners themselves.

I. Definitions and scope

*Definitions*

1. For the purpose of this recommendation:
  - a. foreign person means any person who does not have the nationality of and is not considered to be a resident by the State where he or she is;
  - b. foreign suspect means any foreign person who is alleged to have committed but who has not been convicted of a criminal offence;
  - c. foreign offender means any foreign person who has been convicted of a criminal offence;
  - d. prison means an institution reserved primarily for the detention of suspects or offenders;
  - e. foreign prisoner means any foreign person held in prison and a foreign suspect or a foreign offender detained elsewhere;
  - f. judicial authority means a court, a judge or a prosecutor.

*Scope*

2. This recommendation applies to foreign prisoners and to other foreign persons who are not in prison but who are subject to criminal proceedings, and criminal sanctions and measures, and who may be or have been deprived of their liberty.

II. Basic principles

3. Foreign prisoners shall be treated with respect for their human rights and with due regard for their particular situation and individual needs.
4. Foreign suspects and offenders shall be entitled to be considered for the same range of non-custodial sanctions and measures as other suspects and offenders; they shall not be excluded from consideration on the grounds of their status.
5. Foreign suspects and offenders shall not be remanded in custody or sentenced to custodial sanctions on the grounds of their status, but, as for other suspects and offenders, only when strictly necessary and as a measure of last resort.
6. Foreign offenders sentenced to imprisonment shall be entitled to full consideration for early release.
7. Positive steps shall be taken to avoid discrimination and to address specific problems that foreign persons may face while subject to community sanctions or measures, in prison, during transfer and after release.
8. Foreign prisoners who so require shall be given appropriate access to interpretation and translation facilities and the possibility to learn a language that will enable them to communicate more effectively.

9. The prison regime shall accommodate the special welfare needs of foreign prisoners and prepare them for release and social reintegration.

10. Decisions to transfer foreign prisoners to a State with which they have links shall be taken with respect for human rights, in the interests of justice and with regard to the need to socially reintegrate such prisoners.

11. Sufficient resources shall be allocated in order to deal effectively with the particular situation and specific needs of foreign prisoners.

12. Appropriate training in dealing with foreign suspects and offenders shall be provided for the relevant authorities, agencies, professionals and associations which have regular contact with such persons.

### III. Use of remand in custody

13.1. In order to ensure that remand in custody is used for foreign suspects, as for other suspects, only when strictly necessary and as a measure of last resort, it shall be governed by 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.

13.2. In particular:

- a. alternatives to remand in custody shall always be considered for a foreign suspect; and
- b. the fact that such a suspect is neither a national nor a resident of the State or has no other links with that State shall not, in itself, be sufficient to conclude that there is a risk of flight.

### IV. Sentencing

14.1. In order to ensure that custodial sanctions are imposed on foreign offenders, as for other offenders, only when strictly necessary and as a measure of last resort, sentencing shall take into consideration Recommendation Rec (92) 17 concerning consistency in sentencing. In particular, foreign offenders shall be considered for the same range of non-custodial sanctions or measures as national offenders.

14.2. The judicial authorities shall be provided, where possible and appropriate, with pre-sentence reports about the personal circumstances of foreign offenders and their families, the likely impact of various sanctions on them and the possibility and desirability of their being transferred after sentencing.

14.3. To avoid disproportionate hardship and obstacles to social reintegration, account shall be taken when considering sentences of the possible impact that such sentences may have on individual offenders and their dependants, without prejudice to the independence of the judiciary.

### V. Conditions of imprisonment

#### *Admission*

15.1. At admission and during detention, foreign prisoners shall be provided with information, in a language they understand, about:

- a. their rights and duties as prisoners including regarding contacts with their consular representatives;
- b. the main features of the prison regime and the internal regulations;
- c. rules and procedures for making requests and complaints; and
- d. their rights to legal advice and assistance.

15.2. Immediately after admission, prison authorities shall assist foreign prisoners, who wish to do so, to inform of their imprisonment their families, legal advisers, consular representatives and other persons or organisations competent to assist them.

15.3. As soon as possible after admission, foreign prisoners shall be provided with information, in a language they understand, orally or in writing, of international transfer possibilities.

#### *Allocation*

16.1. Decisions regarding the allocation of foreign prisoners shall take into account the need to alleviate their potential isolation and to facilitate their contact with the outside world.

16.2. Subject to the requirements of safety and security, and the individual needs of foreign prisoners, consideration shall be given to housing foreign prisoners in prisons close to transport facilities that would enable their families to visit them.

16.3. Where appropriate and subject to the requirements of safety and security, foreign prisoners shall be allocated to prisons where there are others of their nationality, culture, religion or who speak their language.

#### *Accommodation*

17. Decisions on whether to accommodate foreign prisoners together shall be based primarily on their individual needs and the facilitation of their social reintegration, while ensuring a safe and secure environment for prisoners and staff.

#### *Hygiene*

18.1. Facilities for sanitation and hygiene shall, as far as practicable, accommodate the cultural and religious preferences of foreign prisoners, while maintaining appropriate medical standards.

18.2. Rules that require prisoners to keep their appearance clean and tidy shall be interpreted in a manner that respects prisoners' cultural and religious preferences, while maintaining appropriate medical standards.

#### *Clothing*

19.1. Clothes provided by prison authorities shall not offend the cultural or religious sensibilities of foreign prisoners.



19.2. Where clothes are not provided by the prison authorities, prisoners shall be allowed, subject to the requirements of safety and security, to wear clothes that reflect their cultural and religious traditions.

### *Nutrition*

20. In addition to providing a nutritious diet that takes account of the cultural and religious requirements of prisoners, prison authorities shall, where possible, provide prisoners with opportunities to purchase and cook food that makes their diet more culturally appropriate and to take their meals at times that meet their religious requirements.

### *Legal advice and assistance*

21.1. Foreign prisoners shall be informed, in a language they understand, about their right to legal advice on matters affecting their detention and status.

21.2. Foreign prisoners shall be informed about possible legal aid and, where necessary, assisted in accessing such legal aid.

21.3. Foreign prisoners who need to communicate with their legal adviser shall be allowed access to interpretation where necessary.

21.4. Prison authorities shall facilitate the provision of administrative and legal assistance to foreign prisoners by approved outside agencies.

21.5. Foreign prisoners who are subject to disciplinary proceedings shall be assisted by an interpreter where necessary.

### *Contact with the outside world*

22.1. To alleviate the potential isolation of foreign prisoners, special attention shall be paid to the maintenance and development of their relationships with the outside world, including contacts with family and friends, consular representatives, probation and community agencies and volunteers.

22.2. Unless there is a specific concern in individual cases related to safety and security, foreign prisoners shall be allowed to use a language of their choice during such contacts.

22.3. Rules for making and receiving telephone calls and other forms of communication shall be applied flexibly to ensure that foreign prisoners who are communicating with persons abroad have equivalent access to such forms of communication as other prisoners.

22.4. Indigent foreign prisoners shall be assisted with the costs of communicating with the outside world.

22.5. In order to optimise contact, visits to foreign prisoners from family members who live abroad shall be arranged in a flexible manner, which may include allowing prisoners to combine their visit entitlements.

22.6. Support and information shall be provided to the extent possible to enable family members who live abroad to visit foreign prisoners.

22.7. Special measures shall be taken to encourage and enable foreign prisoners to maintain regular and meaningful contact with their children.

22.8. Arrangements shall be made to facilitate visits, correspondence and other forms of communication by children with their imprisoned parent, in particular when they live in a different State.

22.9. The authorities shall endeavour to ensure that foreign prisoners are able to inform family members about the prison or other facility in which they are held or to which they have been transferred.

22.10. In cases of emergency and where the foreign prisoner has given prior consent, the prison authorities shall endeavour to inform family members of the death, serious illness or serious injury of such a prisoner.

22.11. The authorities shall endeavour to keep up-to-date contact details of family members of foreign prisoners.

23.1. Foreign prisoners shall be allowed to keep themselves informed regularly of public affairs by subscribing to newspapers, periodicals or other publications in a language they understand.

23.2. To the extent possible, foreign prisoners shall be given access to radio or television broadcasts or other forms of communication in a language they understand.

23.3. Probation agencies, approved associations and volunteers providing support to foreign prisoners shall be given access to such prisoners who wish to have contact with them.

#### *Contact with consular representatives*

24.1. Foreign prisoners have the right to regular contact with their consular representatives.

24.2. Foreign prisoners shall be given reasonable facilities to communicate with their consular representatives.

24.3. Foreign prisoners who are without consular representation in the country in which they are detained have the right to regular contact and to facilities to communicate with representatives of the State which takes charge of their interests.

24.4. Foreign prisoners who are refugees, asylum seekers or stateless have the right to communicate with representatives of the national or international authorities whose task it is to serve the interests of such prisoners.

25.1. Prison authorities shall inform foreign prisoners about their right to request contact with their consular representatives or representatives of national or international authorities whose task it is to serve their interests.

25.2. Prison authorities shall, subject to the prisoner's request, inform consular representatives about their nationals held in prison.

25.3. Prison authorities shall co-operate fully with consular representatives and national or international authorities whose task is to serve the interests of foreign prisoners.

25.4. Prison authorities shall keep a record of instances where foreign prisoners waive their right to contact their consular representatives and of visits by consular representatives to foreign prisoners.

#### *Prison regime*

26.1. In order to ensure equal access to a balanced programme of activities, prison authorities shall, where necessary, take specific measures to counter the difficulties foreign prisoners may face.

26.2. Access to activities shall not be restricted because the prisoners concerned may be transferred, extradited or expelled.

#### *Work*

27.1. Foreign prisoners shall have access, where appropriate, to suitable work and vocational training, including programmes outside prison.

27.2. Where necessary, specific measures shall be taken to ensure that foreign prisoners have access to income-producing work.

27.3. Foreign prisoners may transfer at least a part of their earnings to family members who are resident abroad.

27.4. Foreign prisoners who work and contribute to the social security system of the State in which they are imprisoned shall be allowed, where possible, to transfer the benefits of such contributions to their State of nationality or another State.

#### *Exercise and recreation*

28.1. Exercise and recreational activities shall be arranged flexibly to enable foreign prisoners to participate in a manner that respects their culture.

28.2. Prison authorities shall encourage activities that promote positive relations amongst prisoners from the same culture and between prisoners from different backgrounds.

#### *Education and training*

29.1. To enable foreign prisoners to relate effectively to other prisoners and staff, they shall be given the opportunity and be encouraged to learn a language that allows them to communicate, and to study local culture and traditions.

29.2. To ensure that educational and vocational training is as effective as possible for foreign prisoners, prison authorities shall take account of their individual needs and aspirations, which may include working towards qualifications that are recognised and can be continued in the country in which they are likely to reside after release.

29.3. The prison library shall be stocked as far as possible with reading materials and other resources that reflect the linguistic needs and cultural preferences of the foreign prisoners in that prison and are easily accessible.

### *Freedom of religion or belief*

30.1. Prisoners shall have the right to exercise or change their religion or belief and shall be protected from any compulsion in this respect.

30.2. Prison authorities shall, as far as practicable, grant foreign prisoners access to approved representatives of their religion or belief.

### *Health*

31.1. Foreign prisoners shall have access to the same health care and treatment programmes that are available to other prisoners.

31.2. Sufficient resources shall be provided to deal with specific health problems which may be faced by foreign prisoners.

31.3. Medical and health care staff working in prisons shall be enabled to deal with specific problems and diseases which may be encountered by foreign prisoners.

31.4. To facilitate the health care of foreign prisoners, attention shall be paid to all aspects of communication. Such communication may require the use of an interpreter who is acceptable to the prisoner concerned and who shall respect medical confidentiality.

31.5. Health care shall be provided in a way that is not offensive to cultural sensitivities and requests by foreign prisoners to be examined by a medical practitioner of the same gender shall be granted as far as possible.

31.6. Where possible, psychiatric and mental health care shall be provided by specialists who have expertise in dealing with persons from different religious, cultural and linguistic backgrounds.

31.7. Attention shall be paid to preventing self-harm and suicide among foreign prisoners.

31.8. Consideration shall be given to the transfer of foreign prisoners, who are diagnosed with terminal illnesses and who wish to be transferred, to a country with which they have close social links.

31.9. Steps shall be taken to facilitate the continuation of medical treatment of foreign prisoners who are to be transferred, extradited or expelled, which may include the provision of medication for use during transportation to that State and, with the prisoners' consent, the transfer of medical records to the medical services of another State.

### *Good order, safety and security*

32.1. Prison staff shall ensure that good order, safety and security are maintained through a process of dynamic security and interaction with foreign prisoners.

32.2. Prison staff shall be alert to potential or actual conflicts between groups within the prison population that may arise due to cultural or religious differences and inter-ethnic tensions.

32.3. To ensure safety in prison, every effort shall be made to enhance mutual respect and tolerance and prevent conflict between prisoners, prison staff or other persons working or visiting the prison, who come from different backgrounds.

32.4. The nationality, culture or religion of a prisoner shall not be the determinative factors in the assessment of the risk to safety and security posed by such prisoner.

#### *Women*

33.1. Special measures shall be taken to combat the isolation of foreign women prisoners.

33.2. Attention shall be paid to meeting the psychological and healthcare needs of foreign women prisoners, especially those who have children.

33.3. Arrangements and facilities for pre-natal and post-natal care shall respect cultural and religious diversity.

#### *Infant children*

34.1. When deciding whether it would be in the best interests of an infant child of a foreign prisoner to be kept in prison, particular consideration shall be given to:

- a. the conditions in which the child would be held in prison;
- b. the conditions that would apply if the child is kept outside prison; and
- c. the views of the legal guardians of the child.

34.2. Arrangements and facilities for the care of infant children who are in prison with their parent shall respect cultural and religious diversity.

34.3. The legal status of any infant children in prison with their foreign parent shall be determined as early as possible during the sentence of that parent, with special care being taken to resolve cases where children born in prison have a different nationality to that of their parent.

## VI. Release

#### *Preparation for release*

35.1. Preparation for release of foreign prisoners shall start in good time and in a manner that facilitates their reintegration into society.

35.2. In order to facilitate the reintegration of foreign prisoners into society:

- a. their legal status and their situation after release shall be determined as early as possible during their sentence;
- b. where appropriate, prison leave and other forms of temporary release shall be granted to them; and

- c. they shall be assisted in making or re-establishing contact with family, friends and relevant support agencies.

35.3. Where foreign prisoners are to remain in the State in which they were held after release, they shall be provided with support and care by prison, probation or other agencies which specialise in assisting prisoners.

35.4. Where foreign prisoners are to be expelled from the State in which they are being held, efforts shall be made, if the prisoners consent, to contact the authorities in the State to which they are to be sent with a view to ensuring support both immediately upon their return and to facilitate their reintegration into society.

35.5. In order to facilitate continuity of treatment and care where foreign prisoners are to be transferred to another State to serve the remainder of their sentence, the competent authorities shall, if the prisoner consents, provide the following information to the State to which the prisoners shall be sent:

- a. the treatment the prisoners have received;
- b. the programmes and activities in which they have participated;
- c. medical records; and
- d. any other information that will facilitate continuity of treatment and care.

35.6. Where foreign prisoners may be transferred to another State, they shall be assisted in seeking independent advice about the consequences of such a transfer.

35.7. Where foreign prisoners are to be transferred to another State to serve the remainder of their sentence, the authorities of the receiving State shall provide the prisoners with information on conditions of imprisonment, prison regimes and possibilities for release.

#### *Consideration for early release*

36.1. Foreign prisoners, like other prisoners, shall be considered for early release as soon as they are eligible and shall not be discriminated against in this respect.

36.2. In particular, steps shall be taken to ensure that detention is not unduly prolonged by delays relating to the finalisation of the immigration status of the foreign prisoner.

#### *Release from prison*

37.1. In order to assist foreign prisoners to return to society after release, practical measures shall be taken to provide appropriate documents and identification papers and assistance with travel.

37.2. Where foreign prisoners will return to a country with which they have links and, if the prisoner consents, the consular representatives shall assist them where possible in this regard.

## VII. Persons who work with foreign prisoners

### *Selection*

38. Persons who work with foreign prisoners shall be selected on criteria that include cultural sensitivity, interaction skills and linguistic abilities.

### *Training*

39.1. Staff involved in the admission of foreign prisoners shall be appropriately trained to deal with them.

39.2. Persons who work with foreign prisoners shall be trained to respect cultural diversity and to understand the particular problems faced by such prisoners.

39.3. Such training may include learning languages spoken most often by foreign prisoners.

39.4. Training programmes shall be evaluated and revised regularly to ensure they reflect changing populations and social circumstances.

39.5. Persons who deal with foreign suspects and offenders shall be kept informed of current national law and practices and international and regional human rights law and standards relating to their treatment, including this recommendation.

### *Specialisation*

40. Appropriately trained specialists shall be appointed to engage in work with foreign prisoners and to liaise with the relevant agencies, professionals and associations on matters related to such prisoners.

## VIII. Policy evaluation

41. The authorities shall regularly evaluate their policies for dealing with foreign suspects and offenders on the basis of scientifically validated research and revise them where appropriate.

Recommendation CM/Rec (2012) 5 of the Committee of Ministers to member States on the European Code of Ethics for Prison Staff

*(Adopted by the Committee of Ministers on 12 April 2012, at the 1140th meeting of the Ministers' Deputies)*

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 (ETS N° 5) 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 their 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 for 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 depends on public involvement and co-operation 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 over 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 Rec (89) 12 on education in prison;
- Recommendation Rec (93) 6 concerning prison and criminological aspects of the control of transmissible diseases including Aids and related health problems in prison;
- Recommendation Rec (97) 12 on staff concerned with the implementation of sanctions and measures;
- Recommendation Rec (98) 7 concerning the ethical and organisational aspects of health care in prison;
- Recommendation Rec (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 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;
- Recommendation CM/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, the 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 (the Bangkok Rules);

Considering the need to recommend common European principles and guidelines for the overall objectives, performance and accountability of prison staff to safeguard security and the rights of individuals 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 for prison staff by the principles set out in the text of a model European Code of Ethics for Prison Staff, appended to the present recommendation, which should be read in conjunction with the European Prison Rules;

Further recommends that governments of member States give the widest possible circulation to this text and codes of ethics based upon it, and oversee their implementation by appropriate bodies.

#### *APPENDIX TO RECOMMENDATION CM/REC (2012) 5*

##### I. Definition of the scope of the code

This code applies to prison staff at all hierarchical 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 should 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:

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

## 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.

3. Prison staff shall co-operate 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 at all levels shall be personally responsible for, and assume the consequences of, their own actions, omissions or orders to subordinates; they shall always verify beforehand the lawfulness of their intended actions.

### B. *Integrity*

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

6. Prison staff shall endeavour to maintain positive professional relationships with prisoners and members of their families.

7. 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.

8. 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.

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<sup>1</sup> 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).

9. Prison staff shall carry out all legal instructions properly issued by their superiors, but they shall have a duty to refrain from carrying out any instructions which are seriously and manifestly infringing the law and to report such instructions, without having to fear sanctions.

*C. Respect for and protection of human dignity*

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

11. 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.

12. 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.

13. Prison staff shall respect and protect the physical, sexual and psychological integrity of all prisoners, including against assault by fellow prisoners or any other person.

14. Prison staff shall at all times treat prisoners, colleagues and all other persons entering prison with politeness and respect.

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

16. 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.

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

18. Prison staff shall use instruments of restraint only as provided for by Rule 68 of the European Prison Rules. In particular they shall never use them on women during labour, during birth and immediately after birth.

*D. Care and assistance*

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

20. 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.

21. 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.

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

### *E. Fairness, impartiality and non-discrimination*

23. 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. Prison staff shall pay particular attention to the provisions of Rule 29 of the European Prison Rules.

24. 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.

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

26. Prison staff shall respect the presumption of innocence of prisoners who have not been convicted or sentenced by a court.

27. Prison staff shall apply objective and fair disciplinary procedures as provided for by the European Prison Rules.<sup>2</sup> Moreover, they shall respect the principle that prisoners charged with a disciplinary offence shall be considered innocent until proven guilty.

### *F. Co-operation*

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

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

30. Prison staff shall promote a spirit of co-operation, 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.

33. The collection, storage, and use of personal data by prison staff shall be carried out in accordance with 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.

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<sup>2</sup> Rules 56-63.

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.

Recommendation CM/Rec (2010) 1 of the Committee of Ministers to member States on the Council of Europe Probation Rules

*(Adopted by the Committee of Ministers on 20 January 2010, at the 1075th meeting of the Ministers' Deputies)*

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

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, in particular through harmonising laws on matters of common interest;

Considering that the aim of probation is to contribute to a fair criminal justice process, as well as to public safety by preventing and reducing the occurrence of offences;

Considering that probation agencies are among the key agencies of justice and that their work has an impact on the reduction of the prison population;

Having regard to:

- the Declaration and Action Plan adopted by the Third Summit of Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005), in particular concerning the security of citizens;
- Resolution N° 2 (paragraph 19) adopted by the 26th Conference of the European Ministers of Justice (Helsinki, 7-8 April 2005);

Taking into consideration:

- the European Convention for the Protection of Human Rights and Fundamental Freedoms (ETS N° 5);
- the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (ETS N° 51);
- the European Convention on the International Validity of Criminal Judgments (ETS N° 70);
- Recommendation N° R (92) 16 on the European rules on community sanctions and measures;
- Recommendation N° R (97) 12 on staff concerned with the implementation of sanctions or measures;
- Recommendation N° R (99) 19 concerning mediation in penal matters;
- Recommendation N° R (99) 22 concerning prison overcrowding and prison population inflation;
- Recommendation Rec (2000) 22 on improving the implementation of the European rules on community sanctions and measures;
- 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 on the European Prison Rules;
- Recommendation Rec (2006) 8 on assistance to crime victims; and
- 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;

Taking further into consideration:

- the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules),

Recommends that governments of the member States:

- be guided in their legislation, policies and practice by the rules contained in the appendices to this recommendation;
- ensure that this recommendation and the accompanying commentary are translated and disseminated as widely as possible and more specifically among judicial authorities, probation agencies, penitentiary services, as well as the media and the general public.

## *APPENDIX I TO RECOMMENDATION CM/REC (2010) 1*

### Part I: Scope, application, definitions and basic principles

#### Scope and application

These rules guide the establishment and proper functioning of probation agencies. These rules apply also to other organisations in their performance of the tasks covered in these rules, including other state organisations, non-governmental and commercial organisations.

Nothing in these rules should in any way be interpreted as precluding the application of any relevant international human rights instruments and standards that are more conducive to the treatment of offenders.

These rules need to be read together with Recommendation N° R (92) 16 on the European rules on community sanctions and measures.

Furthermore, these rules complement the relevant provisions of Recommendation N° R (97) 12 on staff concerned with the implementation of sanctions and measures, Recommendation N° R (99) 19 concerning mediation in penal matters, Recommendation Rec (2000) 22 on improving the implementation of the European rules on community sanctions and measures, 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 on the European Prison Rules, Recommendation Rec (2006) 8 on assistance to crime victims and 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, and are to be read together with them.

#### Definitions

**Probation:** relates to the implementation in the community of sanctions and measures, defined by law and imposed on an offender. It includes a range of activities and interventions, which involve supervision, guidance and assistance aiming at the social inclusion of an offender, as well as at contributing to community safety.

**Probation agency:** means any body designated by law to implement the above tasks and responsibilities. Depending on the national system, the work of a probation agency may also include providing information and advice to judicial and other deciding authorities to help them

reach informed and just decisions; providing guidance and support to offenders while in custody in order to prepare their release and resettlement; monitoring and assistance to persons subject to early release; restorative justice interventions; and offering assistance to victims of crime.

Community sanctions and measures: means sanctions and measures which maintain offenders in the community and involve some restrictions on their liberty through the imposition of conditions and/or obligations. The term designates any sanction imposed by a judicial or administrative authority, and any measure taken before or instead of a decision on a sanction, as well as ways of enforcing a sentence of imprisonment outside a prison establishment.

Aftercare: means the process of reintegrating an offender, on a voluntary basis and after final release from detention, back into the community in a constructive, planned and supervised manner. In these rules, the term is distinguished from the term "resettlement" which refers to statutory involvement after release from custody.

### Basic principles

1. Probation agencies shall aim to reduce reoffending by establishing positive relationships with offenders in order to supervise (including control where necessary), guide and assist them and to promote their successful social inclusion. Probation thus contributes to community safety and the fair administration of justice.
2. Probation agencies shall respect the human rights of offenders. All their interventions shall have due regard to the dignity, health, safety and well-being of offenders.
3. In all cases where probation agencies deal with issues related to victims of crime, they shall respect their rights and needs.
4. Probation agencies shall take full account of the individual characteristics, circumstances and needs of offenders in order to ensure that each case is dealt with justly and fairly. The interventions of probation agencies shall be carried out without discrimination on any ground such as sex, race, colour, language, religion, disability, sexual orientation, political or other opinion, national or social origin, association with a minority ethnic group, property, birth or other status.
5. In implementing any sanction or measure, probation agencies shall not impose any burden or restriction of rights on the offender greater than that provided by the judicial or administrative decision and required in each individual case by the seriousness of the offence or by the properly assessed risks of reoffending.
6. As far as possible, the probation agencies shall seek the offenders' informed consent and co-operation regarding interventions that affect them.
7. Any intervention before guilt has been finally established shall require the offenders' informed consent and shall be without prejudice to the presumption of innocence.
8. Probation agencies, their tasks and responsibilities, as well as their relations with the public authorities and other bodies, shall be defined by national law.



9. Probation shall remain the responsibility of the public authorities, even in the case when services are delivered by other agencies or volunteers.
10. Probation agencies shall be accorded an appropriate standing and recognition and shall be adequately resourced.
11. The deciding authorities shall, where appropriate, make use of the professional advice and follow-up of the probation agencies in order to reduce reoffending, and to foster the use of alternatives to the deprivation of liberty.
12. Probation agencies shall work in partnership with other public or private organisations and local communities to promote the social inclusion of offenders. Co-ordinated and complementary inter-agency and inter-disciplinary work is necessary to meet the often complex needs of offenders and to enhance community safety.
13. All activities and interventions undertaken by probation agencies shall conform to the highest national and international ethical and professional standards.
14. There shall be accessible, impartial and effective complaint procedures regarding probation practice.
15. Probation agencies shall be subject to regular government inspection and/or independent monitoring.
16. The competent authorities shall enhance the effectiveness of probation work by encouraging research, which shall be used to guide probation policies and practices.
17. The competent authorities and the probation agencies shall inform the media and the general public about the work of probation agencies in order to encourage a better understanding of their role and value in society.

## Part II: Organisation and staff

### Organisation

18. The structure, status and resources of probation agencies shall correspond to the volume of the tasks and responsibilities they are entrusted with and shall reflect the importance of the public service they implement.
19. Irrespective of whether probation services are delivered by public or private organisations, agencies shall work in accordance with formal policy instructions and rules provided by the competent authorities.
20. Any private agency providing probation services to offenders shall be approved by the competent authorities in accordance with national law.

### Staff

21. Probation agencies shall act in a manner that earns the respect of other justice agencies and of civil society for the status and work of probation staff. The competent authorities shall endeavour to facilitate the achievement of this aim by providing appropriate resources, focused selection and recruitment, adequate remuneration of staff and good management.

22. Staff shall be recruited and selected in accordance with approved criteria which shall place emphasis on the need for integrity, humanity, professional capacity and personal suitability for the complex work they are required to do.
23. All staff shall have access to education and training appropriate to their role and to their level of professional responsibilities.
24. Initial training shall be provided to all staff and shall seek to impart the relevant skills, knowledge and values. Staff shall be assessed in a recognised manner and qualifications awarded that validate the level of competence attained.
25. Throughout their career, all staff shall maintain and improve their knowledge and professional abilities through in service training and development provided to them.
26. Staff shall be trained and enabled to use their discretion within the framework of law, ethics, organisational policy, up-to-date methodological standards and code of conduct.
27. Staff who work or are to work with offenders who have committed some specific offences shall be given appropriate specialised training.
28. Training shall pay attention to offenders and, where applicable, victims who may be particularly vulnerable or have distinct needs.
29. Probation staff shall be sufficiently numerous to carry out their work effectively. Individual staff members shall have a caseload which allows them to supervise, guide and assist offenders effectively and humanely and, where appropriate, to work with their families and, where applicable, victims. Where demand is excessive, it is the responsibility of management to seek solutions and to instruct staff about which tasks are to take priority.
30. The management shall ensure the quality of probation work by providing leadership, guidance, supervision and motivation to staff. Staff shall be accountable for their practice.
31. The management shall endeavour to develop and maintain sound working relationships and good contacts with other agencies and partners, with volunteers, public authorities, the media and the general public.
32. There shall be arrangements for management to consult with staff as a body on general matters regarding their professional practice and related conditions of employment.
33. Staff remuneration, benefits and conditions of employment shall reflect the standing of their profession and shall be adequate to the exacting nature of their work in order to attract and retain suitable staff.
34. Volunteers may be involved in certain aspects of probation work. They shall be adequately selected, supported and resourced.

### Part III

#### Accountability and relations with other agencies

35. Probation agencies shall, in accordance with national law, liaise with and provide information to the judicial authorities, and where appropriate, to other competent authorities.

This will usually include information on the likely impact of custody and the feasibility of non-custodial sanctions and measures, in general and in particular cases. Where individual reports are required, the information to be provided shall be clearly defined.

36. Probation agencies shall regularly submit general reports and feedback information regarding their work to the competent authorities.

37. Probation agencies shall work in co-operation with other agencies of the justice system, with support agencies and with the wider civil society in order to implement their tasks and duties effectively.

38. Probation agencies shall encourage and facilitate support agencies to undertake their inherent responsibility to meet the needs of offenders as members of society.

39. Whether or not probation agencies and the prison service form part of a single organisation, they shall work in close co-operation in order to contribute to a successful transition from life in prison to life in the community.

40. Where appropriate, inter-agency agreements shall be arranged with the respective partners setting the conditions of co-operation and assistance both in general and in relation to particular cases.

41. Formal and clear rules regarding professional confidentiality, data protection and exchange of information shall be provided by national law and shall be specified whenever such partnerships are established.

## Part IV

### Probation work

#### *Pre-sentence reports*

42. Depending on the national legal system, probation agencies may prepare pre-sentence reports on individual alleged offenders in order to assist, where applicable, the judicial authorities in deciding whether to prosecute or what would be the appropriate sanctions or measures. Where this is the case, probation agencies shall regularly communicate with the judicial authorities regarding the circumstances in which such a report may be useful.

43. Pre-sentence reports shall be based on clearly identified information and as far as possible be verified and updated in the course of the proceedings.

44. Alleged offenders shall be given the opportunity to be involved in the preparation of the report, and their opinion, where available, shall be reflected in the report and its contents shall be communicated to them and/or to their legal representative.

#### *Other advisory reports*

45. Depending on the national legal system, probation agencies may produce the reports required for decisions to be taken by the competent authorities. They shall include advice on:

- a. the feasibility of the offender's release in the community;

- b. any special conditions that might be included in the decision regarding the offender's release;
- c. any intervention required to prepare the offender for release.

46. Offenders shall be given the opportunity, where appropriate, to be involved in the preparation of the report, and their opinion, if available, must be reflected in the report and its contents must be communicated to them and/or to their legal representative.

#### *Community service*

47. Community service is a community sanction or measure which involves organising and supervising by the probation agencies of unpaid labour for the benefit of the community as real or symbolic reparation for the harm caused by an offender. Community service shall not be of a stigmatising nature and probation agencies shall seek to identify and use working tasks which support the development of skills and the social inclusion of offenders.

48. Community service shall not be undertaken for the profit of probation agencies, their staff or for commercial profit.

49. In identifying suitable tasks, the probation agencies shall take into account the safety of the community and of the direct beneficiaries of the work.

50. Health and safety precautions shall adequately protect offenders assigned to community service and shall be no less rigorous than those applied to other workers.

51. Probation agencies shall develop community service schemes that encompass a range of tasks suitable to the different skills and diverse needs of offenders. In particular, there must be appropriate work available for women offenders, offenders with disabilities, young adult offenders and elderly offenders.

52. Offenders shall be consulted about the type of work they could undertake.

#### *Supervision measures*

53. In accordance with national law, probation agencies may undertake supervision before, during and after trial, such as supervision during conditional release pending trial, bail, conditional non-prosecution, conditional or suspended sentence and early release.

54. In order to ensure compliance, supervision shall take full account of the diversity and of the distinct needs of individual offenders.

55. Supervision shall not be seen as a purely controlling task, but also as a means of advising, assisting and motivating offenders. It shall be combined, where relevant, with other interventions which may be delivered by probation or other agencies, such as training, skills development, employment opportunities and treatment.

#### *Work with the offender's family*

56. Where appropriate, and in accordance with national law, probation agencies, directly or through other partner agencies, shall also offer support, advice and information to offenders' families.

### *Electronic monitoring*

57. When electronic monitoring is used as part of probation supervision, it shall be combined with interventions designed to bring about rehabilitation and to support desistance.

58. The level of technological surveillance shall not be greater than is required in an individual case, taking into consideration the seriousness of the offence committed and the risks posed to community safety.

### *Resettlement*

59. Where probation agencies are responsible for supervising offenders after release they shall work in co-operation with the prison authorities, the offenders, their family and the community in order to prepare their release and reintegration into society. They shall establish contacts with the competent services in prison in order to support their social and occupational integration after release.

60. Probation agencies shall be afforded all necessary access to prisoners to allow them to assist with preparations for their release and the planning of their resettlement in order to ensure continuity of care by building on any constructive work that has taken place during detention.

61. Supervision following early release shall aim to meet the offenders' resettlement needs such as employment, housing, education and to ensure compliance with the release conditions in order to reduce the risks of reoffending and of causing serious harm.

### *Aftercare*

62. Once all post-release obligations have been discharged, probation agencies may continue, where this is allowed by national law, to offer aftercare services to ex-offenders on a voluntary basis to help them continue their law-abiding lives.

### *Probation work with offenders who are foreign nationals and with nationals sanctioned abroad*

63. Probation agencies shall provide services accessible to offenders of foreign nationality, especially in respect of community supervision and resettlement.

64. In the operation of legal provisions authorising the transfer of probation interventions with regard to offenders who are foreign nationals, the latter shall be informed of their rights in this respect. As far as possible, continuing close co-operation with the relevant probation agency(ies) in their country of origin shall be established and maintained in order to facilitate the necessary supervisory arrangements on the return of the offenders to their country.

65. Probation agencies shall aim, with the consent of the national authorities, to facilitate ongoing contact with and support to nationals sanctioned abroad, who are known to them, and to encourage them to make use of the relevant support agencies on their return.

## Part V

### Process of supervision

#### *Assessment*

66. When required before and during supervision, an assessment of offenders shall be made involving a systematic and thorough consideration of the individual case, including risks, positive factors and needs, the interventions required to address these needs and the offenders' responsiveness to these interventions.

67. Wherever possible, offenders shall be enabled to make an active contribution to the formal assessment. This includes giving due weight to the offenders' views and personal aspirations, as well as their own personal strengths and responsibility for avoiding further offending.

68. The offenders shall be made aware of the process and outcomes of the assessment.

69. Assessment is a continuing process and its accuracy and relevance shall be periodically reviewed.

70. Assessment is recommended:

- a. at the time of determining the appropriate sanction or measure or when diversion from formal criminal proceedings is being considered;
- b. at the beginning of a period of supervision;
- c. whenever there are significant changes in the offenders' life;
- d. when consideration is being given to a change in the nature or the level of supervision;
- e. at the end of the supervision measure.

71. Staff shall be trained to carry out assessments in conformity with the present rules. Where national systems use assessment instruments, staff shall be trained to understand their potential value and limitations and to use these in support of their professional judgement.

#### *Planning*

72. A work plan for the implementation of all sanctions and measures shall be prepared by the competent authorities and included in the case record. This plan shall guide the probation agency's work and shall enable staff and offenders to assess progress towards the objectives set.

73. The work plan shall be negotiated and, as far as possible, agreed with the offender.

74. The plan shall be based on the initial assessment and shall set out the interventions that will be put in place.

75. Whenever the assessment is reviewed, the work plan shall correspondingly be revised as necessary.

### *Interventions*

76. Interventions shall aim at rehabilitation and desistance and shall therefore be constructive and proportionate to the sanction or measure imposed.
77. Probation agencies should be able to use a variety of methods based on an interdisciplinary approach and sound knowledge derived from relevant research.
78. Offenders shall be fully informed beforehand about any proposed intervention. Every attempt shall be made to ensure their active participation in such interventions.
79. In arranging interventions and making referral, the probation agencies shall, where appropriate, call upon support agencies.
80. Irrespective of the number of persons contributing to working with an offender, there shall in every case be an identified responsible member of staff whose task it is to assess, elaborate and co-ordinate the general work plan and to ensure contact with the offender and compliance. This is especially important where offenders are subject to more than one intervention or when more than one agency is involved.

### *Evaluation*

81. The progress of the individual offender shall be evaluated at regular intervals and this process shall influence the work plan during the remainder of supervision. The evaluation shall form part of the case record and, when required, of the follow-up reporting to the deciding authority.
82. Evaluation shall also reflect the extent to which the agreed work plan has been defined, put into effect and produced its intended consequences. Probation agencies shall be able to apply to the deciding authority to alter or end the supervision, when appropriate.
83. The offenders' view regarding the relevance of supervision shall be included in the evaluation.
84. At the end of the period of supervision, a final evaluation shall be made. Offenders must be made aware that this evaluation will remain in their case records and that they may be referred to in the future.

### *Enforcement and compliance*

85. Probation agencies shall work to ensure the active compliance of offenders with their supervision and with any conditions imposed. In gaining the offenders' co-operation, they shall not rely solely on the prospect of sanctions for non-compliance.
86. Offenders shall be made fully aware of what is required of them, of the duties and responsibilities of probation staff and of the consequences of non-compliance.
87. Where offenders fail to comply with any of the conditions imposed, probation staff shall respond actively and promptly. The response shall take full account of the circumstances of the failure to comply.

### *Recording, information and confidentiality*

88. All probation agencies shall keep formal, accurate and up-to-date records of their work. These records shall typically include personal details of the individuals concerned relevant to the implementation of the sanction or measure, a record of their contact with the agency and work undertaken in relation to them. They shall also record assessment, planning, intervention and evaluation.

89. Records are subject to principles of confidentiality and data protection as set out in national law. Confidential information shall only be shared with other relevant agencies based on strict procedures of handling and used for clearly defined purposes.

90. Records are an important means of ensuring accountability. They shall be checked regularly by managers and shall be available for formal inspections and monitoring as required.

91. Probation agencies shall be able to give an account to the judiciary and other competent authorities of the work being undertaken, offenders' progress and the extent of their compliance.

92. Offenders shall have access to case records kept about them to the extent that this is foreseen in national law and does not infringe the right to privacy of others. The offenders shall have the right to contest the contents of these records.

## Part VI

### Other work of probation agencies

#### *Work with victims*

93. Where probation agencies provide services to victims of crime they shall assist them in dealing with the consequences of the offence committed, taking full account of the diversity of their needs.

94. Where appropriate, probation agencies shall liaise with victim support services to ensure that the needs of victims are met.

95. Where probation agencies are in contact with victims and/or seek their views, the latter shall be clearly informed that decisions regarding the sanctioning of offenders are taken based on a number of factors and not only the harm done to a particular victim.

96. Even where probation agencies do not work directly with victims, interventions shall respect the rights and needs of victims and shall aim at increasing offenders' awareness of the harm done to victims and their taking responsibility for such harm.

#### *Restorative justice practices*

97. Where probation agencies are involved in restorative justice processes, the rights and responsibilities of the offenders, the victims and the community shall be clearly defined and acknowledged. Appropriate training shall be provided to probation staff. Whatever specific intervention is used, the main aim shall be to make amends for the wrong done.



## *Crime prevention*

98. Where provided by national law, the expertise and experience of probation agencies shall be used in developing crime reduction strategies. This may include making use of joint interventions and partnerships.

## Part VII

### Complaint procedures, inspection and monitoring

99. National law shall provide for clear, accessible and effective procedures to investigate and respond to complaints regarding probation practice.

100. These procedures shall be fair and impartial.

101. In all cases, the complainant shall be duly informed of the process and the findings of the investigation.

102. Probation agencies shall ensure that there are reliable systems in place to monitor and improve their own practice and to ensure that it meets the standards required.

103. Probation agencies shall be accountable to the competent authorities and subject to regular government inspection and/or independent monitoring and shall co-operate fully with all such scrutiny. The findings of independent monitoring bodies shall be made public.

## Part VIII

### Research, evaluation, work with the media and the public

104. Probation policy and practice shall be as far as possible evidence based. The authorities shall provide the resources necessary for rigorous research and evaluation.

105. Revision of existing laws, policy and practice shall be based on sound scientific knowledge and research that meets internationally recognised standards.

106. The media and the public shall be provided regularly with factual information about the work carried out by probation agencies. They shall be informed about the purposes and results of the work in order to encourage a better understanding of their role and value in society.

107. The competent authorities shall be encouraged to publish regular reports on developments in the field of probation.

108. Statements of policy and practice of probation agencies shall be made available to other agencies, to service users and to the general public, both nationally and internationally, in order to promote confidence and improve probation standards and practices.

Glossary of the terms used

Aftercare means the process of reintegrating an offender, on a voluntary basis and after final release from detention, back into the community in a constructive, planned and supervised manner. In these rules the term is distinguished from the term “resettlement” which refers to statutory involvement after release from custody.

Assessment means the process of estimating the risks, needs and strengths of an offender before planning an intervention and/or providing advice to judicial or other competent authorities. In addition, assessment seeks to identify the causes of offending, and whether measures can be taken to reduce the likelihood of its reoccurrence.

Assistance is to be seen as forming an integral part of the supervision process alongside control. It usually covers one or more of the following services: providing assistance in finding housing, employment, education, providing family support, etc. In some legal systems it may be provided by separate agencies.

Complaint refers both to filing an application before a judicial authority and to appealing to an administrative body.

Community sanctions and measures mean sanctions and measures which maintain offenders in the community and involve some restrictions on their liberty through the imposition of conditions and/or obligations. The term designates any sanction imposed by a judicial or administrative authority, and any measure taken before or instead of a decision on a sanction, as well as ways of enforcing a sentence of imprisonment outside a prison establishment.

Conditions and obligations mean any requirements which are integral to the sanction or measure imposed by the deciding authority.

Control means activities limited to ascertaining whether or to ensuring that any conditions or obligations imposed by a sanction or measure are complied with by the offender. Such activities usually include using, or threatening to use stricter sanctions or measures in case of non-compliance. The notion of control is narrower than that of supervision.

Crime prevention means any policy and practice implemented by the agencies of the criminal justice system and other competent agencies and aimed at preventing (or, more plausibly, reducing) crime.

Deciding authority means a judicial, administrative or other authority empowered by law to impose or revoke a community sanction or measure or to modify its conditions and obligations.

Desistance means the process by which, with or without the intervention of criminal justice agencies, offenders terminate their offending activities and maintain crime-free lives through the development of their human capital (such as individual skills and knowledge) and their social capital (such as employment, family, social connections and ties and engagement in civil society).

Early release comprises all forms of discharge from prison before the prison sentence has been fully served, such as provisional release, conditional release (parole) or conditional pardon.

Evaluation is a thorough review of the extent to which set objectives have been achieved. In this process decisions are taken about what needs to be done next.

Implementation means the carrying out of the practical aspects of the work of a probation agency to ensure that a community sanction or measure is properly enforced.

Intervention means any action taken to supervise, treat, assist or guide offenders in order to divert them from committing further offences and to help them lead law-abiding lives. Intervention therefore does not refer to providing information or writing reports.

Judicial authority means a court, a judge or a prosecutor.

National law means not only primary legislation passed by the national legislator, but also any other binding regulations and orders, as well as the case law of courts and tribunals, in as far as these forms of creating law are recognised by the national legal system.

Offender means any person who is alleged to have or who has committed an infringement of the criminal law. For the purpose of this recommendation and without prejudice to the presumption of innocence and the establishment of guilt by a judicial decision, the term "offender" shall be understood to include anyone facing criminal proceedings.

Post-release supervision means supervision during the period of early release.

Probation relates to the implementation in the community of sanctions and measures, defined by law and imposed on an offender. It includes a range of activities and interventions, which involve supervision, guidance and assistance aiming at the social inclusion of an offender, as well as at contributing to community safety.

Probation agency means any body designated by law to implement the above tasks and responsibilities. Depending on the national system, the work of a probation agency may also include providing information and advice to judicial and other deciding authorities to help them reach informed and just decisions; providing guidance and support to offenders while in custody in order to prepare their release and resettlement; monitoring and assistance to persons subject to early release; restorative justice interventions; and offering assistance to victims of crime.

Rehabilitation is a broad concept which denotes a wide variety of interventions aimed at promoting desistance and at the restoration of an offender to the status of a law-abiding person.

Resettlement begins during the period of detention. It is the process of a prisoner's reintegration back into the community in a positive and managed way. In these rules, resettlement refers to the period of supervision after the offender has left prison but is still subject to certain statutory obligations - for example, a period of parole. It is to be distinguished from "aftercare".

Restorative justice includes approaches and programmes based on several underlying assumptions: a. that the response to crime should repair as much as possible the harm suffered by the victim; b. that offenders should be brought to understand that their behaviour is not acceptable and that it has had some real consequences for the victim and the community; c. that offenders can and should accept responsibility for their action; d. that victims should have an opportunity to express their needs and to participate in determining the best way for the

offender to make reparation, and e. that the community has a responsibility to contribute to this process.

Supervision refers both to assistance activities conducted by or on behalf of an implementing authority which are intended to maintain the offender in the community and to actions taken to ensure that the offender fulfils any conditions or obligations imposed, including control where necessary. Supervision may be mandatory or voluntary (upon the offender's request).

Victim means a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, caused by acts or omissions that are in violation of criminal law. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim.

Volunteer means is a person carrying out probation activities who is not paid for this work. This does not exclude the payment of a small amount of money to volunteers to cover the expenses of their work.

Recommendation CM/Rec (2008) 11 of the Committee of Ministers to member States on the European Rules for juvenile offenders subject to sanctions or measures

*(Adopted by the Committee of Ministers on 5 November 2008, at the 1040th meeting of the Ministers' Deputies)*

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

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, in particular through harmonising laws on matters of common interest;

Having regard in particular:

- to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS N° 5) and to the case law of the European Court of Human Rights;
- to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS N° 126) and to the work of the committee entrusted with its implementation;
- to the United Nations Convention on the Rights of the Child;

Taking into consideration:

- Recommendation Rec (2006) 2 on the European Prison Rules;
- Recommendation Rec (2005) 5 on the rights of children living in residential institutions;
- Recommendation Rec (2004) 10 concerning the protection of the human rights and dignity of persons with mental disorder;
- Recommendation Rec (2003) 20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice;
- Recommendation N° R (97) 12 on staff concerned with the implementation of sanctions or measures;
- Recommendation N° R (92) 16 on the European rules on community sanctions and measures;
- Recommendation N° R (87) 20 on social reactions to juvenile delinquency;

Taking further into consideration:

- the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines);
- the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules);
- the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules);
- the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (The Havana Rules);

Having regard to the Final Declaration and Action Plan adopted at the Third Summit of Heads of State and Government of the Council of Europe (Warsaw, Poland, 16-17 May 2005), and in particular to Part III.2 of the Action Plan entitled "Building a Europe for children", as well as having regard to Resolution N° 2 adopted at the 28th Conference of European Ministers of Justice (Lanzarote, Spain, 25-26 October 2007);

Considering therefore that common action at European level is needed in order to better protect the rights and well-being of juveniles who enter in conflict with the law and to develop a child-friendly justice system in its member States;

Considering it important in this respect that Council of Europe member States continue to improve, update and observe common principles regarding their national juvenile justice policies and practices and enhance international co-operation in this field,

Recommends that governments of the member States:

- be guided in their legislation, policies and practice by the rules contained in the appendix to this recommendation;
- ensure that this recommendation and the accompanying commentary are translated and disseminated as widely as possible and more specifically among judicial authorities and the police; services entrusted with the execution of sanctions and measures addressing juvenile offenders; penitentiary, welfare and mental health institutions holding juvenile offenders and their staff as well as the media and the general public.

#### *APPENDIX TO RECOMMENDATION CM/REC (2008) 11*

#### European Rules for juvenile offenders subject to sanctions or measures

The aim of the present rules is to uphold the rights and safety of juvenile offenders subject to sanctions or measures and to promote their physical, mental and social well-being when subjected to community sanctions or measures, or any form of deprivation of liberty.

Nothing in these rules ought to be interpreted as precluding the application of other relevant international human rights instruments and standards that are more conducive to ensuring the rights, care and protection of juveniles. Furthermore, the provisions of Recommendation Rec (2006) 2 on the European Prison Rules and of Recommendation N° R (92) 16 on the European rules on community sanctions and measures shall be applied to the benefit of juvenile offenders in as far as they are not in conflict with these rules.

#### Part I - Basic principles, scope and definitions

##### A. Basic principles

1. Juvenile offenders subject to sanctions or measures shall be treated with respect for their human rights.
2. The sanctions or measures that may be imposed on juveniles, as well as the manner of their implementation, shall be specified by law and based on the principles of social integration and education and of the prevention of re-offending.
3. Sanctions and measures shall be imposed by a court or if imposed by another legally recognised authority they shall be subject to prompt judicial review. They shall be determinate and imposed for the minimum necessary period and only for a legitimate purpose.
4. The minimum age for the imposition of sanctions or measures as a result of the commission of an offence shall not be too low and shall be determined by law.

5. The imposition and implementation of sanctions or measures shall be based on the best interests of the juvenile offenders, limited by the gravity of the offences committed (principle of proportionality) and take account of their age, physical and mental well-being, development, capacities and personal circumstances (principle of individualisation) as ascertained when necessary by psychological, psychiatric or social inquiry reports.
6. In order to adapt the implementation of sanctions and measures to the particular circumstances of each case the authorities responsible for the implementation shall have a sufficient degree of discretion without leading to serious inequality of treatment.
7. Sanctions or measures shall not humiliate or degrade the juveniles subject to them.
8. Sanctions or measures shall not be implemented in a manner that aggravates their afflictive character or poses an undue risk of physical or mental harm.
9. Sanctions or measures shall be implemented without undue delay and only to the extent and for the period strictly necessary (principle of minimum intervention).
10. Deprivation of liberty of a juvenile shall be a measure of last resort and imposed and implemented for the shortest period possible. Special efforts must be undertaken to avoid pre-trial detention.
11. Sanctions or measures shall be imposed and implemented without discrimination on any ground such as sex, race, colour, language, religion, sexual orientation, political or other opinion, national or social origin, association with a national minority, property, birth or other status (principle of non-discrimination).
12. Mediation or other restorative measures shall be encouraged at all stages of dealing with juveniles.
13. Any justice system dealing with juveniles shall ensure their effective participation in the proceedings concerning the imposition as well as the implementation of sanctions or measures. Juveniles shall not have fewer legal rights and safeguards than those provided to adult offenders by the general rules of criminal procedure.
14. Any justice system dealing with juveniles shall take due account of the rights and responsibilities of the parents and legal guardians and shall as far as possible involve them in the proceedings and the execution of sanctions or measures, except if this is not in the best interests of the juvenile. Where the offender is over the age of majority, the participation of parents and legal guardians is not compulsory. Members of the juveniles' extended families and the wider community may also be associated with the proceedings where appropriate.
15. Any justice system dealing with juveniles shall follow a multi-disciplinary and multi-agency approach and be integrated with wider social initiatives for juveniles in order to ensure a holistic approach to and continuity of the care of such juveniles (principles of community involvement and continuous care).
16. The juvenile's right to privacy shall be fully respected at all stages of the proceedings. The identity of juveniles and confidential information about them and their families shall not be conveyed to anyone who is not authorised by law to receive it.

17. Young adult offenders may, where appropriate, be regarded as juveniles and dealt with accordingly.

18. All staff working with juveniles perform an important public service. Their recruitment, special training and conditions of work shall ensure that they are able to provide the appropriate standard of care to meet the distinctive needs of juveniles and provide positive role models for them.

19. Sufficient resources and staffing shall be provided to ensure that interventions in the lives of juveniles are meaningful. Lack of resources shall never justify the infringement of the human rights of juveniles.

20. The execution of any sanction or measure shall be subjected to regular government inspection and independent monitoring.

#### B. Scope and definitions

21. For the purpose of these rules:

21.1. "juvenile offender" means any person below the age of 18 who is alleged to have or who has committed an offence. References to juveniles in these rules shall be regarded as references to juvenile offenders as defined above;

21.2. "young adult offender" means any person between the ages of 18 and 21 who is alleged to have or who has committed an offence and who is subject to these rules because he/she falls under the provisions of Rule 17. References to young adults in these rules shall be regarded as references to young adult offenders as defined above;

21.3. "offence" means any act or omission that infringes criminal law. For the purpose of these rules it includes any such infringement dealt with by a criminal court or any other judicial or administrative authority;

21.4. "community sanctions or measures" means any sanction or measure other than a detention measure which maintains juveniles in the community and involves some restrictions of their liberty through the imposition of conditions and/or obligations, and which is implemented by bodies designated by law for that purpose. The term designates any sanction imposed by a judicial or administrative authority and any measure taken before or instead of a decision on a sanction, as well as ways of enforcing a sentence of imprisonment outside a prison establishment;

21.5. "deprivation of liberty" means any form of placement in an institution by decision of a judicial or administrative authority, from which the juvenile is not permitted to leave at will;

21.6. "institution" means a physical entity under the control of public authorities, where juveniles are living under the supervision of staff according to formal rules.

22. These rules may also apply to the benefit of other persons held in the same institutions or settings as juvenile offenders.



## Part II - Community sanctions and measures

### C. Legal framework

23.1. A wide range of community sanctions and measures, adjusted to the different stages of development of juveniles, shall be provided at all stages of the process.

23.2. Priority shall be given to sanctions and measures that may have an educational impact as well as constituting a restorative response to the offences committed by juveniles.

24. National law shall specify the following characteristics of the different community sanctions and measures:

- a. the definition and mode of application of all sanctions and measures applicable to juveniles;
- b. any condition or obligation that is the consequence of the imposition of such sanction or measure;
- c. the cases in which the consent of the juvenile is required before a sanction or measure may be imposed;
- d. which authorities are responsible for the imposition, modification and implementation of a sanction or measure and their respective duties and responsibilities;
- e. the grounds and procedures applicable for the modification of an imposed sanction or measure; and
- f. the procedures for the regular and external scrutiny of the work of the implementing authorities.

25. In order to meet the specific needs of juveniles, national law shall set out:

- a. the obligation of any competent authority to explain the content and the aims of the legal provisions governing community sanctions or measures to juvenile offenders and, if necessary, to their parents or legal guardians;
- b. the obligation of any competent authority to aim at the best possible co-operation with juvenile offenders and their parents or legal guardians; and
- c. the rights of parents and legal guardians of juvenile offenders who may be subject to community sanctions or measures, possible restrictions on their rights and duties in regard to the imposition and implementation of any such sanctions and measures.

26. The decision to impose or revoke a community sanction or measure shall be taken by a judicial authority or, if it is taken by an administrative authority authorised by law, it shall be subject to judicial review.

27. Depending on the progress made by the juvenile, the competent authorities shall, when provided for by national law, be entitled to reduce the duration of any sanction or measure, relax any condition or obligation laid down in such a sanction or measure or terminate it.

28. The rights of juveniles to benefits in respect of education, vocational training, physical and mental health care, safety and social security shall not be limited by the imposition or implementation of community sanctions or measures.

29. Whenever the consent of juveniles or their parents or legal guardians is required for the imposition or implementation of community sanctions or measures, such consent shall be informed and explicit.

30.1. If juveniles do not comply with the conditions and obligations of the community sanctions or measures imposed on them, this shall not lead automatically to deprivation of liberty. Where possible, modified or new community sanctions or measures shall replace the previous ones.

30.2. Failure to comply shall not automatically constitute an offence.

D. Conditions of implementation and consequences of non-compliance

*D.1. Conditions of implementation*

31.1. Community sanctions and measures shall be implemented in a way that makes them as meaningful as possible to juveniles and that contributes to their educational development and the enhancement of their social skills.

31.2. Juveniles shall be encouraged to discuss matters relating to the implementation of community sanctions and measures and to communicate individually or collectively with the authorities about these matters.

32. The implementation of community sanctions or measures shall respect as far as possible the existing constructive social networks of the juveniles and the relations to their families.

33.1. Juveniles shall be informed, in a manner and language they understand, as to how the community sanction or measure imposed on them will be implemented and about their rights and duties in regard to its implementation.

33.2. Juveniles shall have the right to make oral or written representations prior to any formal decision concerning the implementation of the community sanctions or measures, as well as the right to apply to alter the conditions of implementation.

34.1. Individual case records shall be established and kept up to date by the implementing authorities.

34.2. Case records shall meet the following requirements:

- a. information in case records shall only encompass matters relevant to the community sanction or measure imposed and its implementation;
- b. juveniles and their parents or legal guardians shall have access to the juvenile's case records to the extent that it does not infringe the rights to privacy of others; they shall have the right to contest the contents of the case records;
- c. information in a case record shall only be disclosed to those with a legal right to receive it and any information disclosed shall be limited to what is relevant for the task of the authority requesting information;

d. after the termination of the community sanction or measure, case records shall be destroyed or kept in archives where access to their contents shall be restricted by rules providing safeguards on revealing their content to third parties.

35. Any information about juveniles given to agencies which provide educational or work placements or personal and social assistance shall be restricted to the purpose of the particular action under consideration.

36.1. The conditions under which juveniles carry out community work or comparable duties shall meet the standards set by general national health and safety legislation.

36.2. The juveniles shall be insured or indemnified against the consequences of accident, injury and public liability arising as a result of implementation of community sanctions or measures.

37. The costs of implementation shall in principle not be borne by the juveniles or their families.

38. The relationship between the staff concerned and the juveniles shall be guided by principles of education and development.

39.1. The implementation of community sanctions and measures shall be based on individualised assessments and methods of intervention that are consistent with proven professional standards.

39.2. These methods shall be developed in the light of research findings and best practices in social work, youth welfare and allied fields of activity.

40. Within the framework of a given community sanction or measure various approaches, such as case-work, group therapy, mentoring and day attendance, and the specialised treatment of various categories of offenders shall be adopted to meet the needs of the juveniles.

41.1. Restrictions of liberty shall be proportionate to the community sanction or measure, limited by its aims and shall be placed on juveniles only to the extent that they are necessary for its proper implementation.

41.2. Practical and precise instructions shall be issued to the staff directly responsible for the implementation of community sanctions or measures.

42. Wherever possible, a continuous and long-term relationship shall be maintained between the staff implementing a community sanction or measure and the juvenile, even when the juvenile's place of residence, legal status or type of intervention changes.

43.1. Special attention shall be paid to appropriate interventions for linguistic or ethnic minorities and juveniles who are foreign nationals.

43.2. In case there is a provision to transfer the execution of community sanctions or measures applied to juveniles who are foreign nationals they shall be informed of their rights in this respect. Close co-operation with the juvenile welfare and justice agencies shall be established in order to facilitate the necessary assistance for such juveniles immediately upon arrival in their country of origin.

43.3. In exceptional cases where juveniles who are foreign nationals are to be expelled to their countries of origin after the execution of the community sanctions or measures, efforts shall be made to establish contacts with social welfare authorities in their countries of origin, in so far as such contacts are in the best interest of the juveniles concerned.

44. Juveniles shall be encouraged to make reparation to the best of their ability for any damage or negative effects caused by the offence, in so far as such reparation is within the scope of the community sanctions or measures to which they are subject.

45. Community work shall not be undertaken for the sole purpose of making a profit.

#### *D.2. Consequences of non-compliance*

46. Juveniles and their parents or legal guardians shall be informed of the consequences of non-compliance with the conditions and obligations of community sanctions or measures and the rules under which allegations of non-compliance will be considered.

47.1. The procedures to be followed by the authorities reporting or deciding on non-compliance with the requirements of the community sanctions or measures shall be defined clearly.

47.2. Minor transgressions shall be noted in the individual case file but need not be reported to the authority deciding on non-compliance, unless national law requires that this be done. Such transgressions may be promptly dealt with by discretionary means.

47.3. Significant failure to comply with the requirements shall be promptly reported in writing to the authority deciding on non-compliance.

47.4. Such reports shall give a detailed account of the manner in which the non-compliance occurred, the circumstances in which it took place and the personal situation of the juvenile.

48.1. The authority responsible for deciding on non-compliance shall only give a ruling on the modification or the partial or total revocation of a community sanction or measure after making a detailed examination of the facts reported to it.

48.2. If necessary, psychological or psychiatric assessments or observations, as well as social inquiry reports shall be requested.

48.3. The authority shall ensure that juveniles and, where appropriate, their parents or legal guardians have the opportunity to examine the evidence of non-compliance on which the request for modification or revocation is based and to present their comments.

48.4. Where the revocation or modification of a community sanction or measure is being considered, due account shall be taken of the extent to which the juvenile has already fulfilled the requirements of the initial sanction or measure in order to ensure that a new or modified sanction or measure is still proportionate to the offence.

48.5. If as a result of non-compliance an authority other than a court revokes or modifies a community sanction or measure, its decision shall be subject to judicial review.

## Part III - Deprivation of liberty

### E. General part

#### *E.1. Overall approach*

49.1. Deprivation of liberty shall be implemented only for the purpose for which it is imposed and in a manner that does not aggravate the suffering inherent to it.

49.2. Deprivation of liberty of juveniles shall provide for the possibility of early release.

50.1. Juveniles deprived of their liberty shall be guaranteed a variety of meaningful activities and interventions according to an individual overall plan that aims at progression through less restrictive regimes and preparation for release and reintegration into society. These activities and interventions shall foster their physical and mental health, self-respect and sense of responsibility and develop attitudes and skills that will prevent them from re-offending.

50.2. Juveniles shall be encouraged to take part in such activities and interventions.

50.3. Juveniles deprived of their liberty shall be encouraged to discuss matters relating to general conditions and regime activities in institutions and to communicate individually or, where applicable, collectively with authorities about these matters.

51. In order to guarantee the continuity of care, juveniles shall be assisted, from the beginning of and throughout any period of deprivation of liberty, by the agencies that may be responsible for them after release.

52.1. As juveniles deprived of their liberty are highly vulnerable, the authorities shall protect their physical and mental integrity and foster their well-being.

52.2. Particular care shall be taken of the needs of juveniles who have experienced physical, mental or sexual abuse.

#### *E.2. Institutional structure*

53.1. Institutions or sections of institutions shall provide a range of facilities to meet the individual needs of the juveniles held there and the specific purpose of their committal.

53.2. Such institutions shall provide conditions with the least restrictive security and control arrangements necessary to protect juveniles from harming themselves, staff, others or the wider community.

53.3. Life in an institution shall approximate as closely as possible the positive aspects of life in the community.

53.4. The number of juveniles in an institution shall be small enough to enable individualised care. Institutions shall be organised into small living units.

53.5. Juvenile institutions shall be located in places that are easy to access and facilitate contact between the juveniles and their families. They should be established and integrated into the social, economic and cultural environment of the community.

### *E.3. Placement*

54. The placement of different categories of juveniles in institutions shall be guided in particular by the provision of the type of care best suited to their particular needs and the protection of their physical and mental integrity and well-being.

55. Juveniles shall be placed, as far as possible, in institutions easily accessible from their homes or places of social reintegration.

56. Juveniles deprived of liberty shall be sent to institutions with the least restrictive level of security to hold them safely.

57. Juveniles who are suffering from mental illness and who are to be deprived of their liberty shall be held in mental health institutions.

58. As far as possible, juveniles, and where practicable their parents or legal guardians, shall be consulted about the initial placement and any subsequent transfer from one institution to another.

59.1. Juveniles shall not be held in institutions for adults, but in institutions specially designed for them. If juveniles are nevertheless exceptionally held in an institution for adults, they shall be accommodated separately unless in individual cases where it is in their best interest not to do so. In all cases, these rules shall apply to them.

59.2. Exceptions may have to be made to the requirements for separate detention in terms of sub-paragraph 1 in order to allow juveniles to participate jointly in organised activities with persons in institutions for adults.

59.3. Juveniles who reach the age of majority and young adults dealt with as if they were juveniles shall normally be held in institutions for juvenile offenders or in specialised institutions for young adults unless their social reintegration can be better effected in an institution for adults.

60. Male and female juveniles shall normally be held in separate institutions or units within an institution. Separation between male and female juveniles need not be applied in welfare or mental health institutions. Even where male and female juveniles are held separately, they shall be allowed to participate jointly in organised activities.

61. Within institutions there shall be an appropriate assessment system in order to place juveniles according to their educational, developmental and safety needs.

### *E.4. Admission*

62.1. No juvenile shall be admitted to or held in an institution without a valid commitment order.

62.2. At admission, the following details shall be recorded immediately concerning each juvenile:

- a. information concerning the identity of the juvenile and his or her parents or legal guardians;

- b. the reasons for commitment and the authority responsible for it;
- c. the date and time of admission;
- d. an inventory of the personal property of the juvenile that is to be held in safekeeping;
- e. any visible injuries and allegations of prior ill-treatment;
- f. any information and any report about the juvenile's past and his or her educational and welfare needs; and
- g. subject to the requirements of medical confidentiality, any information about the juvenile's risk of self-harm or a health condition that is relevant to the physical and mental well-being of the juvenile or to that of others.

62.3. At admission, the rules of the institution and the rights and obligations of the juvenile shall be explained in a language and manner that the juvenile understands.

62.4. Notification of the placement of the juvenile, information on the rules governing the institution and any other relevant information shall be given immediately to the juvenile's parents or legal guardians.

62.5. As soon as possible after admission, the juvenile shall be medically examined, a medical record shall be opened and treatment of any illness or injury shall be initiated.

62.6. As soon as possible after admission:

- a. the juvenile shall be interviewed and a first psychological, educational and social report identifying any factors relevant to the specific type and level of care and intervention shall be made;
- b. the appropriate level of security for the juvenile shall be established and if necessary alterations shall be made to the initial placement;
- c. save in the case of very short periods of deprivation of liberty, an overall plan of educational and training programmes in accordance with the individual characteristics of the juvenile shall be developed and the implementation of such programmes shall begin; and
- d. the views of the juvenile shall be taken into account when developing such programmes.

#### *E.5. Accommodation*

63.1. The accommodation provided for juveniles, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation. Specific minimum requirements in respect of these matters shall be set in national law.

63.2. Juveniles shall normally be accommodated during the night in individual bedrooms, except where it is preferable for them to share sleeping accommodation. Accommodation shall only be shared if it is appropriate for this purpose and shall be occupied by juveniles suitable to

associate with each other. Juveniles shall be consulted before being required to share sleeping accommodation and may indicate with whom they would wish to share.

64. There shall be regular, unobtrusive supervision by staff of all accommodation, particularly during the night in order to ensure the protection of each juvenile. There shall also be an effective alarm system that can be used in case of emergencies.

#### *E.6. Hygiene*

65.1. All parts of every institution shall be properly maintained and kept clean at all times.

65.2. Juveniles shall have ready access to sanitary facilities that are hygienic and respect privacy.

65.3. Adequate facilities shall be provided so that juveniles may have a bath or shower daily if possible, at a temperature suitable to the climate.

65.4. Juveniles shall keep their persons, clothing and sleeping accommodation clean and tidy and the authorities shall teach them to do so and provide them with the means for it.

#### *E.7. Clothing and bedding*

66.1. Juveniles shall be allowed to wear their own clothing provided that it is suitable.

66.2. Juveniles who do not have sufficient suitable clothing of their own shall be provided with such clothing by the institution.

66.3. Suitable clothing is clothing that is not degrading or humiliating and is adequate for the climate and does not pose a risk to security or safety.

66.4. Juveniles who obtain permission to go outside the institution shall not be required to wear clothing that identifies them as persons deprived of their liberty.

67. Every juvenile shall be provided with a separate bed and separate and appropriate bedding, which shall be kept in good order and changed often enough to ensure its cleanliness.

#### *E.8. Nutrition*

68.1. Juveniles shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the activities that they undertake in the institution.

68.2. Food shall be prepared and served hygienically in three meals a day with reasonable intervals between them.

68.3. Clean drinking water shall be available to juveniles at all times.

68.4. Where appropriate, juveniles shall be given the opportunity to cater for themselves.

#### *E.9. Health*

69.1. The provisions contained in international instruments on medical care for the physical and mental health of adult detainees are applicable also to juveniles deprived of their liberty.



69.2. The health of juveniles deprived of their liberty shall be safeguarded according to recognised medical standards applicable to juveniles in the wider community.

70.1. Particular attention should be paid to dealing with health hazards linked to deprivation of liberty.

70.2. Special policies shall be developed and implemented to prevent suicide and self-harm by juveniles, particularly during their initial detention, segregation and other recognised high risk periods.

71. Juveniles shall be given preventive health care and health education.

72.1. Medical interventions, including the use of medication, shall be made only on medical grounds and not for purposes of maintaining good order or as a form of punishment. The same ethical principles and principles of consent governing medical interventions in free society shall be applied. A record shall be kept of any medical treatment or any drugs administered.

72.2. Juveniles deprived of their liberty shall never be subject to experimental use of drugs or treatment.

73. Particular attention shall be paid to the needs of:

- a. younger juveniles;
- b. pregnant girls and mothers with infant children;
- c. drug addicts and alcoholics;
- d. juveniles with physical and mental health problems;
- e. juveniles who exceptionally are deprived of their liberty for long periods;
- f. juveniles who have experienced physical, mental or sexual abuse;
- g. socially isolated juveniles; and
- h. other particularly vulnerable offender groups.

74.1. Health-care services offered to juveniles shall form an integral part of a multidisciplinary programme of care.

74.2. In order to provide a seamless web of support and therapy and without prejudice to professional confidentiality and the role of each profession, the work of doctors and nurses shall be closely co-ordinated with social workers, psychologists, teachers, other professionals and staff, who have regular contact with juvenile offenders.

75. Health care in juvenile institutions shall not be limited to treating sick patients, but shall extend to social and preventive medicine and the supervision of nutrition.

### *E.10. Regime activities*

76.1 All interventions shall be designed to promote the development of juveniles, who shall be actively encouraged to participate in them.

76.2. These interventions shall endeavour to meet the individual needs of juveniles in accordance with their age, gender, social and cultural background, stage of development and type of offence committed. They shall be consistent with proven professional standards based on research findings and best practices in the field.

77. Regime activities shall aim at education, personal and social development, vocational training, rehabilitation and preparation for release. These may include:

- a.* schooling;
- b.* vocational training;
- c.* work and occupational therapy;
- d.* citizenship training;
- e.* social skills and competence training;
- f.* aggression-management;
- g.* addiction therapy;
- h.* individual and group therapy;
- i.* physical education and sport;
- j.* tertiary or further education;
- k.* debt regulation;
- l.* programmes of restorative justice and making reparation for the offence;
- m.* creative leisure time activities and hobbies;
- n.* activities outside the institution in the community, day leave and other forms of leave; and
- o.* preparation for release and aftercare.

78.1. Schooling and vocational training, and where appropriate treatment interventions, shall be given priority over work.

78.2. As far as possible arrangements shall be made for juveniles to attend local schools and training centres and other activities in the community.

78.3. Where it is not possible for juveniles to attend local schools or training centres outside the institution, education and training shall take place within the institution, but under the auspices of external educational and vocational training agencies.

78.4. Juveniles shall be enabled to continue their schooling or vocational training while in detention and those who have not completed their compulsory schooling may be obliged to do so.

78.5. Juveniles in detention shall be integrated into the educational and vocational training system of the country so that after their release they may continue their education and vocational training without difficulty.

79.1. An individual plan shall be drawn up based on the activities in Rule 77 listing those in which the juvenile shall participate.

79.2. The objective of this plan shall be to enable juveniles from the outset of their detention to make the best use of their time and to develop skills and competences that enable them to reintegrate into society.

79.3. The plan shall be oriented towards preparing juveniles to be released as early as possible and give an indication of appropriate post-release measures.

79.4. The plan shall be implemented and updated regularly with the participation of the juveniles, the outside agencies concerned and as far as possible their parents or legal guardians.

80.1. The regime shall allow all juveniles to spend as many hours a day outside their sleeping accommodation as are necessary for an adequate level of social interaction. Such a period shall be preferably at least eight hours a day.

80.2. The institution shall also provide meaningful activities on weekends and holidays.

81. All juveniles deprived of their liberty shall be allowed to exercise regularly for at least two hours every day, of which at least one hour shall be in the open air, if the weather permits.

82.1. The institution shall provide sufficient work for juveniles which is stimulating and of educational value.

82.2. Work shall be adequately rewarded.

82.3. When juveniles participate in regime activities during work time they shall be rewarded in the same way as if they were working.

82.4. Juveniles shall receive adequate social security coverage similar to that provided in free society.

#### *E.11. Contact with the outside world*

83. Juveniles shall be allowed to communicate through letters, without restriction as to their number and as often as possible by telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive regular visits from these persons.

84. Arrangements for visits shall be such as to allow juveniles to maintain and develop family relationships in as normal a manner as possible and have opportunities for social reintegration.

85.1. Institutional authorities shall assist juveniles in maintaining adequate contact with the outside world and provide them with the appropriate means to do so.

85.2. Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact.

85.3. Any information received of the death or serious illness of any near relative shall be promptly communicated to the juvenile.

86.1. As part of the normal regime, juveniles shall be allowed regular periods of leave, either escorted or alone. In addition, juveniles shall be allowed to leave the institution for humanitarian reasons.

86.2. If regular periods of leave are not practicable, provision shall be made for additional or long-term visits by family members or other persons who can make a positive contribution to the development of the juvenile.

#### *E.12. Freedom of thought, conscience and religion*

87.1. Juveniles' freedom of thought, conscience and religion shall be respected.

87.2. The institutional regimen shall be organised so far as is practicable to allow juveniles to practise their religion and follow their beliefs, to attend services or meetings led by approved representatives of such religion or beliefs, to receive visits in private from such representatives of their religion or beliefs and to have in their possession books or literature relating to their religion or beliefs.

87.3. Juveniles may not be compelled to practise a religion, follow a belief, attend religious services or meetings, take part in religious practices or to accept a visit from a representative of any religion or belief.

#### *E.13. Good order*

##### *E.13.1. General approach*

88.1. Good order shall be maintained by creating a safe and secure environment in which the dignity and physical integrity of the juveniles are respected and their primary developmental goals are met.

88.2. Particular attention shall be paid to protecting vulnerable juveniles and to preventing victimisation.

88.3. Staff shall develop a dynamic approach to safety and security which builds on positive relationships with juveniles in the institutions.

88.4. Juveniles shall be encouraged to commit themselves individually and collectively to the maintenance of good order in the institution.

### *E.13.2. Searching*

89.1. There shall be detailed procedures regarding searching of juveniles, staff, visitors and premises. The situations when such searches are necessary and their nature shall be defined by national law.

89.2. Searches shall respect the dignity of juveniles concerned and as far as possible their privacy. Juveniles shall be searched by staff of the same gender. Related intimate examinations must be justified by reasonable suspicion in an individual case and shall be conducted by a medical practitioner only.

89.3. Visitors shall only be searched if there is a reasonable suspicion that they may have something in their possession that threatens the safety and security of the institution.

89.4. Staff shall be trained to carry out searches effectively, while at the same time respecting the dignity of those being searched and their personal possessions.

### *E.13.3. Use of force, physical restraint and weapons*

90.1. Staff shall not use force against juveniles except, as a last resort, in self-defence or in cases of attempted escape, physical resistance to a lawful order, direct risk of self-harm, harm to others or serious damage to property.

90.2. The amount of force used shall be the minimum necessary and be applied for the shortest time necessary.

90.3. Staff who deal directly with juveniles shall be trained in techniques that enable the minimal use of force in the restraint of aggressive behaviour.

90.4. There shall be detailed procedures concerning the use of force, including stipulations on:

- a. the various types of force that may be used;
- b. the circumstances in which each type of force may be used;
- c. the members of staff who are entitled to use different types of force;
- d. the level of authority required before any force is used;
- e. the reports that must be completed once force has been used; and
- f. the process for reviewing the above reports.

91.1. Handcuffs or restraint jackets shall not be used except when less intensive forms of the use of force have failed. Handcuffs may also be used if essential as a precaution against violent behaviour or escape during a transfer. They shall be removed when a juvenile appears before a judicial or administrative authority unless that authority decides otherwise.

91.2. Instruments of restraint shall not be applied for any longer time than is strictly necessary. The use of chains and irons shall be prohibited.

91.3. The manner of use of instruments of restraint shall be specified in national law.

91.4. Isolation in a calming down cell as a means of temporary restraint shall only be used exceptionally and only for a few hours and in any case shall not exceed twenty-four hours. A medical practitioner shall be informed of such isolation and given immediate access to the juvenile concerned.

92. Staff in institutions in which juveniles are deprived of their liberty shall not be allowed to carry weapons unless an operational emergency so requires. The carrying and use of lethal weapons in welfare and mental health institutions is prohibited.

#### *E.13.4. Separation for security and safety reasons*

93.1. If in very exceptional cases a particular juvenile needs to be separated from the others for security or safety reasons, this shall be decided by the competent authority on the basis of clear procedures laid down in national law, specifying the nature of the separation, its maximum duration and the grounds on which it may be imposed.

93.2. Such separation shall be subject to regular review. In addition, the juvenile may lodge a complaint in terms of Rule 121 about any aspect of such separation. A medical practitioner shall be informed of such separation and given immediate access to the juvenile concerned.

#### *E.13.5. Discipline and punishment*

94.1. Disciplinary procedures shall be mechanisms of last resort. Restorative conflict resolution and educational interaction with the aim of norm validation shall be given priority over formal disciplinary hearings and punishments.

94.2. Only conduct likely to constitute a threat to good order, safety or security may be defined as a disciplinary offence.

94.3. National law shall determine the acts or omissions that constitute disciplinary offences, the procedures to be followed at disciplinary hearings, the types and duration of punishment that may be imposed, the authority competent to impose such punishment and the appellate process.

94.4. Juveniles charged with disciplinary offences must be informed promptly and in a manner and language they understand of the nature of the accusation against them and be given adequate time and facilities to prepare their defence; be allowed to defend themselves in person or with the assistance of their parents or legal guardians or, when the interests of justice so require, through legal assistance.

95.1. Disciplinary punishments shall be selected, as far as possible, for their educational impact. They shall not be heavier than justified by the seriousness of the offence.

95.2. Collective punishment, corporal punishment, punishment by placing in a dark cell, and all other forms of inhuman and degrading punishment shall be prohibited.

95.3. Solitary confinement in a punishment cell shall not be imposed on juveniles.

95.4. Segregation for disciplinary purposes shall only be imposed in exceptional cases where other sanctions would not be effective. Such segregation shall be for a specified period of time, which shall be as short as possible. The regime during such segregation shall provide

appropriate human contact, grant access to reading material and offer at least one hour of outdoor exercise every day if the weather permits.

95.5. A medical practitioner shall be informed of such segregation and given access to the juvenile concerned.

95.6. Disciplinary punishment shall not include a restriction on family contacts or visits unless the disciplinary offence relates to such contacts or visits.

95.7. Exercise under the terms of Rule 81 shall not be restricted as part of a disciplinary punishment.

#### *E.14. Transfer between institutions*

96. Juveniles shall be transferred when the initial criteria for placing them or the further promotion of reintegration into society can be met more effectively in another institution or when serious security and safety risks make such a transfer essential.

97. Juveniles shall not be transferred as a disciplinary measure.

98. A juvenile may be transferred from one type of institution to another if prescribed by law and if ordered by a judicial or administrative authority after an appropriate inquiry has been conducted.

99.1. All relevant information and data relating to the juvenile shall be transferred in order to ensure continuity of care.

99.2. The conditions under which juveniles are transported shall meet the requirements of humane detention.

99.3. The anonymity and privacy of the juveniles being transported shall be respected.

#### *E.15. Preparation for release*

100.1. All juveniles deprived of their liberty shall be assisted in making the transition to life in the community.

100.2. All juveniles whose guilt has been determined shall be prepared for release by special forms of interventions.

100.3. Such interventions shall be included in the individual plan under the terms of Rule 79.1 and shall be implemented in good time prior to release.

101.1. Steps shall be taken to ensure a gradual return of the juvenile to life in free society.

101.2. Such steps should include additional leave, and partial or conditional release combined with effective social support.

102.1. From the beginning of the deprivation of liberty the institutional authorities and the services and agencies that supervise and assist released juveniles shall work closely together to enable them to re-establish themselves in the community, for example by:

- a. assisting in returning to their family or finding a foster family and helping them develop other social relationships;
- b. finding accommodation;
- c. continuing their education and training;
- d. finding employment;
- e. referring them to appropriate social and health-care agencies; and
- f. providing monetary assistance.

102.2. Representatives of such services and agencies shall be given access to juveniles in institutions to assist them with preparation for release.

102.3. These services and agencies shall be obliged to provide effective and timely pre-release assistance before the envisaged dates of release.

103. Where juveniles are released conditionally, the implementation of such conditional release shall be subject to the same principles that guide the implementation of community sanctions and measures in terms of these rules.

#### *E.16. Foreign nationals*

104.1 Juveniles who are foreign nationals and who are to remain in the country in which they are held shall be treated in the same way as other juveniles.

104.2 As long as a definite decision is not yet taken on whether to transfer foreign juveniles to their country of origin, they shall be treated in the same way as other juveniles.

104.3. If it has been decided to transfer them, they shall be prepared for reintegration in their countries of origin. Where possible there should be close co-operation with the juvenile welfare and justice agencies in order to guarantee the necessary assistance for such juveniles immediately upon arrival in their country of origin.

104.4. Juveniles who are foreign nationals shall be informed of the possibilities of requesting that the execution of their deprivation of liberty take place in their country of origin.

104.5. Juveniles who are foreign nationals shall be allowed extended visits or other forms of contacts with the outside world where this is necessary to compensate for their social isolation.

105.1. Juveniles who are foreign nationals and are held in institutions shall be informed, without delay, of their right to request contact and be allowed reasonable facilities to communicate with the diplomatic or consular representative of their state.

105.2. Such juveniles who are nationals of states without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the state which takes charge of their interests or the national or international authority whose task it is to serve the interests of such persons.



105.3. Institutional and welfare authorities shall co-operate fully with diplomatic or consular officials representing such juveniles in order to meet their special needs.

105.4. In addition, foreign juveniles facing expulsion shall be provided with legal advice and assistance in this regard.

#### *E.17. Ethnic and linguistic minorities in institutions*

106.1. Special arrangements shall be made to meet the needs of juveniles who belong to ethnic or linguistic minorities in institutions.

106.2. As far as practicable, the cultural practices of different groups shall be allowed to continue in the institution.

106.3. Linguistic needs shall be met by using competent interpreters and by providing written material in the range of languages used in a particular institution.

106.4. Special steps shall be taken to offer language courses to juveniles who are not proficient in the official language.

#### *E.18. Juveniles with disabilities*

107.1. Juveniles with disabilities should be detained in ordinary institutions in which the accommodation has been adapted to meet their needs.

107.2. Juveniles with disabilities whose needs cannot be accommodated in ordinary institutions shall be transferred to specialised institutions where these needs can be met.

### F. Special Part

#### *F.1. Police custody, pre-trial detention, and other forms of deprivation of liberty prior to sentencing*

108. All detained juvenile offenders whose guilt has not been determined by a court shall be presumed innocent of an offence and the regime to which they are subject shall not be influenced by the possibility that they may be convicted of an offence in the future.

109. The particular vulnerability of juveniles during the initial period of detention shall be taken into consideration to ensure that they are treated with full respect for their dignity and personal integrity at all times.

110. In order to guarantee the through care for such juveniles, they shall be assisted immediately by the agencies that will be responsible for them after their release or while they are subject to custodial or non-custodial sanctions or measures in the future.

111. The liberty of such juveniles may be restricted only to the extent justified by the purpose of their detention.

112. Such juveniles shall not be compelled to work or take part in any interventions or activities which juveniles in the community cannot be compelled to undertake.

113.1. A range of interventions and activities shall be available to detained juveniles whose guilt has not been determined.

113.2. If such juveniles request to participate in interventions for juveniles whose guilt has been determined, they shall, if possible, be allowed to do so.

#### *F.2. Welfare institutions*

114. Welfare institutions are primarily open institutions and shall provide closed accommodation only in exceptional cases and for the shortest period possible.

115. All welfare institutions shall be accredited and registered with the competent public authorities and shall provide care meeting the required national standards.

116. Juvenile offenders who are integrated with other juveniles in welfare institutions shall be treated in the same way as such juveniles.

#### *F.3. Mental health institutions*

117. Juvenile offenders in mental health institutions shall receive the same general treatment as other juveniles in such institutions and the same regime activities as other juveniles deprived of their liberty.

118. Treatment for mental health problems in such institutions shall be determined on medical grounds only, shall follow the recognised and accredited national standards prescribed for mental health institutions and shall be governed by the principles contained in the relevant international instruments.

119. In mental health institutions safety and security standards for juvenile offenders shall be determined primarily on medical grounds.

### Part IV - Legal advice and assistance

120.1. Juveniles and their parents or legal guardians are entitled to legal advice and assistance in all matters related to the imposition and implementation of sanctions or measures.

120.2. The competent authorities shall provide juveniles with reasonable facilities for gaining effective and confidential access to such advice and assistance, including unrestricted and unsupervised visits by legal advisors.

120.3. The state shall provide free legal aid to juveniles, their parents or legal guardians when the interests of justice so require.

### Part V - Complaints procedures. Inspection and monitoring

#### G. Complaints procedures

121. Juveniles and their parents or guardians shall have ample opportunity to make requests or complaints to the authority responsible for the institution where they are held or for the community sanction or measure to which they are subject.

122.1. Procedures for making requests or complaints shall be simple and effective. Decisions on such requests or complaints shall be taken promptly.

122.2. Mediation and restorative conflict resolution shall be given priority as means of resolving complaints or meeting requests.

122.3. If a request is denied or a complaint is rejected, reasons shall be provided to the juvenile and, where applicable, to the parent or legal guardian who made it. The juvenile or, where applicable, the parent or legal guardian shall have the right to appeal to an independent and impartial authority.

122.4. Such appellate process is to be conducted by this authority:

- a. in a way that is sensitive to juveniles and their needs and concerns;
- b. by persons who have an understanding of juvenile matters; and
- c. at a place as near as possible to the institution where the juvenile is held or where the community sanctions or measures to which the juvenile is subject are being implemented.

122.5. Even where the initial complaint or request or the subsequent appellate process is primarily in writing, there shall be a possibility for the juvenile to be heard in person.

123. Juveniles shall not be punished for having made a request or lodged a complaint.

124. Juveniles and their parents or legal guardians are entitled to seek legal advice about complaints and appeal procedures and to benefit from legal assistance when the interests of justice so require.

#### H. Inspection and monitoring

125. Institutions in which juveniles are deprived of their liberty and authorities implementing community sanctions and measures shall be inspected regularly by a governmental agency in order to assess whether they are operating in accordance with the requirements of national and international law, and the provisions of these rules.

126.1. The conditions in such institutions and the treatment of juveniles deprived of their liberty or subject to community sanctions or measures shall be monitored by an independent body or bodies, to which the juveniles shall have confidential access, and whose findings shall be made public.

126.2. In such independent monitoring particular attention shall be paid to the use of force, restraints, disciplinary punishments and other particularly restrictive forms of treatment.

126.3. All instances of death or serious injury of juveniles shall be investigated promptly, vigorously and independently.

126.4. Such independent monitoring bodies shall be encouraged to co-operate with those international agencies that are legally entitled to visit institutions in which juveniles are deprived of liberty.

## Part VI - Staff

127.1. A comprehensive policy concerning the staff responsible for the implementation of community sanctions and measures and the deprivation of liberty of juveniles shall be laid down in a formal document covering recruitment, selection, training, status, management responsibilities and conditions of work.

127.2. This policy shall also specify the fundamental ethical standards to be adopted by the staff dealing with such juveniles and focus on the juvenile target group to be dealt with. It shall also provide for an effective mechanism to deal with violations of ethical and professional standards.

128.1. There shall be special recruitment and selection procedures for staff dealing with juveniles, taking into consideration the qualities of character and the professional qualifications necessary to work with juveniles and their families.

128.2. Recruitment and selection procedures shall be explicit, clear, fair and non-discriminatory.

128.3. Staff recruitment and selection shall take into account the need to employ men and women with the skills necessary to deal with the language and cultural diversities of the juveniles for whom they are responsible.

129.1. Staff responsible for the implementation of community sanctions and measures and the deprivation of liberty of juveniles shall have adequate initial training, dealing with theoretical and practical aspects of their work, and be given guidance that will enable them to have a realistic understanding of their particular field of activity, their practical duties and the ethical requirements of their work.

129.2. The professional competence of staff shall be regularly reinforced and developed through further in-service training, supervision and performance reviews and appraisals.

129.3. The training shall focus on:

- a. ethics and basic values of the profession concerned;
- b. national safeguards and international instruments on children's rights and protection of juveniles against unacceptable treatment;
- c. juvenile and family law, psychology of development, social and educational work with juveniles;
- d. instruction of staff on how to guide and motivate the juveniles, to gain their respect, and to provide juveniles with a positive role model and perspective;
- e. the establishment and maintenance of a professional relationship with the juveniles and their families;
- f. proven methods of intervention and good practices;
- g. methods of dealing with the diversity of the juveniles concerned; and
- h. ways of co-operating in multidisciplinary teams as well as with other institutions involved in the treatment of individual juveniles.

130. The staff concerned with the implementation of community sanctions and measures and the deprivation of liberty of juveniles shall be sufficiently numerous to carry out their various duties effectively and shall include a sufficient range of specialists to meet the needs of the juveniles in their care.

131.1. Staff should normally be employed on a permanent basis.

131.2. Suitable volunteer workers shall be encouraged to contribute to activities with juveniles.

131.3. The authority responsible for implementing sanctions or measures remains accountable for ensuring that the requirements of the present rules are met even where other organisations or individuals are involved in the process of implementation, whether they are paid for their services or not.

132. Staff shall be employed in a way that ensures continuity in the treatment of juveniles.

133. Staff working with juveniles shall have appropriate conditions of work and pay that are commensurate with the nature of their work and comparable to the conditions of others employed in similar professional activities.

134.1. In order to enhance effective co-operation between staff working with juveniles in the community and in custodial settings, the possibility for those two groups to be seconded or to undertake training to work in the other setting shall be encouraged.

134.2. Budgetary constraints shall never lead to the secondment of persons who lack the necessary qualifications.

## Part VII - Evaluation, research, work with the media and the public

### I. Evaluation and research

135. Sanctions and measures designed for juveniles are to be developed on the basis of research and scientific evaluation.

136.1. For this purpose, comparative data shall be collected that allow the success and failure of both residential and community sanctions and measures to be evaluated. Such evaluation shall pay attention to recidivism rates and their causes.

136.2. Data shall also be collected on the personal and social circumstances of juveniles and on the conditions in institutions where juveniles may be held.

136.3. The authorities shall be responsible for the collection and collation of statistical data in a way that would allow regional and other comparisons.

137. Criminological research on all aspects of the treatment of juveniles by independent bodies shall be fostered by the provision of financial support and access to data and institutions. Research findings shall be published, also when commissioned by national authorities.

138. Research shall respect the privacy of juveniles and meet the standards of national and international data protection law.

## J. Work with the media and the public

139.1. The media and the public shall be provided regularly with factual information about conditions in institutions for the deprivation of liberty of juveniles and of the steps taken to implement community sanctions and measures for juveniles.

139.2. The media and the public shall be informed about the purpose of community sanctions and measures and the deprivation of liberty of juveniles, as well of the work of the staff implementing these, in order to encourage a better understanding of the role of such sanctions or measures in society.

140. The responsible authorities shall be encouraged to publish regular reports on developments in institutions for juveniles and of the implementation of community sanctions and measures.

141. The media and members of the public with a professional interest in matters concerning juveniles shall be given access to institutions where juveniles are held, provided that the privacy and other rights of such juveniles are protected.

### Part VIII - Updating the rules

142. These rules shall be updated regularly.

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

*(Adopted by the Committee of Ministers on 27 September 2006, at the 974th meeting of the Ministers' Deputies)*

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

Considering the fundamental importance of the presumption of innocence and the right to the liberty of the person;

Aware of the irreversible damage that remand in custody may cause to persons ultimately found to be innocent or discharged and of the detrimental impact that remand in custody may have on the maintenance of family relationships;

Taking into consideration the financial consequences of remand in custody for the state, the individuals affected and the economy in general;

Noting the considerable number of persons remanded in custody and the problems posed by prison overcrowding;

Having regard to the case law of the European Court of Human Rights, the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the opinions of United Nations human rights treaty bodies;

Taking into consideration Recommendation Rec (2006) 2 of the Committee of Ministers on the European Prison Rules and Recommendation N° R (99) 22 of the Committee of Ministers concerning prison overcrowding and prison population inflation;

Considering the need to ensure that the use of remand in custody is always exceptional and is always justified;

Bearing in mind the human rights and fundamental freedoms of all persons deprived of their liberty and the particular need to ensure that not only are persons remanded in custody able to prepare their defence and to maintain their family relationships but they are also not held in conditions incompatible with their legal status, which is based on the presumption of innocence;

Considering the importance attaching to the development of international norms regarding the circumstances in which the use of remand in custody is justified, the procedures whereby it is imposed or continued and the conditions in which persons remanded in custody are held, as well as of mechanisms for the effective implementation of such norms;

Recommends that governments of member States disseminate and be guided in their legislation and practice by the principles set out in the appendix to this recommendation which replaces Resolution (65) 11 on remand in custody and Recommendation N° R (80) 11 of the Committee of Ministers to member States concerning custody pending trial.

Rules on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse

Preamble

The present rules are intended to:

- a.* set strict limits on the use of remand in custody;
- b.* encourage the use of alternative measures wherever possible;
- c.* require judicial authority for the imposition and continued use of remand in custody and alternative measures;
- d.* ensure that persons remanded in custody are held in conditions and subject to a regime appropriate to their legal status, which is based on the presumption of innocence;
- e.* require the provision of suitable facilities and appropriate management for the holding of persons remanded in custody;
- f.* ensure the establishment of effective safeguards against possible breaches of the rules.

The present rules reflect the human rights and fundamental freedoms of all persons but particularly the prohibition of torture and inhuman or degrading treatment, the right to a fair trial and the rights to liberty and security and to respect for private and family life.

The present rules are applicable to all persons suspected of having committed an offence but include particular requirements for juveniles and other especially vulnerable persons.

## I. Definitions and general principles

### Definitions

1. [1] 'Remand in custody' is any period of detention of a suspected offender ordered by a judicial authority and prior to conviction. It also includes any period of detention pursuant to rules relating to international judicial co-operation and extradition, subject to their specific requirements. It does not include the initial deprivation of liberty by a police or a law enforcement officer (or by anyone else so authorised to act) for the purposes of questioning.

[2] 'Remand in custody' also includes any period of detention after conviction whenever persons awaiting either sentence or the confirmation of conviction or sentence continue to be treated as unconvicted persons.

[3] 'Remand prisoners' are persons who have been remanded in custody and who are not already serving a prison sentence or are detained under any other instrument.

2. [1] 'Alternative measures' to remand in custody may include, for example: undertakings to appear before a judicial authority as and when required, not to interfere with the course of justice and not to engage in particular conduct, including that involved in a profession or particular employment; requirements to report on a daily or periodic basis to a judicial



authority, the police or other authority; requirements to accept supervision by an agency appointed by the judicial authority; requirements to submit to electronic monitoring; requirements to reside at a specified address, with or without conditions as to the hours to be spent there; requirements not to leave or enter specified places or districts without authorisation; requirements not to meet specified persons without authorisation; requirements to surrender passports or other identification papers; and requirements to provide or secure financial or other forms of guarantees as to conduct pending trial.

[2] Wherever practicable, alternative measures shall be applied in the state where a suspected offender is normally resident if this is not the state in which the offence was allegedly committed.

## General principles

3. [1] In view of both the presumption of innocence and the presumption in favour of liberty, the remand in custody of persons suspected of an offence shall be the exception rather than the norm.

[2] There shall not be a mandatory requirement that persons suspected of an offence (or particular classes of such persons) be remanded in custody.

[3] In individual cases, remand in custody shall only be used when strictly necessary and as a measure of last resort; it shall not be used for punitive reasons.

4. In order to avoid inappropriate use of remand in custody the widest possible range of alternative, less restrictive measures relating to the conduct of a suspected offender shall be made available.

5. Remand prisoners shall be subject to conditions appropriate to their legal status; this entails the absence of restrictions other than those necessary for the administration of justice, the security of the institution, the safety of prisoners and staff and the protection of the rights of others and in particular the fulfilment of the requirements of the European Prison Rules and the other rules set out in Part III of the present text.

## II. The use of remand in custody

### Justification

6. Remand in custody shall generally be available only in respect of persons suspected of committing offences that are imprisonable.

7. A person may only be remanded in custody where all of the following four conditions are satisfied:

- a. there is reasonable suspicion that he or she committed an offence; and
- b. there are substantial reasons for believing that, if released, he or she would either (i) abscond, or (ii) commit a serious offence, or (iii) interfere with the course of justice, or (iv) pose a serious threat to public order; and
- c. there is no possibility of using alternative measures to address the concerns referred to in *b.*; and

d. this is a step taken as part of the criminal justice process.

8. [1] In order to establish whether the concerns referred to in Rule 7*b*. exist, or continue to do so, as well as whether they could be satisfactorily allayed through the use of alternative measures, objective criteria shall be applied by the judicial authorities responsible for determining whether suspected offenders shall be remanded in custody or, where this has already happened, whether such remand shall be extended.

[2] The burden of establishing that a substantial risk exists and that it cannot be allayed shall lie on the prosecution or investigating judge.

9. [1] The determination of any risk shall be based on the individual circumstances of the case, but particular consideration shall be given to:

- a. the nature and seriousness of the alleged offence;
- b. the penalty likely to be incurred in the event of conviction;
- c. the age, health, character, antecedents and personal and social circumstances of the person concerned, and in particular his or her community ties; and
- d. the conduct of the person concerned, especially how he or she has fulfilled any obligations that may have been imposed on him or her in the course of previous criminal proceedings.

[2] The fact that the person concerned is not a national of, or has no other links with, the state where the offence is supposed to have been committed shall not in itself be sufficient to conclude that there is a risk of flight.

10. Wherever possible remand in custody should be avoided in the case of suspected offenders who have the primary responsibility for the care of infants.

11. In deciding whether remand in custody shall be continued, it shall be borne in mind that particular evidence which may once have previously made the use of such a measure seem appropriate, or the use of alternative measures seem inappropriate, may be rendered less compelling with the passage of time.

12. A breach of alternative measures may be subject to a sanction but shall not automatically justify subjecting someone to remand in custody. In such cases the replacement of alternative measures by remand in custody shall require specific motivation.

#### Judicial authorisation

13. The responsibility for remanding someone in custody, authorising its continuation and imposing alternative measures shall be discharged by a judicial authority.

14. [1] After his or her initial deprivation of liberty by a law enforcement officer (or by anyone else so authorised to act), someone suspected of having committed an offence shall be brought promptly before a judicial authority for the purpose of determining whether or not this deprivation of liberty is justified, whether or not it requires prolongation or whether or not the suspected offender shall be remanded in custody or subjected to alternative measures.

[2] The interval between the initial deprivation of liberty and this appearance before such an authority should preferably be no more than forty-eight hours and in many cases a much shorter interval may be sufficient.

15. The existence of an emergency in accordance with Article 15 of the European Convention on Human Rights shall not lead to an interval greater than seven days between the initial deprivation of liberty and the appearance before a judicial authority with a view to remanding in custody unless it is absolutely impossible to hold a hearing.

16. The judicial authority responsible for remanding someone in custody or authorising its continuation, as well as for imposing alternative measures, shall hear and determine the matter without delay.

17. [1] The existence of a continued justification for remanding someone in custody shall be periodically reviewed by a judicial authority, which shall order the release of the suspected offender where it finds that one or more of the conditions in Rules 6 and 7 *a, b, c* and *d* are no longer fulfilled.

[2] The interval between reviews shall normally be no longer than a month unless the person concerned has the right to submit and have examined, at any time, an application for release.

[3] The responsibility for ensuring that such reviews take place shall rest with the prosecuting authority or investigating judicial authority, and in the event of no application being made by the prosecuting authority or investigating judicial authority to continue a remand in custody, any person subject to such a measure shall automatically be released.

18. Any person remanded in custody, as well as anyone subjected to an extension of such remand or to alternative measures, shall have a right of appeal against such a ruling and shall be informed of this right when this ruling is made.

19. [1] A remand prisoner shall have a separate right to a speedy challenge before a court with respect to the lawfulness of his or her detention.

[2] This right may be satisfied through the periodic review of remand in custody where this allows all the issues relevant to such a challenge to be raised.

20. The existence of an emergency in accordance with Article 15 of the European Convention on Human Rights shall not affect the right of a remand prisoner to challenge the lawfulness of his or her detention.

21. [1] Every ruling by a judicial authority to remand someone in custody, to continue such remand or to impose alternative measures shall be reasoned and the person affected shall be provided with a copy of the reasons.

[2] Only in exceptional circumstances shall reasons not be notified on the same day as the ruling.

#### Duration

22. [1] Remand in custody shall only ever be continued so long as all the conditions in Rules 6 and 7 are fulfilled.

[2] In any case its duration shall not exceed, nor normally be disproportionate to, the penalty that may be imposed for the offence concerned.

[3] In no case shall remand in custody breach the right of a detained person to be tried within a reasonable time.

23. Any specification of a maximum period of remand in custody shall not lead to a failure to consider at regular intervals the actual need for its continuation in the particular circumstances of a given case.

24. [1] It is the responsibility of the prosecuting authority or the investigating judicial authority to act with due diligence in the conduct of an investigation and to ensure that the existence of matters supporting remand in custody is kept under continuous review.

[2] Priority shall be given to cases involving a person who has been remanded in custody.

Assistance by a lawyer, presence of the person concerned and interpretation

25. [1] The intention to seek remand in custody and the reasons for so doing shall be promptly communicated to the person concerned in a language which he or she understands.

[2] The person whose remand in custody will be sought shall have the right to assistance from a lawyer in the remand proceedings and to have an adequate opportunity to consult with his or her lawyer in order to prepare their defence. The person concerned shall be advised of these rights in sufficient time and in a language which he or she understands so that their exercise is practicable.

[3] Such assistance from a lawyer shall be provided at public expense where the person whose remand in custody is being sought cannot afford it.

[4] The existence of an emergency in accordance with Article 15 of the European Convention on Human Rights should not normally affect the right of access to and consultation with a lawyer in the context of remand proceedings.

26. A person whose remand in custody is being sought and his or her lawyer shall have access to documentation relevant to such a decision in good time.

27. [1] A person who is the national of another country and whose remand in custody is being sought shall have the right to have the consul of this country notified of this possibility in sufficient time to obtain advice and assistance from him or her.

[2] This right should, wherever possible, also be extended to persons holding the nationality both of the country where their remand in custody is being sought and of another country.

28. A person whose remand in custody is being sought shall have the right to appear at remand proceedings. Under certain conditions this requirement may be satisfied through the use of appropriate video-links.

29. Adequate interpretation services before the judicial authority considering whether to remand someone in custody shall be made available at public expense, where the person concerned does not understand and speak the language normally used in those proceedings.

30. Persons appearing at remand proceedings shall be given an opportunity to wash and, in the case of male prisoners, to shave unless there is a risk of this resulting in a fundamental alteration of their normal appearance.

31. The foregoing Rules in this section shall also apply to the continuation of the remand in custody.

#### Informing the family

32. [1] A person whose remand in custody is being sought (or sought to be continued) shall have the right to have the members of his or her family informed in good time, about the date and the place of remand proceedings unless this would result in a serious risk of prejudice for the administration of justice or for national security.

[2] The decision in any event about contacting family members shall be a matter for the person whose remand in custody is being sought (or sought to be prolonged) unless he or she is not legally competent to make such a decision or there is some other compelling justification.

#### Deduction of pre-conviction custody from sentence

33. [1] The period of remand in custody prior to conviction, wherever spent, shall be deducted from the length of any sentence of imprisonment subsequently imposed.

[2] Any period of remand in custody could be taken into account in establishing the penalty imposed where it is not one of imprisonment.

[3] The nature and duration of alternative measures previously imposed could equally be taken into account in determining the sentence.

#### Compensation

34. [1] Consideration shall be given to the provision of compensation to persons remanded in custody who are not subsequently convicted of the offence in respect of which they were so remanded; this compensation might cover loss of income, loss of opportunities and moral damage.

[2] Compensation shall not be required where it is established that either the person remanded had, by his or her behaviour, actively contributed to the reasonableness of the suspicion that he or she had committed an offence or he or she had deliberately obstructed the investigation of the alleged offence.

### III. Conditions of remand in custody

#### General

35. The conditions of remand in custody shall, subject to the Rules set out below, be governed by the European Prison Rules.

## Absence from remand institution

36. [1] A remand prisoner shall only leave the remand institution for further investigation if this is authorised by a judge or prosecutor or with the express consent of the remand prisoner and for a limited period.

[2] On return to the remand institution the remand prisoner shall undergo, at his or her request, a thorough physical examination by a medical doctor or, exceptionally, by a qualified nurse as soon as possible.

## Continuing medical treatment

37. [1] Arrangements shall be made to enable remand prisoners to continue with necessary medical or dental treatment that they were receiving before they were detained, if so decided by the remand institution's doctor or dentist where possible in consultation with the remand prisoner's doctor or dentist.

[2] Remand prisoners shall be given the opportunity to consult and be treated by their own doctor or dentist if a medical or dental necessity so requires.

[3] Reasons shall be given if an application by a remand prisoner to consult his or her own doctor or dentist is refused.

[4] Such costs as are incurred shall not be the responsibility of the administration of the remand institution.

## Correspondence

38. There shall normally be no restriction on the number of letters sent and received by remand prisoners.

## Voting

39. Remand prisoners shall be able to vote in public elections and referendums that occur during the period of remand in custody.

## Education

40. Remand in custody shall not unduly disrupt the education of children or young persons or unduly interfere with access to more advanced education.

## Discipline and punishment

41. No disciplinary punishment imposed on a remand prisoner shall have the effect of extending the length of the remand in custody or interfering with the preparation of his or her defence.

42. The punishment of solitary confinement shall not affect the access to a lawyer and shall allow minimum contact with family outside. It should not affect the conditions of a remand prisoner's detention in respect of bedding, physical exercise, hygiene, access to reading material and approved religious representatives.

## Staff

43. Staff who work in a remand institution with remand prisoners shall be selected and trained so as to be able to take full account of the particular status and needs of remand prisoners.

## Complaints procedures

44. [1] Remand prisoners shall have avenues of complaint open to them, both within and outside the remand institution, and be entitled to confidential access to an appropriate authority mandated to address their grievances.

[2] These avenues shall be in addition to any right to bring legal proceedings.

[3] Complaints shall be dealt with as speedily as possible.

Recommendation Rec (2006) 2 of the Committee of Ministers to member States on the European Prison Rules<sup>3</sup>

*(Adopted by the Committee of Ministers on 11 January 2006, at the 952nd meeting of the Ministers' Deputies)*

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

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 discipline while also ensuring prison conditions which do not infringe human dignity and which offer meaningful occupational activities and treatment programmes to inmates, 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 policy;

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

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 specific aspects of penitentiary policy and practice and in particular N° R (89) 12 on education in prison, N° R (93) 6 concerning prison and criminological aspects of the control of transmissible diseases including AIDS and related health problems in prison, N° R (97) 12 on staff concerned with the implementation of sanctions and measures, N° R (98) 7 concerning the ethical and organisational aspects of health care in prison, N° R (99) 22 concerning prison overcrowding and prison population inflation, Rec (2003) 22 on conditional release (parole), and Rec (2003) 23 on the management by prison administrations of life sentence and other long-term prisoners;

Bearing in mind the United Nations Standard Minimum Rules for the Treatment of Prisoners; Considering that Recommendation N° R (87) 3 of the Committee of Ministers on the European Prison Rules needs to be substantively revised and updated in order to reflect the developments

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<sup>3</sup> When this recommendation was adopted, and in application of Article 10.2c of the Rules of Procedure for the meetings of the Ministers' Deputies, the Representative of Denmark reserved the right of his government to comply or not with Rule 43, paragraph 2, of the appendix to the recommendation because it is of the opinion that the requirement that prisoners held under solitary confinement be visited by medical staff on a daily basis raises serious ethical concerns regarding the possible role of such staff in effectively pronouncing prisoners fit for further solitary confinement.



which have occurred in penal policy, sentencing practice and the overall management of prisons in Europe,

Recommends that governments of member States:

- be guided in their legislation, policies and practice by the rules contained in the appendix to this recommendation, which replaces Recommendation N° R (87) 3 of the Committee of Ministers on the European Prison Rules;
- ensure that this recommendation and the accompanying commentary to its text are translated and disseminated as widely as possible and more specifically among judicial authorities, prison staff and individual prisoners.

## *APPENDIX TO RECOMMENDATION REC (2006) 2*

### Part I

#### *Basic principles*

1. All persons deprived of their liberty shall be treated with respect for their human rights.
2. Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.
3. Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.
4. Prison conditions that infringe prisoners' human rights are not justified by lack of resources.
5. Life in prison shall approximate as closely as possible the positive aspects of life in the community.
6. All detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty.
7. Co-operation with outside social services and as far as possible the involvement of civil society in prison life shall be encouraged.
8. Prison staff carry out an important public service and their recruitment, training and conditions of work shall enable them to maintain high standards in their care of prisoners.
9. All prisons shall be subject to regular government inspection and independent monitoring.

#### *Scope and application*

10.1 The European Prison Rules apply to persons who have been remanded in custody by a judicial authority or who have been deprived of their liberty following conviction.

10.2 In principle, persons who have been remanded in custody by a judicial authority and persons who are deprived of their liberty following conviction should only be detained in prisons, that is, in institutions reserved for detainees of these two categories.

10.3 The Rules also apply to persons:

- a. who may be detained for any other reason in a prison; or
- b. who have been remanded in custody by a judicial authority or deprived of their liberty following conviction and who may, for any reason, be detained elsewhere.

10.4 All persons who are detained in a prison or who are detained in the manner referred to in paragraph 10.3.b are regarded as prisoners for the purpose of these rules.

11.1 Children under the age of 18 years should not be detained in a prison for adults, but in an establishment specially designed for the purpose.

11.2 If children are nevertheless exceptionally held in such a prison there shall be special regulations that take account of their status and needs.

12.1 Persons who are suffering from mental illness and whose state of mental health is incompatible with detention in a prison should be detained in an establishment specially designed for the purpose.

12.2 If such persons are nevertheless exceptionally held in prison there shall be special regulations that take account of their status and needs.

13. These rules shall be applied impartially, without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

## Part II

### *Conditions of imprisonment*

#### *Admission*

14. No person shall be admitted to or held in a prison as a prisoner without a valid commitment order, in accordance with national law.

15.1 At admission the following details shall be recorded immediately concerning each prisoner:

- a. information concerning the identity of the prisoner;
- b. the reasons for commitment and the authority for it;
- c. the day and hour of admission;
- d. an inventory of the personal property of the prisoner that is to be held in safekeeping in accordance with Rule 31;
- e. any visible injuries and complaints about prior ill-treatment; and

f. subject to the requirements of medical confidentiality, any information about the prisoner's health that is relevant to the physical and mental well-being of the prisoner or others.

15.2 At admission all prisoners shall be given information in accordance with Rule 30.

15.3 Immediately after admission notification of the detention of the prisoner shall be given in accordance with Rule 24.9.

16. As soon as possible after admission:

- a. information about the health of the prisoner on admission shall be supplemented by a medical examination in accordance with Rule 42;
- b. the appropriate level of security for the prisoner shall be determined in accordance with Rule 51;
- c. the threat to safety that the prisoner poses shall be determined in accordance with Rule 52;
- d. any available information about the social situation of the prisoner shall be evaluated in order to deal with the immediate personal and welfare needs of the prisoner; and
- e. in the case of sentenced prisoners the necessary steps shall be taken to implement programmes in accordance with Part VIII of these rules.

#### *Allocation and accommodation*

17.1 Prisoners shall be allocated, as far as possible, to prisons close to their homes or places of social rehabilitation.

17.2 Allocation shall also take into account the requirements of continuing criminal investigations, safety and security and the need to provide appropriate regimes for all prisoners.

17.3 As far as possible, prisoners shall be consulted about their initial allocation and any subsequent transfer from one prison to another.

18.1 The accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation.

18.2 In all buildings where prisoners are required to live, work or congregate:

- a. the windows shall be large enough to enable the prisoners to read or work by natural light in normal conditions and shall allow the entrance of fresh air except where there is an adequate air conditioning system;
- b. artificial light shall satisfy recognised technical standards; and
- c. there shall be an alarm system that enables prisoners to contact the staff without delay.

18.3 Specific minimum requirements in respect of the matters referred to in paragraphs 1 and 2 shall be set in national law.

18.4 National law shall provide mechanisms for ensuring that these minimum requirements are not breached by the overcrowding of prisons.

18.5 Prisoners shall normally be accommodated during the night in individual cells except where it is preferable for them to share sleeping accommodation.

18.6 Accommodation shall only be shared if it is suitable for this purpose and shall be occupied by prisoners suitable to associate with each other.

18.7 As far as possible, prisoners shall be given a choice before being required to share sleeping accommodation.

18.8 In deciding to accommodate prisoners in particular prisons or in particular sections of a prison due account shall be taken of the need to detain:

- a. untried prisoners separately from sentenced prisoners;
- b. male prisoners separately from females; and
- c. young adult prisoners separately from older prisoners.

18.9 Exceptions can be made to the requirements for separate detention in terms of paragraph 8 in order to allow prisoners to participate jointly in organised activities, but these groups shall always be separated at night unless they consent to be detained together and the prison authorities judge that it would be in the best interest of all the prisoners concerned.

18.10 Accommodation of all prisoners shall be in conditions with the least restrictive security arrangements compatible with the risk of their escaping or harming themselves or others.

### *Hygiene*

19.1 All parts of every prison shall be properly maintained and kept clean at all times.

19.2 When prisoners are admitted to prison the cells or other accommodation to which they are allocated shall be clean.

19.3 Prisoners shall have ready access to sanitary facilities that are hygienic and respect privacy.

19.4 Adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least twice a week (or more frequently if necessary) in the interest of general hygiene.

19.5 Prisoners shall keep their persons, clothing and sleeping accommodation clean and tidy.

19.6 The prison authorities shall provide them with the means for doing so including toiletries and general cleaning implements and materials.

19.7 Special provision shall be made for the sanitary needs of women.

### *Clothing and bedding*

20.1 Prisoners who do not have adequate clothing of their own shall be provided with clothing suitable for the climate.

20.2 Such clothing shall not be degrading or humiliating.

20.3 All clothing shall be maintained in good condition and replaced when necessary.

20.4 Prisoners who obtain permission to go outside prison shall not be required to wear clothing that identifies them as prisoners.

21. Every prisoner shall be provided with a separate bed and separate and appropriate bedding, which shall be kept in good order and changed often enough to ensure its cleanliness.

### *Nutrition*

22.1 Prisoners shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work.

22.2 The requirements of a nutritious diet, including its minimum energy and protein content, shall be prescribed in national law.

22.3 Food shall be prepared and served hygienically.

22.4 There shall be three meals a day with reasonable intervals between them.

22.5 Clean drinking water shall be available to prisoners at all times.

22.6 The medical practitioner or a qualified nurse shall order a change in diet for a particular prisoner when it is needed on medical grounds.

### *Legal advice*

23.1 All prisoners are entitled to legal advice, and the prison authorities shall provide them with reasonable facilities for gaining access to such advice.

23.2 Prisoners may consult on any legal matter with a legal adviser of their own choice and at their own expense.

23.3 Where there is a recognised scheme of free legal aid the authorities shall bring it to the attention of all prisoners.

23.4 Consultations and other communications including correspondence about legal matters between prisoners and their legal advisers shall be confidential.

23.5 A judicial authority may in exceptional circumstances authorise restrictions on such confidentiality to prevent serious crime or major breaches of prison safety and security.

23.6 Prisoners shall have access to, or be allowed to keep in their possession, documents relating to their legal proceedings.

### *Contact with the outside world*

24.1 Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons.

24.2 Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact.

24.3 National law shall specify national and international bodies and officials with whom communication by prisoners shall not be restricted.

24.4 The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible.

24.5 Prison authorities shall assist prisoners in maintaining adequate contact with the outside world and provide them with the appropriate welfare support to do so.

24.6 Any information received of the death or serious illness of any near relative shall be promptly communicated to the prisoner.

24.7 Whenever circumstances allow, the prisoner should be authorised to leave prison either under escort or alone in order to visit a sick relative, attend a funeral or for other humanitarian reasons.

24.8 Prisoners shall be allowed to inform their families immediately of their imprisonment or transfer to another institution and of any serious illness or injury they may suffer.

24.9 Upon the admission of a prisoner to prison, the death or serious illness of, or serious injury to a prisoner, or the transfer of a prisoner to a hospital, the authorities shall, unless the prisoner has requested them not to do so, immediately inform the spouse or partner of the prisoner, or, if the prisoner is single, the nearest relative and any other person previously designated by the prisoner.

24.10 Prisoners shall be allowed to keep themselves informed regularly of public affairs by subscribing to and reading newspapers, periodicals and other publications and by listening to radio or television transmissions unless there is a specific prohibition for a specified period by a judicial authority in an individual case.

24.11 Prison authorities shall ensure that prisoners are able to participate in elections, referenda and in other aspects of public life, in so far as their right to do so is not restricted by national law.

24.12 Prisoners shall be allowed to communicate with the media unless there are compelling reasons to forbid this for the maintenance of safety and security, in the public interest or in order to protect the integrity of victims, other prisoners or staff.

### *Prison regime*

25.1 The regime provided for all prisoners shall offer a balanced programme of activities.

25.2 This regime shall allow all prisoners to spend as many hours a day outside their cells as are necessary for an adequate level of human and social interaction.

25.3 This regime shall also provide for the welfare needs of prisoners.

25.4 Particular attention shall be paid to the needs of prisoners who have experienced physical, mental or sexual abuse.

### *Work*

26.1 Prison work shall be approached as a positive element of the prison regime and shall never be used as a punishment.

26.2 Prison authorities shall strive to provide sufficient work of a useful nature.

26.3 As far as possible, the work provided shall be such as will maintain or increase prisoners' ability to earn a living after release.

26.4 In conformity with Rule 13 there shall be no discrimination on the basis of gender in the type of work provided.

26.5 Work that encompasses vocational training shall be provided for prisoners able to benefit from it and especially for young prisoners.

26.6 Prisoners may choose the type of employment in which they wish to participate, within the limits of what is available, proper vocational selection and the requirements of good order and discipline.

26.7 The organisation and methods of work in the institutions shall resemble as closely as possible those of similar work in the community in order to prepare prisoners for the conditions of normal occupational life.

26.8 Although the pursuit of financial profit from industries in the institutions can be valuable in raising standards and improving the quality and relevance of training, the interests of the prisoners should not be subordinated to that purpose.

26.9 Work for prisoners shall be provided by the prison authorities, either on their own or in co-operation with private contractors, inside or outside prison.

26.10 In all instances there shall be equitable remuneration of the work of prisoners.

26.11 Prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to allocate a part of their earnings to their families.

26.12 Prisoners may be encouraged to save part of their earnings, which shall be handed over to them on release or be used for other approved purposes.

26.13 Health and safety precautions for prisoners shall protect them adequately and shall not be less rigorous than those that apply to workers outside.

26.14 Provision shall be made to indemnify prisoners against industrial injury, including occupational disease, on terms not less favourable than those extended by national law to workers outside.

26.15 The maximum daily and weekly working hours of the prisoners shall be fixed in conformity with local rules or custom regulating the employment of free workers.

26.16 Prisoners shall have at least one rest day a week and sufficient time for education and other activities.

26.17 As far as possible, prisoners who work shall be included in national social security systems.

#### *Exercise and recreation*

27.1 Every prisoner shall be provided with the opportunity of at least one hour of exercise every day in the open air, if the weather permits.

27.2 When the weather is inclement alternative arrangements shall be made to allow prisoners to exercise.

27.3 Properly organised activities to promote physical fitness and provide for adequate exercise and recreational opportunities shall form an integral part of prison regimes.

27.4 Prison authorities shall facilitate such activities by providing appropriate installations and equipment.

27.5 Prison authorities shall make arrangements to organise special activities for those prisoners who need them.

27.6 Recreational opportunities, which include sport, games, cultural activities, hobbies and other leisure pursuits, shall be provided and, as far as possible, prisoners shall be allowed to organise them.

27.7 Prisoners shall be allowed to associate with each other during exercise and in order to take part in recreational activities.

#### *Education*

28.1 Every prison shall seek to provide all prisoners with access to educational programmes which are as comprehensive as possible and which meet their individual needs while taking into account their aspirations.

28.2 Priority shall be given to prisoners with literacy and numeracy needs and those who lack basic or vocational education.

28.3 Particular attention shall be paid to the education of young prisoners and those with special needs.



28.4 Education shall have no less a status than work within the prison regime and prisoners shall not be disadvantaged financially or otherwise by taking part in education.

28.5 Every institution shall have a library for the use of all prisoners, adequately stocked with a wide range of both recreational and educational resources, books and other media.

28.6 Wherever possible, the prison library should be organised in co-operation with community library services.

28.7 As far as practicable, the education of prisoners shall:

- a. be integrated with the educational and vocational training system of the country so that after their release they may continue their education and vocational training without difficulty; and
- b. take place under the auspices of external educational institutions.

#### *Freedom of thought, conscience and religion*

29.1 Prisoners' freedom of thought, conscience and religion shall be respected.

29.2 The prison regime shall be organised so far as is practicable to allow prisoners to practise their religion and follow their beliefs, to attend services or meetings led by approved representatives of such religion or beliefs, to receive visits in private from such representatives of their religion or beliefs and to have in their possession books or literature relating to their religion or beliefs.

29.3 Prisoners may not be compelled to practise a religion or belief, to attend religious services or meetings, to take part in religious practices or to accept a visit from a representative of any religion or belief.

#### *Information*

30.1 At admission, and as often as necessary afterwards all prisoners shall be informed in writing and orally in a language they understand of the regulations governing prison discipline and of their rights and duties in prison.

30.2 Prisoners shall be allowed to keep in their possession a written version of the information they are given.

30.3 Prisoners shall be informed about any legal proceedings in which they are involved and, if they are sentenced, the time to be served and the possibilities of early release.

#### *Prisoners' property*

31.1 All property that prisoners are not allowed to retain under the rules governing the prison shall be placed in safe custody on admission to the institution.

31.2 A prisoner whose property is taken into safe custody shall sign an inventory of the property.

31.3 Steps shall be taken to keep such property in good condition.

31.4 If it has been found necessary to destroy any such property, this shall be recorded and the prisoner informed.

31.5 Prisoners shall, subject to the requirements of hygiene, good order and security, be entitled to purchase or otherwise obtain goods, including food and drink for their personal use at prices that are not abnormally higher than those in free society.

31.6 If a prisoner brings in any medicines, the medical practitioner shall decide what use shall be made of them.

31.7 Where prisoners are allowed to keep possession of their property the prison authorities shall take steps to assist in its safekeeping.

#### *Transfer of prisoners*

32.1 While prisoners are being moved to or from a prison, or to other places such as court or hospital, they shall be exposed to public view as little as possible and proper safeguards shall be adopted to ensure their anonymity.

32.2 The transport of prisoners in conveyances with inadequate ventilation or light, or which would subject them in any way to unnecessary physical hardship or indignity, shall be prohibited.

32.3 The transport of prisoners shall be carried out at the expense and under the direction of the public authorities.

#### *Release of prisoners*

33.1 All prisoners shall be released without delay when their commitment orders expire, or when a court or other authority orders their release.

33.2 The date and time of the release shall be recorded.

33.3 All prisoners shall have the benefit of arrangements designed to assist them in returning to free society after release.

33.4 On the release of a prisoner all articles and money belonging to the prisoner that were taken into safe custody shall be returned except in so far as there have been authorised withdrawals of money or the authorised sending of any such property out of the institution, or it has been found necessary to destroy any article on hygienic grounds.

33.5 The prisoner shall sign a receipt for the property returned.

33.6 When release is pre-arranged, the prisoner shall be offered a medical examination in accordance with Rule 42 as close as possible to the time of release.

33.7 Steps must be taken to ensure that on release prisoners are provided, as necessary, with appropriate documents and identification papers, and assisted in finding suitable accommodation and work.

33.8 Released prisoners shall also be provided with immediate means of subsistence, be suitably and adequately clothed with regard to the climate and season, and have sufficient means to reach their destination.

#### *Women*

34.1 In addition to the specific provisions in these rules dealing with women prisoners, the authorities shall pay particular attention to the requirements of women such as their physical, vocational, social and psychological needs when making decisions that affect any aspect of their detention.

34.2 Particular efforts shall be made to give access to special services for women prisoners who have needs as referred to in Rule 25.4.

34.3 Prisoners shall be allowed to give birth outside prison, but where a child is born in prison the authorities shall provide all necessary support and facilities.

#### *Detained children*

35.1 Where exceptionally children under the age of 18 years are detained in a prison for adults the authorities shall ensure that, in addition to the services available to all prisoners, prisoners who are children have access to the social, psychological and educational services, religious care and recreational programmes or equivalents to them that are available to children in the community.

35.2 Every prisoner who is a child and is subject to compulsory education shall have access to such education.

35.3 Additional assistance shall be provided to children who are released from prison.

35.4 Where children are detained in a prison they shall be kept in a part of the prison that is separate from that used by adults unless it is considered that this is against the best interests of the child.

#### *Infants*

36.1 Infants may stay in prison with a parent only when it is in the best interest of the infants concerned. They shall not be treated as prisoners.

36.2 Where such infants are allowed to stay in prison with a parent special provision shall be made for a nursery, staffed by qualified persons, where the infants shall be placed when the parent is involved in activities where the infant cannot be present.

36.3 Special accommodation shall be set aside to protect the welfare of such infants.

#### *Foreign nationals*

37.1 Prisoners who are foreign nationals shall be informed, without delay, of their right to request contact and be allowed reasonable facilities to communicate with the diplomatic or consular representative of their state.

37.2 Prisoners who are nationals of states without diplomatic or consular representation in the country, and refugees or stateless persons, shall be allowed similar facilities to communicate with the diplomatic representative of the state which takes charge of their interests or the national or international authority whose task it is to serve the interests of such persons.

37.3 In the interests of foreign nationals in prison who may have special needs, prison authorities shall co-operate fully with diplomatic or consular officials representing prisoners.

37.4 Specific information about legal assistance shall be provided to prisoners who are foreign nationals.

37.5 Prisoners who are foreign nationals shall be informed of the possibility of requesting that the execution of their sentence be transferred to another country.

#### *Ethnic or linguistic minorities*

38.1 Special arrangements shall be made to meet the needs of prisoners who belong to ethnic or linguistic minorities.

38.2 As far as practicable the cultural practices of different groups shall be allowed to continue in prison.

38.3 Linguistic needs shall be met by using competent interpreters and by providing written material in the range of languages used in a particular prison.

### Part III

#### *Health*

##### *Health care*

39. Prison authorities shall safeguard the health of all prisoners in their care.

##### *Organisation of prison health care*

40.1 Medical services in prison shall be organised in close relation with the general health administration of the community or nation.

40.2 Health policy in prisons shall be integrated into, and compatible with, national health policy.

40.3 Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

40.4 Medical services in prison shall seek to detect and treat physical or mental illnesses or defects from which prisoners may suffer.

40.5 All necessary medical, surgical and psychiatric services including those available in the community shall be provided to the prisoner for that purpose.

### *Medical and health care personnel*

- 41.1 Every prison shall have the services of at least one qualified general medical practitioner.
- 41.2 Arrangements shall be made to ensure at all times that a qualified medical practitioner is available without delay in cases of urgency.
- 41.3 Where prisons do not have a full-time medical practitioner, a part-time medical practitioner shall visit regularly.
- 41.4 Every prison shall have personnel suitably trained in health care.
- 41.5 The services of qualified dentists and opticians shall be available to every prisoner.

### *Duties of the medical practitioner*

- 42.1 The medical practitioner or a qualified nurse reporting to such a medical practitioner shall see every prisoner as soon as possible after admission, and shall examine them unless this is obviously unnecessary.
- 42.2 The medical practitioner or a qualified nurse reporting to such a medical practitioner shall examine the prisoner if requested at release, and shall otherwise examine prisoners whenever necessary.
- 42.3 When examining a prisoner the medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to:
- a. observing the normal rules of medical confidentiality;
  - b. diagnosing physical or mental illness and taking all measures necessary for its treatment and for the continuation of existing medical treatment;
  - c. recording and reporting to the relevant authorities any sign or indication that prisoners may have been treated violently;
  - d. dealing with withdrawal symptoms resulting from use of drugs, medication or alcohol;
  - e. identifying any psychological or other stress brought on by the fact of deprivation of liberty;
  - f. isolating prisoners suspected of infectious or contagious conditions for the period of infection and providing them with proper treatment;
  - g. ensuring that prisoners carrying the HIV virus are not isolated for that reason alone;
  - h. noting physical or mental defects that might impede resettlement after release;
  - i. determining the fitness of each prisoner to work and to exercise; and
  - j. making arrangements with community agencies for the continuation of any necessary medical and psychiatric treatment after release, if prisoners give their consent to such arrangements.

43.1 The medical practitioner shall have the care of the physical and mental health of the prisoners and shall see, under the conditions and with a frequency consistent with health care standards in the community, all sick prisoners, all who report illness or injury and any prisoner to whom attention is specially directed.

43.2 The medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to the health of prisoners held under conditions of solitary confinement, shall visit such prisoners daily, and shall provide them with prompt medical assistance and treatment at the request of such prisoners or the prison staff.

43.3 The medical practitioner shall report to the director whenever it is considered that a prisoner's physical or mental health is being put seriously at risk by continued imprisonment or by any condition of imprisonment, including conditions of solitary confinement.

44. The medical practitioner or other competent authority shall regularly inspect, collect information by other means if appropriate, and advise the director upon:

- a. the quantity, quality, preparation and serving of food and water;
- b. the hygiene and cleanliness of the institution and prisoners;
- c. the sanitation, heating, lighting and ventilation of the institution; and
- d. the suitability and cleanliness of the prisoners' clothing and bedding.

45.1 The director shall consider the reports and advice that the medical practitioner or other competent authority submits according to Rules 43 and 44 and, when in agreement with the recommendations made, shall take immediate steps to implement them.

45.2 If the recommendations of the medical practitioner are not within the director's competence or if the director does not agree with them, the director shall immediately submit the advice of the medical practitioner and a personal report to higher authority.

#### *Health care provision*

46.1 Sick prisoners who require specialist treatment shall be transferred to specialised institutions or to civil hospitals, when such treatment is not available in prison.

46.2 Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide the prisoners referred to them with appropriate care and treatment.

#### *Mental health*

47.1 Specialised prisons or sections under medical control shall be available for the observation and treatment of prisoners suffering from mental disorder or abnormality who do not necessarily fall under the provisions of Rule 12.

47.2 The prison medical service shall provide for the psychiatric treatment of all prisoners who are in need of such treatment and pay special attention to suicide prevention.

### *Other matters*

48.1 Prisoners shall not be subjected to any experiments without their consent.

48.2 Experiments involving prisoners that may result in physical injury, mental distress or other damage to health shall be prohibited.

### Part IV

#### *Good order*

##### *General approach to good order*

49. Good order in prison shall be maintained by taking into account the requirements of security, safety and discipline, while also providing prisoners with living conditions which respect human dignity and offering them a full programme of activities in accordance with Rule 25.

50. Subject to the needs of good order, safety and security, prisoners shall be allowed to discuss matters relating to the general conditions of imprisonment and shall be encouraged to communicate with the prison authorities about these matters.

#### *Security*

51.1 The security measures applied to individual prisoners shall be the minimum necessary to achieve their secure custody.

51.2 The security which is provided by physical barriers and other technical means shall be complemented by the dynamic security provided by an alert staff who know the prisoners who are under their control.

51.3 As soon as possible after admission, prisoners shall be assessed to determine:

- a. the risk that they would present to the community if they were to escape;
- b. the risk that they will try to escape either on their own or with external assistance.

51.4 Each prisoner shall then be held in security conditions appropriate to these levels of risk.

51.5 The level of security necessary shall be reviewed at regular intervals throughout a person's imprisonment.

#### *Safety*

52.1 As soon as possible after admission, prisoners shall be assessed to determine whether they pose a safety risk to other prisoners, prison staff or other persons working in or visiting prison or whether they are likely to harm themselves.

52.2 Procedures shall be in place to ensure the safety of prisoners, prison staff and all visitors and to reduce to a minimum the risk of violence and other events that might threaten safety.

52.3 Every possible effort shall be made to allow all prisoners to take a full part in daily activities in safety.

52.4 It shall be possible for prisoners to contact staff at all times, including during the night.

52.5 National health and safety laws shall be observed in prisons.

*Special high security or safety measures*

53.1 Special high security or safety measures shall only be applied in exceptional circumstances.

53.2 There shall be clear procedures to be followed when such measures are to be applied to any prisoner.

53.3 The nature of any such measures, their duration and the grounds on which they may be applied shall be determined by national law.

53.4 The application of the measures in each case shall be approved by the competent authority for a specified period of time.

53.5 Any decision to extend the approved period of time shall be subject to a new approval by the competent authority.

53.6 Such measures shall be applied to individuals and not to groups of prisoners.

53.7 Any prisoner subjected to such measures shall have a right of complaint in the terms set out in Rule 70.

*Searching and controls*

54.1 There shall be detailed procedures which staff have to follow when searching:

- a. all places where prisoners live, work and congregate;
- b. prisoners;
- c. visitors and their possessions; and
- d. staff.

54.2 The situations in which such searches are necessary and their nature shall be defined by national law.

54.3 Staff shall be trained to carry out these searches in such a way as to detect and prevent any attempt to escape or to hide contraband, while at the same time respecting the dignity of those being searched and their personal possessions.

54.4 Persons being searched shall not be humiliated by the searching process.

54.5 Persons shall only be searched by staff of the same gender.



54.6 There shall be no internal physical searches of prisoners' bodies by prison staff.

54.7 An intimate examination related to a search may be conducted by a medical practitioner only.

54.8 Prisoners shall be present when their personal property is being searched unless investigating techniques or the potential threat to staff prohibit this.

54.9 The obligation to protect security and safety shall be balanced against the privacy of visitors.

54.10 Procedures for controlling professional visitors, such as legal representatives, social workers and medical practitioners, etc., shall be the subject of consultation with their professional bodies to ensure a balance between security and safety, and the right of confidential professional access.

#### *Criminal acts*

55. An alleged criminal act committed in a prison shall be investigated in the same way as it would be in free society and shall be dealt with in accordance with national law.

#### *Discipline and punishment*

56.1 Disciplinary procedures shall be mechanisms of last resort.

56.2 Whenever possible, prison authorities shall use mechanisms of restoration and mediation to resolve disputes with and among prisoners.

57.1 Only conduct likely to constitute a threat to good order, safety or security may be defined as a disciplinary offence.

57.2 National law shall determine:

- a. the acts or omissions by prisoners that constitute disciplinary offences;
- b. the procedures to be followed at disciplinary hearings;
- c. the types and duration of punishment that may be imposed;
- d. the authority competent to impose such punishment; and
- e. access to and the authority of the appellate process.

58. Any allegation of infringement of the disciplinary rules by a prisoner shall be reported promptly to the competent authority, which shall investigate it without undue delay.

59. Prisoners charged with disciplinary offences shall:

- a. be informed promptly, in a language which they understand and in detail, of the nature of the accusations against them;
- b. have adequate time and facilities for the preparation of their defence;

- c. be allowed to defend themselves in person or through legal assistance when the interests of justice so require;
- d. be allowed to request the attendance of witnesses and to examine them or to have them examined on their behalf; and
- e. have the free assistance of an interpreter if they cannot understand or speak the language used at the hearing.

60.1 Any punishment imposed after conviction of a disciplinary offence shall be in accordance with national law.

60.2 The severity of any punishment shall be proportionate to the offence.

60.3 Collective punishments and corporal punishment, punishment by placing in a dark cell, and all other forms of inhuman or degrading punishment shall be prohibited.

60.4 Punishment shall not include a total prohibition on family contact.

60.5 Solitary confinement shall be imposed as a punishment only in exceptional cases and for a specified period of time, which shall be as short as possible.

60.6 Instruments of restraint shall never be applied as a punishment.

61. A prisoner who is found guilty of a disciplinary offence shall be able to appeal to a competent and independent higher authority.

62. No prisoner shall be employed or given authority in the prison in any disciplinary capacity.

#### *Double jeopardy*

A prisoner shall never be punished twice for the same act or conduct.

#### *Use of force*

64.1 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.

64.2 The amount of force used shall be the minimum necessary and shall be imposed for the shortest necessary time.

65. There shall be detailed procedures about the use of force including stipulations about:

- a. the various types of force that may be used;
- b. the circumstances in which each type of force may be used;
- c. the members of staff who are entitled to use different types of force;
- d. the level of authority required before any force is used; and

e. the reports that must be completed once force has been used.

66. Staff who deal directly with prisoners shall be trained in techniques that enable the minimal use of force in the restraint of prisoners who are aggressive.

67.1 Staff of other law enforcement agencies shall only be involved in dealing with prisoners inside prisons in exceptional circumstances.

67.2 There shall be a formal agreement between the prison authorities and any such other law enforcement agencies unless the relationship is already regulated by domestic law.

67.3 Such agreement shall stipulate:

a. the circumstances in which members of other law enforcement agencies may enter a prison to deal with any conflict;

b. the extent of the authority which such other law enforcement agencies shall have while they are in the prison and their relationship with the director of the prison;

c. the various types of force that members of such agencies may use;

d. the circumstances in which each type of force may be used;

e. the level of authority required before any force is used; and

f. the reports that must be completed once force has been used.

#### *Instruments of restraint*

68.1 The use of chains and irons shall be prohibited.

68.2 Handcuffs, restraint jackets and other body restraints shall not be used except:

a. if necessary, as a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority unless that authority decides otherwise; or

b. by order of the director, if other methods of control fail, in order to protect a prisoner from self-injury, injury to others or to prevent serious damage to property, provided that in such instances the director shall immediately inform the medical practitioner and report to the higher prison authority.

68.3 Instruments of restraint shall not be applied for any longer time than is strictly necessary.

68.4 The manner of use of instruments of restraint shall be specified in national law.

#### *Weapons*

69.1 Except in an operational emergency, prison staff shall not carry lethal weapons within the prison perimeter.

69.2 The open carrying of other weapons, including batons, by persons in contact with prisoners shall be prohibited within the prison perimeter unless they are required for safety and security in order to deal with a particular incident.

69.3 Staff shall not be provided with weapons unless they have been trained in their use.

### *Requests and complaints*

70.1 Prisoners, individually or as a group, shall have ample opportunity to make requests or complaints to the director of the prison or to any other competent authority.

70.2 If mediation seems appropriate this should be tried first.

70.3 If a request is denied or a complaint is rejected, reasons shall be provided to the prisoner and the prisoner shall have the right to appeal to an independent authority.

70.4 Prisoners shall not be punished because of having made a request or lodged a complaint.

70.5 The competent authority shall take into account any written complaints from relatives of a prisoner when they have reason to believe that a prisoner's rights have been violated.

70.6 No complaint by a legal representative or organisation concerned with the welfare of prisoners may be brought on behalf of a prisoner if the prisoner concerned does not consent to it being brought.

70.7 Prisoners are entitled to seek legal advice about complaints and appeals procedures and to legal assistance when the interests of justice require.

## Part V

### *Management and staff*

#### *Prison work as a public service*

71. Prisons shall be the responsibility of public authorities separate from military, police or criminal investigation services.

72.1 Prisons shall be managed within an ethical context which recognises the obligation to treat all prisoners with humanity and with respect for the inherent dignity of the human person.

72.2 Staff shall manifest a clear sense of purpose of the prison system. Management shall provide leadership on how the purpose shall best be achieved.

72.3 The duties of staff go beyond those required of mere guards and shall take account of the need to facilitate the reintegration of prisoners into society after their sentence has been completed through a programme of positive care and assistance.

72.4 Staff shall operate to high professional and personal standards.

73. Prison authorities shall give high priority to observance of the rules concerning staff.

74. Particular attention shall be paid to the management of the relationship between first line prison staff and the prisoners under their care.

75. Staff shall at all times conduct themselves and perform their duties in such a manner as to influence the prisoners by good example and to command their respect.

#### *Selection of prison staff*

76. Staff shall be carefully selected, properly trained, both at the outset and on a continuing basis, paid as professional workers and have a status that civil society can respect.

77. When selecting new staff the prison authorities shall place great emphasis on the need for integrity, humanity, professional capacity and personal suitability for the complex work that they will be required to do.

78. Professional prison staff shall normally be appointed on a permanent basis and have public service status with security of employment, subject only to good conduct, efficiency, good physical and mental health and an adequate standard of education.

79.1 Salaries shall be adequate to attract and retain suitable staff.

79.2 Benefits and conditions of employment shall reflect the exacting nature of the work as part of a law enforcement agency.

80. Whenever it is necessary to employ part-time staff, these criteria shall apply to them as far as that is appropriate.

#### *Training of prison staff*

81.1 Before entering into duty, staff shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests.

81.2 Management shall ensure that, throughout their career, all staff maintain and improve their knowledge and professional capacity by attending courses of in-service training and development to be organised at suitable intervals.

81.3 Staff who are to work with specific groups of prisoners, such as foreign nationals, women, juveniles or mentally ill prisoners, etc., shall be given specific training for their specialised work.

81.4 The training of all staff shall include instruction in the international and regional human rights instruments and standards, especially the European Convention on Human Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as well as in the application of the European Prison Rules.

#### *Prison management*

82. Personnel shall be selected and appointed on an equal basis, without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

83. The prison authorities shall introduce systems of organisation and management that:

- a. ensure that prisons are managed to consistently high standards that are in line with international and regional human rights instruments; and
- b. facilitate good communication between prisons and between the different categories of staff in individual prisons and proper co-ordination of all the departments, both inside and outside the prison, that provide services for prisoners, in particular with respect to the care and reintegration of prisoners.

84.1 Every prison shall have a director, who shall be adequately qualified for that post by character, administrative ability, suitable professional training and experience.

84.2 Directors shall be appointed on a full-time basis and shall devote their whole time to their official duties.

84.3 The prison authorities shall ensure that every prison is at all times in the full charge of the director, the deputy director or other authorised official.

84.4 If a director is responsible for more than one prison there shall always be in addition an official in charge of each of them.

85. Men and women shall be represented in a balanced manner on the prison staff.

86. There shall be arrangements for management to consult with staff as a body on general matters and, especially, on matters to do with their conditions of employment.

87.1 Arrangements shall be in place to encourage the best possible communication among management, other staff, outside agencies and prisoners.

87.2 The director, management and the majority of the other staff of the prison shall be able to speak the language of the greatest number of prisoners, or a language understood by the majority of them.

88. Where privately managed prisons exist, all the European Prison Rules shall apply.

#### *Specialist staff*

89.1 As far as possible, the staff shall include a sufficient number of specialists such as psychiatrists, psychologists, social and welfare workers, teachers and vocational, physical education and sports instructors.

89.2 Wherever possible, suitable part-time and voluntary workers shall be encouraged to contribute to activities with prisoners.

#### *Public awareness*

90.1 The prison authorities shall continually inform the public about the purpose of the prison system and the work carried out by prison staff in order to encourage better public understanding of the role of the prison in society.

90.2 The prison authorities should encourage members of the public to volunteer to provide services in prison where appropriate.

## *Research and evaluation*

91. The prison authorities shall support a programme of research and evaluation about the purpose of the prison, its role in a democratic society and the extent to which it is fulfilling its purpose.

## Part VI

### *Inspection and monitoring*

#### *Governmental inspection*

92. Prisons shall be inspected regularly by a governmental agency in order to assess whether they are administered in accordance with the requirements of national and international law, and the provisions of these rules.

#### *Independent monitoring*

93.1 The conditions of detention and the treatment of prisoners shall be monitored by an independent body or bodies whose findings shall be made public.

93.2 Such independent monitoring body or bodies shall be encouraged to co-operate with those international agencies that are legally entitled to visit prisons.

## Part VII

### *Untried prisoners*

#### *Status as untried prisoners*

94.1 For the purposes of these rules, untried prisoners are prisoners who have been remanded in custody by a judicial authority prior to trial, conviction or sentence.

94.2 A state may elect to regard prisoners who have been convicted and sentenced as untried prisoners if their appeals have not been disposed of finally.

#### *Approach regarding untried prisoners*

95.1 The regime for untried prisoners may not be influenced by the possibility that they may be convicted of a criminal offence in the future.

95.2 The rules in this part provide additional safeguards for untried prisoners.

95.3 In dealing with untried prisoners prison authorities shall be guided by the rules that apply to all prisoners and allow untried prisoners to participate in various activities for which these rules provide.

#### *Accommodation*

96. As far as possible untried prisoners shall be given the option of accommodation in single cells, unless they may benefit from sharing accommodation with other untried prisoners or

unless a court has made a specific order on how a specific untried prisoner should be accommodated.

### *Clothing*

97.1 Untried prisoners shall be allowed to wear their own clothing if it is suitable for wearing in prison.

97.2 Untried prisoners who do not have suitable clothing of their own shall be provided with clothing that shall not be the same as any uniforms that may be worn by sentenced prisoners.

### *Legal advice*

98.1 Untried prisoners shall be informed explicitly of their right to legal advice.

98.2 All necessary facilities shall be provided to assist untried prisoners to prepare their defence and to meet with their legal representatives.

### *Contact with the outside world*

99. Unless there is a specific prohibition for a specified period by a judicial authority in an individual case, untried prisoners:

- a. shall receive visits and be allowed to communicate with family and other persons in the same way as convicted prisoners;
- b. may receive additional visits and have additional access to other forms of communication; and
- c. shall have access to books, newspapers and other news media.

### *Work*

100.1 Untried prisoners shall be offered the opportunity to work but shall not be required to work.

100.2 If untried prisoners elect to work, all the provisions of Rule 26 shall apply to them, including those relating to remuneration.

### *Access to the regime for sentenced prisoners*

101. If an untried prisoner requests to be allowed to follow the regime for sentenced prisoners, the prison authorities shall as far as possible accede to this request.

## Part VIII

### *Sentenced prisoners*

#### *Objective of the regime for sentenced prisoners*

102.1 In addition to the rules that apply to all prisoners, the regime for sentenced prisoners shall be designed to enable them to lead a responsible and crime-free life.



102.2 Imprisonment is by the deprivation of liberty a punishment in itself and therefore the regime for sentenced prisoners shall not aggravate the suffering inherent in imprisonment.

*Implementation of the regime for sentenced prisoners*

103.1 The regime for sentenced prisoners shall commence as soon as someone has been admitted to prison with the status of a sentenced prisoner, unless it has commenced before.

103.2 As soon as possible after such admission, reports shall be drawn up for sentenced prisoners about their personal situations, the proposed sentence plans for each of them and the strategy for preparation for their release.

103.3 Sentenced prisoners shall be encouraged to participate in drawing up their individual sentence plans.

103.4 Such plans shall as far as is practicable include:

- a. work;
- b. education;
- c. other activities; and
- d. preparation for release.

103.5 Social work, medical and psychological care may also be included in the regimes for sentenced prisoners.

103.6 There shall be a system of prison leave as an integral part of the overall regime for sentenced prisoners.

103.7 Prisoners who consent to do so may be involved in a programme of restorative justice and in making reparation for their offences.

103.8 Particular attention shall be paid to providing appropriate sentence plans and regimes for life sentenced and other long-term prisoners.

*Organisational aspects of imprisoning sentenced prisoners*

104.1 As far as possible, and subject to the requirements of Rule 17, separate prisons or separate sections of a prison shall be used to facilitate the management of different regimes for specific categories of prisoners.

104.2 There shall be procedures for establishing and regularly reviewing individual sentence plans for prisoners after the consideration of appropriate reports, full consultations among the relevant staff and with the prisoners concerned who shall be involved as far as is practicable.

104.3 Such reports shall always include reports by the staff in direct charge of the prisoner concerned.

### *Work by sentenced prisoners*

105.1 A systematic programme of work shall seek to contribute to meeting the objective of the regime for sentenced prisoners.

105.2 Sentenced prisoners who have not reached the normal retirement age may be required to work, subject to their physical and mental fitness as determined by the medical practitioner.

105.3 If sentenced prisoners are required to work, the conditions of such work shall conform to the standards and controls which apply in the outside community.

105.4 When sentenced prisoners take part in education or other programmes during working hours as part of their planned regime they shall be remunerated as if they had been working.

105.5 In the case of sentenced prisoners part of their remuneration or savings from this may be used for reparative purposes if ordered by a court or if the prisoner concerned consents.

### *Education of sentenced prisoners*

106.1 A systematic programme of education, including skills training, with the objective of improving prisoners' overall level of education as well as their prospects of leading a responsible and crime-free life, shall be a key part of regimes for sentenced prisoners.

106.2 All sentenced prisoners shall be encouraged to take part in educational and training programmes.

106.3 Educational programmes for sentenced prisoners shall be tailored to the projected length of their stay in prison.

### *Release of sentenced prisoners*

107.1 Sentenced prisoners shall be assisted in good time prior to release by procedures and special programmes enabling them to make the transition from life in prison to a law-abiding life in the community.

107.2 In the case of those prisoners with longer sentences in particular, steps shall be taken to ensure a gradual return to life in free society.

107.3 This aim may be achieved by a pre-release programme in prison or by partial or conditional release under supervision combined with effective social support.

107.4 Prison authorities shall work closely with services and agencies that supervise and assist released prisoners to enable all sentenced prisoners to re-establish themselves in the community, in particular with regard to family life and employment.

107.5 Representatives of such social services or agencies shall be afforded all necessary access to the prison and to prisoners to allow them to assist with preparations for release and the planning of after-care programmes.

Part IX

*Updating the Rules*

108. The European Prison Rules shall be updated regularly.

Recommendation Rec (2003) 23 of the Committee of Ministers to member States on the management by prison administrations of life sentence and other long-term prisoners

*(Adopted by the Committee of Ministers on 9 October 2003, at the 855th meeting of the Ministers' Deputies)*

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

Considering that it is in the Council of Europe member States' interest to establish common principles regarding the enforcement of custodial sentences in order to strengthen international co-operation in this field;

Considering that the enforcement of custodial sentences requires striking a balance between the objectives of ensuring security, good order and discipline in penal institutions, on the one hand, and providing prisoners with decent living conditions, active regimes and constructive preparations for release, on the other;

Considering that prisoners should be managed in ways that are adapted to individual circumstances and consistent with principles of justice, equity and fairness;

Referring to the resolution on the implementation of long-term sentences adopted in October 2001 by the European Ministers of Justice during their 24th Conference held in Moscow;

Considering that the abolition of the death penalty in member States has resulted in an increase in the use of life sentences;

Concerned about the increase, in many countries, in the number and length of long-term sentences, which contribute to prison overcrowding and may impair the effective and humane management of prisoners;

Bearing in mind that implementation of the principles contained in Recommendation N° R (99) 22 concerning prison overcrowding and prison population inflation, as well as the provision to prison administrations of adequate resources and staff, would reduce to an important extent the management problems related to long-term imprisonment and allow for safer and better conditions of detention;

Considering that legislation and practice concerning the management of life sentence and other long-term prisoners should comply with the requirements embodied in the European Convention on Human Rights and the case-law of the organs entrusted with its application;

Bearing in mind the relevance of the principles contained in previous recommendations and in particular:

- Recommendation N° R (82) 16 on prison leave;
- Recommendation N° R (82) 17 concerning custody and treatment of dangerous prisoners;
- Recommendation N° R (84) 12 concerning foreign prisoners;
- Recommendation N° R (87) 3 on the European Prison Rules;
- Recommendation N° R (87) 20 on social reactions to juvenile delinquency;
- Recommendation N° R (89) 12 on education in prison;

- Recommendation N° R (92) 16 on the European rules on community sanctions and measures;
- 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 (2000) 22 on improving the implementation of the European Rules on community sanctions and measures;
- Recommendation Rec (2003) 22 on conditional release,

Recommends that governments of member States:

- be guided in their legislation, policies and practice on the management of life sentence and other long-term prisoners by the principles contained in the appendix to this recommendation;
- ensure that this recommendation and the accompanying report are disseminated as widely as possible.

#### *APPENDIX TO RECOMMENDATION REC (2003) 23*

##### Definition of life sentence and long-term prisoners

1. For the purposes of this recommendation, a life sentence prisoner is one serving a sentence of life imprisonment. A long-term prisoner is one serving a prison sentence or sentences totalling five years or more.

##### General objectives

2. The aims of the management of life sentence and other long-term prisoners should be:
- to ensure that prisons are safe and secure places for these prisoners and for all those who work with or visit them;
  - to counteract the damaging effects of life and long-term imprisonment;
  - to increase and improve the possibilities for these prisoners to be successfully resettled in society and to lead a law-abiding life following their release.

##### General principles for the management of life sentence and other long-term prisoners

3. Consideration should be given to the diversity of personal characteristics to be found among life sentence and long-term prisoners and account taken of them to make individual plans for the implementation of the sentence (individualisation principle).

4. Prison life should be arranged so as to approximate as closely as possible to the realities of life in the community (normalisation principle).

5. Prisoners should be given opportunities to exercise personal responsibility in daily prison life (responsibility principle).

6. A clear distinction should be made between any risks posed by life sentence and other long-term prisoners to the external community, to themselves, to other prisoners and to those working in or visiting the prison (security and safety principle).

7. Consideration should be given to not segregating life sentence and other long-term prisoners on the sole ground of their sentence (non-segregation principle).

8. Individual planning for the management of the prisoner's life or long-term sentence should aim at securing progressive movement through the prison system (progression principle).

### Sentence planning

9. In order to achieve the general objectives and comply with the principles mentioned above, comprehensive sentence plans should be developed for each individual prisoner. These plans should be prepared and developed as far as possible with the active participation of the prisoner and, particularly towards the end of a detention period, in close co-operation with post-release supervision and other relevant authorities.

10. Sentence plans should include a risk and needs assessment of each prisoner and be used to provide a systematic approach to:

- the initial allocation of the prisoner;
- progressive movement through the prison system from more to less restrictive conditions with, ideally, a final phase spent under open conditions, preferably in the community;
- participation in work, education, training and other activities that provide for a purposeful use of time spent in prison and increase the chances of a successful resettlement after release;
- interventions and participation in programmes designed to address risks and needs so as to reduce disruptive behaviour in prison and re-offending after release;
- participation in leisure and other activities to prevent or counteract the damaging effects of long terms of imprisonment;
- conditions and supervision measures conducive to a law-abiding life and adjustment in the community after conditional release.

11. Sentence planning should start as early as possible following entry into prison, be reviewed at regular intervals and modified as necessary.

### Risk and needs assessments

12. A careful appraisal should be made by the prison administration to determine whether individual prisoners pose risks to themselves and others. The range of risks assessed should include harm to self, to other prisoners, to persons working in or visiting the prison, or to the community, and the likelihood of escape, or of committing another serious offence on prison leave or release.

13. Needs assessments should seek to identify the personal needs and characteristics associated with the prisoner's offence(s) and harmful behaviour ("criminogenic needs"). To the

greatest extent possible, criminogenic needs should be addressed so as to reduce offences and harmful behaviour by prisoners both during detention and after release.

14. The initial risk and needs assessment should be conducted by appropriately trained staff and preferably take place in an assessment centre.

15. *a.* Use should be made of modern risk and needs assessment instruments as guides to decisions on the implementation of life and long-term sentences.

*b.* Since risk and needs assessment instruments always contain a margin of error, they should never be the sole method used to inform decision-making but should be supplemented by other forms of assessment.

*c.* All risk and needs assessment instruments should be evaluated so that their strengths and weaknesses become known.

16. Since neither dangerousness nor criminogenic needs are intrinsically stable characteristics, risk and needs assessments should be repeated at intervals by appropriately trained staff to meet the requirements of sentence planning or when otherwise necessary.

17. Risk and needs assessments should always be related to the management of risks and needs. These assessments should therefore inform the choice of appropriate interventions or modifications of those already in place.

#### Security and safety in prison

18. *a.* The maintenance of control in prison should be based on the use of dynamic security, that is the development by staff of positive relationships with prisoners based on firmness and fairness, in combination with an understanding of their personal situation and any risk posed by individual prisoners.

*b.* Where technical devices, such as alarms and closed circuit television are used, these should always be an adjunct to dynamic security methods.

*c.* Within the limits necessary for security, the routine carrying of weapons, including firearms and truncheons, by persons in contact with prisoners should be prohibited within the prison perimeter.

19. *a.* Prison regimes should be organised so as to allow for flexible reactions to changing security and safety requirements.

*b.* Allocation to particular prisons or wings of prisons should be based on comprehensive risk and needs assessments and the importance of placing prisoners in environments that, by taking account of their needs, are likely to reduce any risk posed.

*c.* Particular risks and exceptional circumstances, including requests by prisoners themselves, may necessitate some form of segregation of individual prisoners. Intensive efforts should be made to avoid segregation or, if it must be used, to reduce the period of its use.

20. *a.* Maximum security units should be used only as a last resort and allocation to such units should be regularly reviewed.

*b.* Within maximum security units, regimes should distinguish between the handling of prisoners who pose an exceptional risk of escape or danger should they succeed, and the handling of those posing risks to other prisoners and/or to those working in or visiting the prison.

*c.* With due regard to prisoner behaviour and security requirements, regimes in maximum security units should aim to have a relaxed atmosphere, allow association between prisoners, freedom of movement within the unit and offer a range of activities.

*d.* The management of dangerous prisoners should be guided by the principles embodied in Recommendation N° R (82) 17 concerning custody and treatment of dangerous prisoners.

#### Counteracting the damaging effects of life and other long-term sentences

21. In order to prevent and counteract the damaging effects of life and long-term sentences, prison administrations should seek:

- to ensure that opportunities are provided at the start of the sentence, and later as necessary, to explain to prisoners the prison rules and routine and their duties and rights;
- to provide prisoners with opportunities to make personal choices in as many of the affairs of daily prison life as possible;
- to offer adequate material conditions and opportunities for physical, intellectual and emotional stimulation;
- to develop a pleasant and user-friendly design of prison premises, furniture and decoration.

22. Special efforts should be made to prevent the breakdown of family ties. To this end:

- prisoners should be allocated, to the greatest extent possible, to prisons situated in proximity to their families or close relatives;
- letters, telephone calls and visits should be allowed with the maximum possible frequency and privacy. If such provision endangers safety or security, or if justified by risk assessment, these contacts may be accompanied by reasonable security measures, such as monitoring of correspondence and searches before and after visits.

23. *a.* Other contacts with the external world such as access to newspapers, radio and television and external visitors should also be fostered.

*b.* Particular efforts should be made to allow for the granting of various forms of prison leave, if necessary under escort, taking into account the principles set out in Recommendation N° R (82) 16 on prison leave.

24. Prisoners should have access to appropriate counselling, help and support in order:

- to come to terms with their offences, the harm done to victims and any associated guilt feelings;
- to reduce the risk of suicide, particularly directly after conviction;



- to counteract damaging effects of long-term detention, such as institutionalisation, passivity, lowered self-esteem and depression.

#### Special categories of life sentence and other long-term prisoners

25. Prison authorities should be mindful of the possibilities of repatriation for foreign prisoners as afforded by the European Convention on the Transfer of Sentenced Persons or bilateral arrangements with the relevant country. Foreign prisoners should be informed of these possibilities. Where repatriation is not possible, prison management and practice should be guided by the principles of Recommendation N° R (84) 12 concerning foreign prisoners.

26. Efforts should be made to protect vulnerable prisoners from threats and maltreatment by other prisoners. If protective segregation from other prisoners is necessary, complete isolation should be avoided and a safe and supportive environment provided.

27. Action should be taken to allow for an early and specialist diagnosis of prisoners who are, or who become, mentally disturbed and to provide them with adequate treatment. The guidance given in Recommendation N° R (98) 7 concerning the ethical and organisational aspects of health care in prison should be followed.

28. Elderly prisoners should be assisted to maintain good standards of physical and mental health. To this end, the prison administration should provide:

- access to appropriate diagnostic and remedial services;
- opportunities for work, exercise and other activities that are suited to the individual prisoner's physical and mental capacities;
- dietetically appropriate meals, taking into account special dietary needs.

29. *a.* In order to allow terminally ill prisoners to die with dignity, consideration should be given to releasing them so that they may be cared for and die outside prison. In each case, the prison administration should make every effort to provide these prisoners and their families with appropriate support and care.

*b.* Appropriate help should also be given to assist these prisoners with any desired practical arrangements, for example, the making of a will, burial arrangements, etc.

30. *a.* Since women prisoners usually constitute a small minority of those serving long or life sentences, their individual sentence planning should be carefully considered so as to meet their specific needs.

*b.* Particular efforts for women prisoners should be made to:

- avoid social isolation by merging them as far as possible with the general population of women prisoners;
- give access to special services for women prisoners who have been subject to physical, mental and sexual abuse.

c. Mothers serving life or other long sentences should not be denied the opportunity of having their young children with them solely because of their sentence. Where young children remain with their mother, the prison administration should provide appropriate conditions.

31. Special management care and attention should be given to the particular problems posed by prisoners who are likely to spend their natural life in prison. In particular, their sentence planning should be sufficiently dynamic and allow them to benefit from participation in meaningful activities and adequate programmes including interventions and psychosocial services designed to help them cope with their sentence.

32. a. Juvenile prisoners with long sentences of imprisonment should only be held in institutions or units designed for their special needs.

b. Regimes and sentence planning for these juveniles should be guided by the relevant principles set out in the United Nations Convention on the Rights of the Child and in Recommendation N° R (87) 20 on social reactions to juvenile delinquency, and pay particular attention to:

- the provision of adequate education and schooling;
- the need to maintain close contacts with their parents and family;
- the provision of adequate support and guidance in their emotional development;
- the availability of appropriate sport and leisure activities;
- the careful planning of the transition of a juvenile to an adult regime taking due account of the juvenile's personal development.

#### Managing reintegration into society for life sentence and other long-term prisoners

33. In order to enable life sentence and other long-term prisoners to overcome the particular problem of moving from lengthy incarceration to a law-abiding life in the community, their release should be prepared well in advance and take particular account of the following:

- the need for specific pre-release and post-release plans which address relevant risks and needs;
- due consideration of the possibility of achieving release and the continuation post-release of any programmes, interventions or treatment undertaken by prisoners during detention;
- the need to achieve close collaboration between the prison administration and post-release supervising authorities, social and medical services.

34. The granting and implementation of conditional release for life sentence and other long-term prisoners should be guided by the principles set out in Recommendation Rec (2003) 22 on conditional release.

#### Recalled prisoners

35. If, following revocation of conditional release, a life sentence or long-term prisoner is returned to prison, the principles enumerated in the foregoing should continue to be followed.

In particular, a further assessment of risk and criminogenic needs should be undertaken and used for choosing a suitable allocation and further interventions, with the aim of preparing the prisoner for early reconsideration for release and resettlement in the community.

## Staff

36. In general, the recruitment, selection, training, conditions of work and mobility, as well as the professional conduct of staff dealing with life sentence and other long-term prisoners, should be guided by the principles contained in Recommendation N° R (97) 12 on staff concerned with the implementation of sanctions and measures.

37. *a.* Since staff working with life sentence and long-term prisoners need to deal with the specific difficulties posed by these prisoners, they should be given the special training necessary for their duties.

*b.* Staff should, in particular, be trained to have a full understanding of dynamic security so that they can use this approach to security in the performance of their duties.

*c.* Senior, specialist and supervisory staff should, in addition, be trained to supervise and support the basic grade staff in the use of dynamic security.

38. Given the increased risk of manipulation of staff by prisoners serving long sentences, mobility and rotation of staff should be encouraged.

39. Regular meetings and discussions should be arranged between the different staff categories in order to achieve and maintain a proper balance between a sympathetic understanding of prisoner problems and firmness of control.

## Research

40. Research on the effects of life and long sentences should be undertaken with special reference to the part played by factors that inhibit deleterious effects and promote a constructive adaptation to prison life.

41. Evaluative research should be conducted and published on the effectiveness of programmes designed to improve post-release adjustment in the community.

Recommendation Rec (2003) 22 of the Committee of Ministers to member States on conditional release (parole)

*(Adopted by the Committee of Ministers on 24 September 2003, at the 853rd meeting of the Ministers' Deputies)*

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

Considering that it is in the Council of Europe member States' interest to establish common principles regarding the enforcement of custodial sentences in order to strengthen international co-operation in this field;

Recognising that conditional release is one of the most effective and constructive means of preventing reoffending and promoting resettlement, providing the prisoner with planned, assisted and supervised reintegration into the community;

Considering that it should be used in ways that are adapted to individual circumstances and consistent with the principles of justice and fairness;

Considering that the financial cost of imprisonment places a severe burden on society and that research has shown that detention often has adverse effects and fails to rehabilitate offenders;

Considering, therefore, that it is desirable to reduce the length of prison sentences as much as possible and that conditional release before the full sentence has been served is an important means to that end;

Recognising that conditional release measures require the support of political leaders, administrative officials, judges, public prosecutors, advocates and the public, who therefore need a detailed explanation as to the reasons for adapting prison sentences;

Considering that legislation and the practice of conditional release should comply with the fundamental principles of democratic states governed by the rule of law, whose primary objective is to guarantee human rights in accordance with the European Convention on Human Rights and the case-law of the organs entrusted with its application;

Bearing in mind the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (ETS N° 51);

Recognising the importance of:

- Resolution (65) 1 on suspended sentence, probation and other alternatives to imprisonment;
- Resolution (70) 1 on the practical organisation of measures for the supervision and after-care of conditionally sentenced or conditionally released offenders;
- Resolution (76) 2 on the treatment of long-term prisoners;
- Resolution (76) 10 on certain alternative penal measures to imprisonment;
- Recommendation No R (82) 16 on prison leave;
- Recommendation N° R (87) 3 on the European Prison Rules;
- Recommendation No R (89) 12 on education in prison;

- Recommendation N° R (92) 16 on the European rules on community sanctions and measures;
- Recommendation N° R (92) 17 concerning consistency in sentencing;
- Recommendation N° R (97) 12 on staff concerned with the implementation of sanctions and measures;
- Recommendation N° R (99) 22 concerning prison overcrowding and prison population inflation;
- Recommendation Rec (2000) 22 on improving the implementation of the European Rules on community sanctions and measures,

Recommends that governments of member States:

1. introduce conditional release in their legislation if it does not already provide for this measure;
2. be guided in their legislation, policies and practice on conditional release by the principles contained in the appendix to this recommendation;
3. ensure that this recommendation on conditional release and its explanatory memorandum are disseminated as widely as possible.

#### *APPENDIX TO RECOMMENDATION REC (2003) 22*

##### I. Definition of conditional release

1. For the purposes of this recommendation, conditional release means the early release of sentenced prisoners under individualised post-release conditions. Amnesties and pardons are not included in this definition.
2. Conditional release is a community measure. Its introduction into legislation and application to individual cases are covered by the European rules on community sanctions and measures contained in Recommendation N° R (92) 16, as well as by Recommendation Rec (2000) 22 on improving the implementation of the European rules on community sanctions and measures.

##### II. General principles

3. Conditional release should aim at assisting prisoners to make a transition from life in prison to a law-abiding life in the community through post-release conditions and supervision that promote this end and contribute to public safety and the reduction of crime in the community.
  - 4.a. In order to reduce the harmful effects of imprisonment and to promote the resettlement of prisoners under conditions that seek to guarantee safety of the outside community, the law should make conditional release available to all sentenced prisoners, including life-sentence prisoners.
  - 4.b. If prison sentences are so short that conditional release is not possible, other ways of achieving these aims should be looked for.
5. When starting to serve their sentence, prisoners should know either when they become eligible for release by virtue of having served a minimum period (defined in absolute terms

and/or by reference to a proportion of the sentence) and the criteria that will be applied to determine whether they will be granted release ("discretionary release system") or when they become entitled to release as of right by virtue of having served a fixed period defined in absolute terms and/or by reference to a proportion of the sentence ("mandatory release system").

6. The minimum or fixed period should not be so long that the purpose of conditional release cannot be achieved.

7. Consideration should be given to the savings of resources that can be made by applying the mandatory release system in respect of sentences where a negative individualised assessment would only make a small difference to the date of release.

8. In order to reduce the risk of recidivism of conditionally released prisoners, it should be possible to impose on them individualised conditions such as:

- the payment of compensation or the making of reparation to victims;
- entering into treatment for drug or alcohol misuse or any other treatable condition manifestly associated with the commission of crime;
- working or following some other approved occupational activity, for instance, education or vocational training;
- participation in personal development programmes;
- a prohibition on residing in, or visiting, certain places.

9. In principle, conditional release should also be accompanied by supervision consisting of help and control measures. The nature, duration and intensity of supervision should be adapted to each individual case. Adjustments should be possible throughout the period of conditional release.

10. Conditions or supervision measures should be imposed for a period of time that is not out of proportion to the part of the prison sentence that has not been served.

11. Conditions and supervision measures of indeterminate duration should only be applied when this is absolutely necessary for the protection of society and in accordance with the safeguards laid down in Rule 5 of the European rules on community sanctions and measures as revised in Recommendation Rec (2000) 22.

### III. Preparation for conditional release

12. The preparation for conditional release should be organised in close collaboration with all relevant personnel working in prison and those involved in post-release supervision, and be concluded before the end of the minimum or fixed period.

13. Prison services should ensure that prisoners can participate in appropriate pre-release programmes and are encouraged to take part in educational and training courses that prepare them for life in the community. Specific modalities for the enforcement of prison sentences such as semi-liberty, open regimes or extra-mural placements, should be used as much as possible with a view to preparing the prisoners' resettlement in the community.

14. The preparation for conditional release should also include the possibility of the prisoners' maintaining, establishing or re-establishing links with their family and close relations, and of forging contacts with services, organisations and voluntary associations that can assist conditionally released prisoners in adjusting to life in the community. To this end, various forms of prison leave should be granted.

15. Early consideration of appropriate post-release conditions and supervision measures should be encouraged. The possible conditions, the help that can be given, the requirements of control and the possible consequences of failure should be carefully explained to, and discussed with, the prisoners.

#### IV. Granting of conditional release

##### *Discretionary release system*

16. The minimum period that prisoners have to serve to become eligible for conditional release should be fixed in accordance with the law.

17. The relevant authorities should initiate the necessary procedure to enable a decision on conditional release to be taken as soon as the prisoner has served the minimum period.

18. The criteria that prisoners have to fulfil in order to be conditionally released should be clear and explicit. They should also be realistic in the sense that they should take into account the prisoners' personalities and social and economic circumstances as well as the availability of resettlement programmes.

19. The lack of possibilities for work on release should not constitute a ground for refusing or postponing conditional release. Efforts should be made to find other forms of occupation. The absence of regular accommodation should not constitute a ground for refusing or postponing conditional release and in such cases temporary accommodation should be arranged.

20. The criteria for granting conditional release should be applied so as to grant conditional release to all prisoners who are considered as meeting the minimum level of safeguards for becoming law-abiding citizens. It should be incumbent on the authorities to show that a prisoner has not fulfilled the criteria.

21. If the decision-making authority decides not to grant conditional release it should set a date for reconsidering the question. In any case, prisoners should be able to reapply to the decision-making authority as soon as their situation has changed to their advantage in a substantial manner.

##### *Mandatory release system*

22. The period that prisoners must serve in order to become entitled to release should be fixed by law.

23. Only in exceptional circumstances defined by law should it be possible to postpone release.

24. The decision to postpone release should set a new date for release.

## V. Imposition of conditions

25. When considering the conditions to be imposed and whether supervision is necessary, the decision-making authority should have at its disposal reports, including oral statements, from personnel working in prison who are familiar with the prisoners and their personal circumstances. Professionals involved in post-release supervision or other persons knowledgeable about the prisoners' social circumstances should also make information available.

26. The decision-making authority should make sure that prisoners understand the imposed conditions, the help that can be given, the requirements of control and the possible consequences of failure to comply with the conditions.

## VI. Implementation of conditional release

27. If the implementation of conditional release has to be postponed, prisoners awaiting release should be kept in conditions as close as possible to those they would be likely to enjoy in the community.

28. The implementation of conditional release and supervision measures should be the responsibility of an implementing authority in compliance with Rules 7, 8 and 11 of the European rules on community sanctions and measures.

29. Implementation should be organised and dealt with in compliance with Rules 37 to 75 of the European Rules on community sanctions and measures, and with the basic requirements for effectiveness set out in the relevant provisions of principles 9 to 13 of Recommendation Rec (2000) 22 on improving the implementation of the European rules on community sanctions and measures.

## VII. Failure to comply with imposed conditions

30. Minor failures to observe imposed conditions should be dealt with by the implementing authority by way of advice or warning. Any significant failure should be promptly reported to the authority deciding on possible revocation. This authority should, however, consider whether further advice, a further warning, stricter conditions or temporary revocation would constitute a sufficient penalty.

31. In general, the failure to observe imposed conditions should be dealt with in accordance with Rule 85 of the European rules on community sanctions and measures as well as with the remaining relevant provisions of Chapter X of the rules.

## VIII. Procedural safeguards

32. Decisions on granting, postponing or revoking conditional release, as well as on imposing or modifying conditions and measures attached to it, should be taken by authorities established by law in accordance with procedures covered by the following safeguards:

- a. convicted persons should have the right to be heard in person and to be assisted according to the law;
- b. the decision-making authority should give careful consideration to any elements, including statements, presented by convicted persons in support of their case;



- c. convicted persons should have adequate access to their file;
  - d. decisions should state the underlying reasons and be notified in writing.
33. Convicted persons should be able to make a complaint to a higher independent and impartial decision-making authority established by law against the substance of the decision as well as against non-respect of the procedural guarantees.
34. Complaints procedures should also be available concerning the implementation of conditional release.
35. All complaints procedures should comply with the guarantees set out in Rules 13 to 19 of the European rules on community sanctions and measures.
36. Nothing in paragraphs 32 to 35 should be construed as limiting or derogating from any of the rights that may be guaranteed in this connection by the European Convention on Human Rights.

#### IX. Methods to improve decision-making

37. The use and development of reliable risk and needs assessment instruments which would, in conjunction with other methods, assist decision-making should be encouraged.
38. Information sessions and/or training programmes should be arranged for decision-makers, with contributions from specialists in law and social sciences, and all involved in the resettlement of conditionally released prisoners.
39. Steps should be taken to ensure a reasonable degree of consistency in decision-making.

#### X. Information and consultation on conditional release

40. Politicians, judicial authorities, decision-making and implementing authorities, community leaders, associations providing help to victims and to prisoners, as well as university teachers and researchers interested in the subject should receive information and be consulted on the functioning of conditional release, and on the introduction of new legislation or practice in this field.
41. Decision-making authorities should receive information about the numbers of prisoners to whom conditional release has been applied successfully and unsuccessfully as well as on the circumstances of success or failure.
42. Media and other campaigns should be organised to keep the general public informed on the functioning and new developments in the use of conditional release and its role within the criminal justice system. Such information should be made speedily available in the event of any dramatic and publicised failure occurring during a prisoner's conditional release period. Since such events tend to capture media interest, the purpose and positive effects of conditional release should also be emphasised.

#### XI. Research and statistics

43. In order to obtain more knowledge about the appropriateness of existing conditional release systems and their further development, evaluation should be carried out and statistics

should be compiled to provide information about the functioning of these systems and their effectiveness in achieving the basic aims of conditional release.

44. In addition to the evaluations recommended above, research into the functioning of conditional release systems should be encouraged. Such research should include the views, attitudes and perceptions on conditional release of judicial and decision-making authorities, implementing authorities, victims, members of the public and prisoners. Other aspects that should be considered include whether conditional release is cost-effective, whether it produces a reduction in reoffending rates, the extent to which conditionally released prisoners adjust satisfactorily to life in the community and the impact the development of a conditional release scheme might have on the imposition of sanctions and measures, and the enforcement of sentences. The nature of release preparation programmes should also be subject to research scrutiny.

45. Statistics should be kept on such matters as the number of prisoners granted conditional release in relation to eligibility, the length of the sentences and the offences involved, the proportion of time served before the granting of conditional release, the number of revocations, reconviction rates and the criminal history and socio-demographic background of conditionally released prisoners.

Recommendation N° R (99) 22 of the Committee of Ministers to member States concerning Prison Overcrowding and Prison Population Inflation

*(Adopted by the Committee of Ministers on 30 September 1999, at the 681st meeting of the Ministers' Deputies)*

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

Considering that prison overcrowding and prison population growth represent a major challenge to prison administrations and the criminal justice system as a whole, both in terms of human rights and of the efficient management of penal institutions;

Considering that the efficient management of the prison population is contingent on such matters as the overall crime situation, priorities in crime control, the range of penalties available on the law books, the severity of the sentences imposed, the frequency of use of community sanctions and measures, the use of pre-trial detention, the effectiveness and efficiency of criminal justice agencies and not least public attitudes towards crime and punishment;

Affirming that measures aimed at combating prison overcrowding and reducing the size of the prison population need to be embedded in a coherent and rational crime policy directed towards the prevention of crime and criminal behaviour, effective law enforcement, public safety and protection, the individualisation of sanctions and measures and the social reintegration of offenders;

Considering that such measures should conform to the basic principles of democratic States governed by the rule of law and subject to the paramount aim of guaranteeing human rights, in conformity with the European Convention on Human Rights and the case-law of the organs entrusted with its application;

Recognising moreover that such measures require support by political and administrative leaders, judges, prosecutors and the general public, as well as the provision of balanced information on the functions of punishment, on the relative effectiveness of custodial and non-custodial sanctions and measures and on the reality of prisons;

Bearing in mind the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

Recognising the importance of Recommendation N° R (80) 11 concerning custody pending trial, Recommendation N° R (87) 3 on the European Prison Rules, Recommendation N° R (87) 18 concerning the simplification of criminal justice, Recommendation N° R (92) 16 on the European Rules on community sanctions and measures and Recommendation N° R (92) 17 concerning consistency in sentencing,

Recommends that governments of member States:

- take all appropriate measures, when reviewing their legislation and practice in relation to prison overcrowding and prison population inflation, to apply the principles set out in the Appendix to this Recommendation;

- encourage the widest possible dissemination of the Recommendation and the report on prison overcrowding and prison population inflation elaborated by the European Committee on Crime Problems.

## *APPENDIX TO RECOMMENDATION N° R (99) 22*

### I. Basic principles

1. Deprivation of liberty should be regarded as a sanction or measure of last resort and should therefore be provided for only, where the seriousness of the offence would make any other sanction or measure clearly inadequate.
2. The extension of the prison estate should rather be an exceptional measure, as it is generally unlikely to offer a lasting solution to the problem of overcrowding. Countries whose prison capacity may be sufficient in overall terms but poorly adapted to local needs should try to achieve a more rational distribution of prison capacity.
3. Provision should be made for an appropriate array of community sanctions and measures, possibly graded in terms of relative severity; prosecutors and judges should be prompted to use them as widely as possible.
4. Member states should consider the possibility of decriminalising certain types of offence or reclassifying them so that they do not attract penalties entailing the deprivation of liberty.
5. In order to devise a coherent strategy against prison overcrowding and prison population inflation a detailed analysis of the main contributing factors should be carried out, addressing in particular such matters as the types of offence which carry long prison sentences, priorities in crime control, public attitudes and concerns and existing sentencing practices.

### II. Coping with a shortage of prison places

6. In order to avoid excessive levels of overcrowding a maximum capacity for penal institutions should be set.
7. Where conditions of overcrowding occur, special emphasis should be placed on the precepts of human dignity, the commitment of prison administrations to apply humane and positive treatment, the full recognition of staff roles and effective modern management approaches. In conformity with the European Prison Rules, particular attention should be paid to the amount of space available to prisoners, to hygiene and sanitation, to the provision of sufficient and suitably prepared and presented food, to prisoners' health care and to the opportunity for outdoor exercise.
8. In order to counteract some of the negative consequences of prison overcrowding, contacts of inmates with their families should be facilitated to the extent possible and maximum use of support from the community should be made.
9. Specific modalities for the enforcement of custodial sentences, such as semi-liberty, open regimes, prison leave or extra-mural placements, should be used as much as possible with a view to contributing to the treatment and resettlement of prisoners, to maintaining their family and other community ties and to reducing the tension in penal institutions.

### III. Measures relating to the pre-trial stage

#### *Avoiding criminal proceedings - Reducing recourse to pre-trial detention*

10. Appropriate measures should be taken with a view to fully implementing the principles laid down in Recommendation N° R (87) 18 concerning the simplification of criminal justice; this would involve in particular that member States, while taking into account their own constitutional principles or legal tradition, resort to the principle of discretionary prosecution (or measures having the same purpose) and make use of simplified procedures and out-of-court settlements as alternatives to prosecution in suitable cases, in order to avoid full criminal proceedings.

11. The application of pre-trial detention and its length should be reduced to the minimum compatible with the interests of justice. To this effect, member States should ensure that their law and practice are in conformity with the relevant provisions of the European Convention on Human Rights and the case-law of its control organs, and be guided by the principles set out in Recommendation N° R (80) 11 concerning custody pending trial, in particular as regards the grounds on which pre-trial detention can be ordered.

12. The widest possible use should be made of alternatives to pre-trial detention, such as the requirement of the suspected offender to reside at a specified address, a restriction on leaving or entering a specified place without authorisation, the provision of bail or supervision and assistance by an agency specified by the judicial authority. In this connection attention should be paid to the possibilities for supervising a requirement to remain in a specified place through electronic surveillance devices.

13. In order to assist the efficient and humane use of pre-trial detention, adequate financial and human resources should be made available and appropriate procedural means and managerial techniques be developed, as necessary.

### IV. Measures relating to the trial stage

#### *The system of sanctions/measures - The length of the sentence*

14. Efforts should be made to reduce recourse to sentences involving long imprisonment, which place a heavy burden on the prison system, and to substitute community sanctions and measures for short custodial sentences.

15. In providing for community sanctions and measures which could be used instead of deprivation of liberty, consideration should be given to the following:

- suspension of the enforcement of a sentence to imprisonment with imposed conditions,
- probation as an independent sanction imposed without the pronouncement of a sentence to imprisonment,
- high intensity supervision,
- community service (i.e. unpaid work on behalf of the community),
- treatment orders / contract treatment for specific categories of offenders,

- victim-offender mediation / victim compensation,
- restrictions of the liberty of movement by means of, for example, curfew orders or electronic monitoring.

16. Community sanctions and measures should only be imposed in conformity with the guarantees and conditions laid down in the European Rules on Community Sanctions and Measures.

17. Combinations of custodial and non-custodial sanctions and measures should be introduced into legislation and practice, such as unsuspended custodial sentences, followed by community service, (intensive) supervision in the community, electronically monitored house arrest or, in appropriate cases, by an obligation to undergo treatment.

#### *Sentencing and the role of prosecutors and judges*

18. When applying the law prosecutors and judges should endeavour to bear in mind the resources available, in particular in terms of prison capacity. In this connection, continued attention should be paid to assessing the impact which existing sentencing structures and planned sentencing policies have on the evolution of the prison population.

19. Prosecutors and judges should be involved in the process of devising penal policies in relation to prison overcrowding and prison population inflation, with a view to engaging their support and to avoiding counterproductive sentencing practices.

20. Rationales for sentencing should be set by the legislator or other competent authorities, with a view to, inter alia, reducing the use of imprisonment, expanding the use of community sanctions and measures, and to using measures of diversion such as mediation or the compensation of the victim.

21. Particular attention should be paid to the role aggravating and mitigating factors as well as previous convictions play in determining the appropriate quantum of the sentence.

#### V. Measures relating to the post-trial stage

##### *The implementation of community sanctions and measures - The enforcement of custodial sentences*

22. In order to make community sanctions and measures credible alternatives to short terms of imprisonment, their effective implementation should be ensured, in particular through:

- the provision of the infrastructure for the execution and monitoring of such community sanctions, not least in order to give judges and prosecutors confidence in their effectiveness; and
- the development and use of reliable risk-prediction and risk-assessment techniques as well as supervision strategies, with a view to identifying the offender's risk to relapse and to ensuring public protection and safety.

23. The development of measures should be promoted which reduce the actual length of the sentence served, by giving preference to individualised measures, such as early conditional

release (parole), over collective measures for the management of prison overcrowding (amnesties, collective pardons).

24. Parole should be regarded as one of the most effective and constructive measures, which not only reduces the length of imprisonment but also contributes substantially to a planned return of the offender to the community.

25. In order to promote and expand the use of parole, best conditions for offender support, assistance and supervision in the community have to be created, not least with a view to prompting the competent judicial or administrative authorities to consider this measure as a valuable and responsible option.

26. Effective programmes for treatment during detention and for supervision and treatment after release should be devised and implemented so as to facilitate the resettlement of offenders, to reduce recidivism, to provide public safety and protection and to give judges and prosecutors the confidence that measures aimed at reducing the actual length of the sentence to be served and community sanctions and measures are constructive and responsible options.

Recommendation N° R (99) 19 of the Committee of Ministers to member States concerning mediation in penal matters

*(Adopted by the Committee of Ministers on 15 September 1999, at the 679<sup>th</sup> meeting of the Ministers' Deputies)*

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

Noting the developments in member States in the use of mediation in penal matters as a flexible, comprehensive, problem-solving, participatory option complementary or alternative to traditional criminal proceedings;

Considering the need to enhance active personal participation in criminal proceedings of the victim and the offender and others who may be affected as parties as well as the involvement of the community;

Recognising the legitimate interest of victims to have a stronger voice in dealing with the consequences of their victimisation, to communicate with the offender and to obtain apology and reparation;

Considering the importance of encouraging the offenders' sense of responsibility and offering them practical opportunities to make amends, which may further their reintegration and rehabilitation;

Recognising that mediation may increase awareness of the important role of the individual and the community in preventing and handling crime and resolving its associated conflicts, thus encouraging more constructive and less repressive criminal justice outcomes;

Recognising that mediation requires specific skills and calls for codes of practice and accredited training;

Considering the potentially substantial contribution to be made by non-governmental organisations and local communities in the field of mediation in penal matters and the need to combine and to co-ordinate the efforts of public and private initiatives;

Having regard to the requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Bearing in mind the European Convention on the Exercise of Children's Rights as well as Recommendations N° R (85) 11 on the position of the victim in the framework of criminal law and procedure, N° R (87) 18 concerning the simplification of criminal justice, N° R (87) 21 on assistance to victims and the prevention of victimisation, N° R (87) 20 on social reactions to juvenile delinquency, N° R (88) 6 on social reactions to juvenile delinquency among young people coming from migrant families, N° R (92) 16 on the European Rules on community sanctions and measures, N° R (95) 12 on the management of criminal justice and N° R (98) 1 on family mediation;

Recommends that the governments of member States consider the principles set out in the appendix to this Recommendation when developing mediation in penal matters, and give the widest possible circulation to this text.



## *APPENDIX TO RECOMMENDATION N° R (99) 19*

### I. Definition

These guidelines apply to any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the crime through the help of an impartial third party (mediator).

### II. General principles

1. Mediation in penal matters should only take place if the parties freely consent. The parties should be able to withdraw such consent at any time during the mediation.
2. Discussions in mediation are confidential and may not be used subsequently, except with the agreement of the parties.
3. Mediation in penal matters should be a generally available service.
4. Mediation in penal matters should be available at all stages of the criminal justice process.
5. Mediation services should be given sufficient autonomy within the criminal justice system.

### III. Legal basis

6. Legislation should facilitate mediation in penal matters.
7. There should be guidelines defining the use of mediation in penal matters. Such guidelines should in particular address the conditions for the referral of cases to the mediation service and the handling of cases following mediation.
8. Fundamental procedural safeguards should be applied to mediation; in particular, the parties should have the right to legal assistance and, where necessary, to translation/interpretation. Minors should, in addition, have the right to parental assistance.

### IV. The operation of criminal justice in relation to mediation

9. A decision to refer a criminal case to mediation, as well as the assessment of the outcome of a mediation procedure, should be reserved to the criminal justice authorities.
10. Before agreeing to mediation, the parties should be fully informed of their rights, the nature of the mediation process and the possible consequences of their decision.
11. Neither the victim nor the offender should be induced by unfair means to accept mediation.
12. Special regulations and legal safeguards governing minors' participation in legal proceedings should also be applied to their participation in mediation in penal matters.
13. Mediation should not proceed if any of the main parties involved is not capable of understanding the meaning of the process.

14. The basic facts of a case should normally be acknowledged by both parties as a basis for mediation. Participation in mediation should not be used as evidence of admission of guilt in subsequent legal proceedings.

15. Obvious disparities with respect to factors such as the parties' age, maturity or intellectual capacity should be taken into consideration before a case is referred to mediation.

16. A decision to refer a criminal case to mediation should be accompanied by a reasonable time-limit within which the competent criminal justice authorities should be informed of the state of the mediation procedure.

17. Discharges based on mediated agreements should have the same status as judicial decisions or judgments and should preclude prosecution in respect of the same facts (*ne bis in idem*).

18. When a case is referred back to the criminal justice authorities without an agreement between the parties or after failure to implement such an agreement, the decision as to how to proceed should be taken without delay.

## V. The operation of mediation services

### V.1. Standards

19. Mediation services should be governed by recognised standards.

20. Mediation services should have sufficient autonomy in performing their duties. Standards of competence and ethical rules, as well as procedures for the selection, training and assessment of mediators should be developed.

21. Mediation services should be monitored by a competent body.

### V.2. Qualifications and training of mediators

22. Mediators should be recruited from all sections of society and should generally possess good understanding of local cultures and communities.

23. Mediators should be able to demonstrate sound judgment and interpersonal skills necessary to mediation.

24. Mediators should receive initial training before taking up mediation duties as well as in-service training. Their training should aim at providing for a high level of competence, taking into account conflict resolution skills, the specific requirements of working with victims and offenders and basic knowledge of the criminal justice system.

### V.3. Handling of individual cases

25. Before mediation starts, the mediator should be informed of all relevant facts of the case and be provided with the necessary documents by the competent criminal justice authorities.

26. Mediation should be performed in an impartial manner, based on the facts of the case and on the needs and wishes of the parties. The mediator should always respect the dignity of the parties and ensure that the parties act with respect towards each other.

27. The mediator should be responsible for providing a safe and comfortable environment for the mediation. The mediator should be sensitive to the vulnerability of the parties.
28. Mediation should be carried out efficiently, but at a pace that is manageable for the parties.
29. Mediation should be performed *in camera*.
30. Notwithstanding the principle of confidentiality, the mediator should convey any information about imminent serious crimes, which may come to light in the course of mediation, to the appropriate authorities or to the persons concerned.

#### V.4. Outcome of mediation

31. Agreements should be arrived at voluntarily by the parties. They should contain only reasonable and proportionate obligations.
32. The mediator should report to the criminal justice authorities on the steps taken and on the outcome of the mediation. The mediator's report should not reveal the contents of mediation sessions, nor express any judgment on the parties' behaviour during mediation.

#### VI. Continuing development of mediation

33. There should be regular consultation between criminal justice authorities and mediation services to develop common understanding.
34. Member States should promote research on, and evaluation of, mediation in penal matters.

Recommendation N° R (98) 7<sup>4</sup> of the Committee of Ministers to member States concerning the ethical and organisational aspects of health care in prison

*(Adopted by the Committee of Ministers on 8 April 1998, at the 627th meeting of the Ministers' Deputies)*

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

Considering that medical practice in the community and in the prison context should be guided by the same ethical principles;

Aware that the respect for the fundamental rights of prisoners entails the provision to prisoners of preventive treatment and health care equivalent to those provided to the community in general;

Recognising that the medical practitioner in prison often faces difficult problems which stem from conflicting expectations from the prison administration and prisoners, the consequences of which require that the practitioner should adhere to very strict ethical guidelines;

Considering that it is in the interests of the prison doctor, the other health care staff, the inmates and the prison administration to proceed on a clear vision of the right to health care in prison and the specific role of the prison doctor and the other health care staff;

Considering that specific problem situations in prisons such as overcrowding, infectious diseases, drug addiction, mental disturbance, violence, cellular confinement or body searches require sound ethical principles in the conduct of medical practice;

Bearing in mind the European Convention on Human Rights, the European Social Charter and the Convention on Human Rights and Biomedicine;

Bearing in mind the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the recommendations on health care service in prisons summarised in the 3rd general report on the activities of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

Referring to its Recommendation N° R (87) 3 on the European Prison Rules which help to guarantee minimum standards of humanity and dignity in prisons;

Recalling Recommendation N° R (90) 3 on medical research on human beings and Recommendation N° R (93) 6 concerning prison and criminological aspects of the control of transmissible diseases including Aids and related health problems in prison, as well as the 1993 WHO guidelines on HIV infection and Aids in prison;

Mindful of Recommendations 1235 (1994) on psychiatry and human rights and 1257 (1995) on the conditions of detention in Council of Europe member States, prepared by the Parliamentary Assembly of the Council of Europe;

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<sup>4</sup> In accordance with Rule 10.2c of the Rules of Procedure for the meetings of the Ministers' Deputies, the Danish Delegation wishes to make the following reservation: "Paragraph 72 of the appendix is not acceptable to Denmark to the extent that it allows for body searches being carried out by persons other than a medical doctor. And in the opinion of Danish Authorities, an intimate examination body cavities should take place only with the consent of the person involved."

Referring to the Principles of Medical Ethics for the Protection of Detained Persons and Prisoners against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by United Nations General Assembly in 1982;

Referring to the specific declarations of the World Medical Association (WMA) concerning medical ethics, in particular the Declaration of Tokyo (1975), the Declaration of Malta on hunger strikers (1991) and the Statement on body searches of prisoners (1993);

Taking note of recent reforms in structure, organisation and regulation of prison health care services in several member States, in particular in connection with reforms of their health care systems;

Taking into account the different administrative structures of member States which require the implementation of recommendations both at federal and state levels.

Recommends that the governments of member States:

- take into account, when reviewing their legislation and in their practice in the area of health care provision in prison, the principles and recommendations set out in the appendix to this recommendation;
- ensure the widest possible dissemination of the recommendation and its explanatory memorandum, paying special attention to all individuals and bodies responsible for the organisation and provision of preventive treatment and health care in prison.

#### *APPENDIX TO RECOMMENDATION N° R (98) 7*

##### I. Main characteristics of the right to health in prison

###### A. *Access to a doctor*

1. When entering prison and later on while in custody, prisoners should be able at any time to have access to a doctor or a fully qualified nurse, irrespective of their detention regime and without undue delay, if required by their state of health. All detainees should benefit from appropriate medical examinations on admission. Special emphasis should be put on the screening of mental disorders, of psychological adaptation to prison, of withdrawal symptoms resulting from use of drugs, medication or alcohol, and of contagious and chronic conditions.

2. In order to satisfy the health requirements of the inmates, doctors and qualified nurses should be available on a full-time basis in the large penal institutions, depending on the number and the turnover of inmates and their average state of health.

3. A prison's health care service should at least be able to provide out-patient consultations and emergency treatment. When the state of health of the inmates requires treatment which cannot be guaranteed in prison, everything possible should be done to ensure that treatment is given, in all security in health establishments outside the prison .

4. Prisoners should have access to a doctor, when necessary, at any time during the day and the night. Someone competent to provide first aid should always be present on the prison premises. In case of serious emergencies, the doctor, a member of the nursing staff and the prison management should be warned; active participation and commitment of the custodial staff is essential.

5. An access to psychiatric consultation and counselling should be secured. There should be a psychiatric team in larger penal institutions. If this is not available as in the smaller establishments, consultations should be assured by a psychiatrist, practising in hospital or in private.

6. The services of a qualified dental surgeon should be available to every prisoner.

7. The prison administration should make arrangements for ensuring contacts and co-operation with local public and private health institutions. Since it is not easy to provide appropriate treatment in prison for certain inmates addicted to drugs, alcohol or medication, external consultants belonging to the system providing specialist assistance to addicts in the general community should be called on for counselling and even care purposes.

8. Where appropriate, specific services should be provided to female prisoners. Pregnant inmates should be medically monitored and should be able to deliver in an external hospital service most appropriate to their condition.

9. In being escorted to hospital the patient should be accompanied by medical or nursing staff, as required.

#### B. *Equivalence of care*

10. Health policy in custody should be integrated into, and compatible with, national health policy. A prison health care service should be able to provide medical, psychiatric and dental treatment and to implement programmes of hygiene and preventive medicine in conditions comparable to those enjoyed by the general public. Prison doctors should be able to call upon specialists. If a second opinion is required, it is the duty of the service to arrange it.

11. The prison health care service should have a sufficient number of qualified medical, nursing and technical staff, as well as appropriate premises, installations and equipment of a quality comparable, if not identical, to those which exist in the outside environment.

12. The role of the ministry responsible for health should be strengthened in the domain of quality assessment of hygiene, health care and organisation of health services in custody, in accordance with national legislation. A clear division of responsibilities and authority should be established between the ministry responsible for health or other competent ministries, which should co-operate in implementing an integrated health policy in prison.

#### C. *Patient's consent and confidentiality*

13. Medical confidentiality should be guaranteed and respected with the same rigour as in the population as a whole.

14. Unless inmates suffer from any illness which renders them incapable of understanding the nature of their condition, they should always be entitled to give the doctor their informed consent before any physical examination of their person or their body products can be undertaken, except in cases provided for by law. The reasons for each examination should be clearly explained to, and understood by, the inmates. The indication for any medication should be explained to the inmates, together with any possible side effects likely to be experienced by them.

15. Informed consent should be obtained in the case of mentally ill patients as well as in situations when medical duties and security requirements may not coincide, for example refusal of treatment or refusal of food.

16. Any derogation from the principle of freedom of consent should be based upon law and be guided by the same principles which are applicable to the population as a whole.

17. Remand prisoners should be entitled to ask for a consultation with their own doctor or another outside doctor at their own expense. Sentenced prisoners may seek a second medical opinion and the prison doctor should give this proposition sympathetic consideration. However, any decision as to the merits of this request is ultimately his responsibility.

18. All transfers to other prisons should be accompanied by full medical records. The records should be transferred under conditions ensuring their confidentiality. Prisoners should be informed that their medical record will be transferred. They should be entitled to object to the transfer, in accordance with national legislation.

All released prisoners should be given relevant written information concerning their health for the benefit of their family doctor.

#### *D. Professional independence*

19. Doctors who work in prison should provide the individual inmate with the same standards of health care as are being delivered to patients in the community. The health needs of the inmate should always be the primary concern of the doctor.

20. Clinical decisions and any other assessments regarding the health of detained persons should be governed only by medical criteria. Health care personnel should operate with complete independence within the bounds of their qualifications and competence.

21. Nurses and other members of the health care staff should perform their tasks under the direct responsibility of the senior doctor, who should not delegate to paramedical personnel tasks other than those authorised by law and by deontological codes. The quality of the medical and nursing services should be assessed by a qualified health authority.

22. The remuneration of medical staff should not be lower than that which would be used in other sectors of public health.

II. The specific role of the prison doctor and other health care staff in the context of the prison environment

#### *A. General requirements*

23. The role of the prison doctor is firstly to give appropriate medical care and advice to all the prisoners for whom he or she is clinically responsible.

24. It should also imply advising the prison management on matters concerned with nutrition or the environment within which the prisoners are required to live, as well as in respect of hygiene and sanitation.

25. Health care staff should be able to provide health information to the prison management and custodial staff as well as appropriate health training, as necessary.

### *B. Information, prevention and education for health*

26. On admission to prison, each person should receive information on rights and obligations, the internal regulations of the establishment as well as guidelines as to how and where to get help and advice. This information should be understood by each inmate. Special instruction should be given to the illiterate.

27. A health education programme should be developed in all prison establishments. Both inmates and prison administrators should receive a basic health promotion information package, targeted towards health care for persons in custody.

28. Emphasis should be put on explaining the advantages of voluntary and anonymous screening for transmissible diseases and the possible negative consequences of hepatitis, sexually transmitted diseases, tuberculosis or infection with HIV. Those who undergo a test must benefit from follow-up medical consultation.

29. The health education programme should aim at encouraging the development of healthy lifestyles and enabling inmates to make appropriate decisions in respect of their own health and that of their families, preserving and protecting individual integrity, diminishing risks of dependency and recidivism. This approach should motivate inmates to participate in health programmes in which they are taught in a coherent manner the behaviour and strategies for minimising risks to their health.

### *C. Particular forms of pathology and preventive health care in prison*

30. Any signs of violence observed when prisoners are medically screened on their admission to a prison establishment should be fully recorded by the doctor, together with any relevant statements by the prisoner and the doctor's conclusions. This information should also be made available to the prison administration with the consent of the prisoner.

31. Any information on cases of violence against inmates, occasioned in the course of detention, should be forwarded to the relevant authorities. As a rule, such action should only be undertaken with the consent of the inmates concerned.

32. In certain exceptional cases, and in any event in strict compliance with the rules of professional ethics, the informed consent of the prisoner need not be regarded as essential, in particular, if the doctor considers that he or she has an overriding responsibility both to the patient and to the rest of the prison community to report a serious incident that presents a real danger. The health care service should collect, if appropriate, periodic statistical data concerning injuries observed, with a view to communicating them to the prison management and the ministries concerned, in accordance with national legislation on data protection.

33. Appropriate health training for members of the custodial staff should be provided with a view to enabling them to report physical and mental health problems which they might detect in the prison population.

### *D. The professional training of prison health care staff*

34. Prison doctors should be well versed in both general medical and psychiatric disorders. Their training should comprise the acquisition of initial theoretical knowledge, an understanding of the prison environment and its effects on medical practice in prison, an



assessment of their skills, and a traineeship under the supervision of a more senior colleague. They should also be provided with regular in-service training.

35. Appropriate training should also be provided to other health care staff and should include knowledge about the functioning of prisons and relevant prison regulations.

III. The organisation of health care in prison with specific reference to the management of certain common problems

*A. Transmitted diseases, in particular: HIV infection and Aids, Tuberculosis, Hepatitis*

36. In order to prevent sexually transmitted infections in prison adequate prophylactic measures should be taken.

37. HIV tests should be performed only with the consent of the inmates, on an anonymous basis and in accordance with existing legislation. Thorough counselling should be provided before and after the test.

38. The isolation of a patient with an infectious condition is only justified if such a measure would also be taken outside the prison environment for the same medical reasons.

39. No form of segregation should be envisaged in respect of persons who are HIV antibody positive, subject to the provisions contained in paragraph 40.

40. Those who become seriously ill with Aids-related illnesses should be treated within the prison health care department, without necessarily resorting to total isolation. Patients, who need to be protected from the infectious illnesses transmitted by other patients, should be isolated only if such a measure is necessary for their own sake to prevent them acquiring intercurrent infections, particularly in those cases where their immune system is seriously impaired.

41. If cases of tuberculosis are detected, all necessary measures should be applied to prevent the propagation of this infection, in accordance with relevant legislation in this area. Therapeutic intervention should be of a standard equal to that outside of prison.

42. Because it is the only effective method of preventing the spread of hepatitis B, vaccination against hepatitis B should be offered to inmates and staff. Information and appropriate prevention facilities should be made available in view of the fact that hepatitis B and C are transmitted mainly by the intravenous use of drugs together with seminal and blood contamination.

*B. Addiction to drugs, alcohol and medication: management of pharmacy and distribution of medication*

43. The care of prisoners with alcohol and drug-related problems needs to be developed further, taking into account in particular the services offered for drug addicts, as recommended by the Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs ("Pompidou Group"). Therefore, it is necessary to offer sufficient training to medical and prison personnel, and to improve co-operation with external counselling services, in order to ensure continuing follow-up therapy on discharge to the community.

44. The prison doctor should encourage prisoners to take advantage of the system of social or psychotherapeutic assistance in order to prevent the risks of abuse of drugs, medication and alcohol.

45. The treatment of the withdrawal symptoms of abuse of drugs, alcohol or medication in prison should be conducted along the same lines as in the community.

46. If prisoners undergo a withdrawal cure, the doctor should encourage them, both while still in prison and after their release, to take all the necessary steps to avoid a relapse into addiction.

47. Detained persons should be able to consult a specialised internal or external counsellor who would give them the necessary support both while they are serving their sentence and during their care after release. Such counsellors should also be able to contribute to the in-service training of custodial staff.

48. Where appropriate, prisoners should be allowed to carry their prescribed medication. However, medication which is dangerous if taken as an overdose should be withheld and issued to them on an individual dose-by-dose basis.

49. In consultation with the competent pharmaceutical adviser, the prison doctor should prepare as necessary a comprehensive list of medicines and drugs usually prescribed in the medical service. A medical prescription should remain the exclusive responsibility of the medical profession, and medicines should be distributed by authorised personnel only.

*C. Persons unsuited to continued detention: serious physical handicap, advanced age, short term fatal prognosis*

50. Prisoners with serious physical handicaps and those of advanced age should be accommodated in such a way as to allow as normal a life as possible and should not be segregated from the general prison population. Structural alterations should be effected to assist the wheelchair-bound and handicapped on lines similar to those in the outside environment.

51. The decision as to when patients subject to short term fatal prognosis should be transferred to outside hospital units should be taken on medical grounds. While awaiting such transfer, these patients should receive optimum nursing care during the terminal phase of their illness within the prison health care centre. In such cases provision should be made for periodic respite care in an outside hospice. The possibility of a pardon for medical reasons or early release should be examined.

*D. Psychiatric symptoms, mental disturbance and major personality disorders, risk of suicide*

52. The prison administration and the ministry responsible for mental health should co-operate in organising psychiatric services for prisoners.

53. Mental health services and social services attached to prisons should aim to provide help and advice for inmates and to strengthen their coping and adaptation skills. These services should co-ordinate their activities, bearing in mind their respective tasks. Their professional independence should be ensured, with due regard to the specific conditions of the prison context.

54. In cases of convicted sex offenders, a psychiatric and psychological examination should be offered as well as appropriate treatment during their stay and after.

55. Prisoners suffering from serious mental disturbance should be kept and cared for in a hospital facility which is adequately equipped and possesses appropriately trained staff. The decision to admit an inmate to a public hospital should be made by a psychiatrist, subject to authorisation by the competent authorities.

56. In those cases where the use of close confinement of mental patients cannot be avoided, it should be reduced to an absolute minimum and be replaced with one-to-one continuous nursing care as soon as possible.

57. Under exceptional circumstances, physical restraint for a brief period in cases of severely mentally ill patients may be envisaged, while the calming action of appropriate medication begins to take effect.

58. The risk of suicide should be constantly assessed both by medical and custodial staff. Physical methods designed to avoid self-harm, close and constant observation, dialogue and reassurance, as appropriate, should be used in moments of crisis.

59. Follow-up treatment for released inmates should be provided for at outside specialised services.

#### *E. Refusal of treatment, hunger strike*

60. In the case of refusal of treatment, the doctor should request a written statement signed by the patient in the presence of a witness. The doctor should give the patient full information as to the likely benefits of medication, possible therapeutic alternatives, and warn him/her about risks associated with his/her refusal. It should be ensured that the patient has a full understanding of his/her situation. If there are difficulties of comprehension due to the language used by the patient, the services of an experienced interpreter must be sought.

61. The clinical assessment of a hunger striker should be carried out only with the express permission of the patient, unless he or she suffers from serious mental disorders which require the transfer to a psychiatric service.

62. Hunger strikers should be given an objective explanation of the harmful effects of their action upon their physical well-being, so that they understand the dangers of prolonged hunger striking.

63. If, in the opinion of the doctor, the hunger striker's condition is becoming significantly worse, it is essential that the doctor report this fact to the appropriate authority and take action in accordance with national legislation (including professional standards).

#### *F. Violence in prison: disciplinary procedures and sanctions, disciplinary confinement, physical restraint, top security regime*

64. Prisoners who fear acts of violence including possible sexual offences from other prisoners for any pertinent reason, or who have recently been assaulted or injured by other members of the prison community, should be able to have access to the full protection of custodial staff.

65. The doctor's role should not involve authorising and condoning the use of force by prison staff, who must themselves take that responsibility to achieve good order and discipline.

66. In the case of a sanction of disciplinary confinement, any other disciplinary punishment or security measure which might have an adverse effect on the physical or mental health of the prisoner, health care staff should provide medical assistance or treatment on request by the prisoner or by prison staff.

*G. Health care special programmes: sociotherapeutic programmes, family ties and contacts with the outside world, mother and child*

67. Sociotherapeutic programmes should be organised along community lines and carefully supervised. Doctors should be willing to co-operate in a constructive way with all the services concerned, with a view to enabling prisoners to benefit from such programmes and thus to acquire the social skills which might help reduce the risks of recidivism after release.

68. Consideration should be given to the possibility of allowing inmates to meet with their sexual partner without visual supervision during the visit.

69. It should be possible for very young children of detained mothers to stay with them, with a view to allowing their mothers to provide the attention and care they need for maintaining a good state of health and to keep an emotional and psychological link.

70. Special facilities should be provided for mothers accompanied by children (crèches, daynurseries).

71. Doctors should not become involved in administrative decisions concerning the separation of children from their mothers at a given age.

*H. Body searches, medical reports, medical research*

72. Body searches are a matter for the administrative authorities and prison doctors should not become involved in such procedures. However, an intimate medical examination should be conducted by a doctor when there is an objective medical reason requiring her/his involvement.

73. Prison doctors should not prepare any medical or psychiatric reports for the defence or the prosecution, save on formal request by the prisoner or as directed by a court. They should avoid any mission as medical experts involved in the judicial procedure concerning remand prisoners. They should collect and analyse specimens only for diagnostic testing and solely for medical reasons.

74. Medical research on prisoners should be carried out in accordance with the principles set out in Recommendations N° R (87) 3 on the European Prison Rules, N° R (90) 3 on medical research in human beings and N° R (93) 6 on prison and criminological aspects of the control of transmissible diseases including Aids and related health problems in prison.

# COUNCIL OF EUROPE

## COMMITTEE OF MINISTERS

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RECOMMENDATION No. R (97) 12

### OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON STAFF CONCERNED WITH THE IMPLEMENTATION OF SANCTIONS AND MEASURES

*(Adopted by the Committee of Ministers on 10 September 1997  
at the 600th meeting of the Ministers' Deputies)*

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

Having regard to the interest of the Council of Europe in establishing common principles on penal policy for the control of crime and ways of dealing with suspected or sentenced offenders which are effective whilst also respecting human rights;

Recognising the importance of Resolution (66) 26 on the status, recruitment and training of prison staff, and Resolution (68) 24 on the status, selection and training of governing grades of staff of penal establishments, together with the necessity of updating to take account of the changes in penal, administrative and professional practice that have come about since their adoption, and have come to expression, *inter alia*, in Recommendation No. R (87) 3 on the European Prison Rules;

Recognising the necessity also to establish principles for the recruitment, selection, training and status of staff concerned with the implementation of community sanctions and measures that supplement those laid down in Recommendation No. R (92) 16 on the European Rules on Community Sanctions and Measures;

Considering that the satisfactory implementation of community and custodial sanctions and measures requires the use of a highly competent, qualified and committed staff if the purposes of the sanctions and measures are to be achieved;

Recognising that the realisation of the several purposes of community and custodial sanctions and measures increasingly calls for a close collaboration between the staff responsible for their implementation within these two sectors and, therefore, the possibilities of staff mobility deserve consideration;

Considering that it is desirable that staff should be recruited and selected according to qualifications and qualities of personality and character befitting their various tasks;

Affirming that they should be given significant opportunities to continuously develop their knowledge and skills so as to accomplish their tasks and meet new challenges with competence and innovative but realistic imagination;

Considering that collaboration between the various staff responsible for the implementation of sanctions and measures will be facilitated if their work is carried out on the basis of shared knowledge about aims and working methods;

Considering therefore that the recruitment, selection and professional development of staff implementing community and custodial sanctions and measures should be undertaken in accordance with principles that make for a unified approach to their work;

Considering it important that the staff be accorded a status commensurate with the essential functions they carry out on behalf of the community, and have conditions of employment befitting their qualifications and which take account of the demanding nature of their work ;

Affirming the importance of making explicit the ethical basis of the work carried out by staff concerned with the implementation of community and custodial sanctions and measures ;

Recommends that governments of member states :

– be guided by the principles on the recruitment, selection, training, conditions of work and mobility of staff concerned with the implementation of sanctions and measures contained in Appendix I to this recommendation ;

– take appropriate action to provide national ethical guidelines for staff concerned with the implementation of sanctions and measures either by drawing up such ethical guidelines in accordance with the European guidelines set out in Appendix II to this recommendation or by adapting, where necessary, existing national ethical guidelines in accordance with the European guidelines ;

– encourage the widest possible dissemination of the recommendation and its explanatory memorandum.

#### Appendix I to Recommendation No. R (97) 12<sup>1</sup>

##### *Principles for the recruitment, selection, training, conditions of work and mobility of staff concerned with the implementation of sanctions and measures*

### **I. General principles**

1. An explicit policy concerning the staff responsible for the implementation of sanctions and measures should be laid down in a formal document or documents covering all aspects of recruitment and selection, training, status, management responsibilities, conditions of work and mobility. This policy should emphasise the ethical nature of corporate and individual responsibilities and particular reference should be made to national adherence to human rights instruments. It should be formulated in consultation with the staff and/or its professional representatives. Adequate financial resources should be reserved in the budget of the service(s) for the carrying out of this policy.

2. To the extent that staff policy is influenced by changes concerning the implementation of sanctions and measures and, more generally, by administrative, professional and social developments, the principles of the policy should be reviewed and, if necessary, modified.

3. The staff concerned with the implementation of sanctions and measures should be sufficiently numerous to effectively carry out the various duties incumbent upon them. They should possess the qualities of personality and character as well as the professional qualifications necessary for their functions.

### **II. Recruitment and selection**

4. The principles concerning recruitment and selection should be seen as being broadly applicable not only to recruitment and selection for initial entry at basic level but also to recruitment and selection for other posts within or between the probation and prison services.

5. For assistance with decisions on acceptance or rejection, job descriptions should be used in recruitment procedures. Job descriptions should clearly and concretely describe the aims, duties and responsibilities attached to the work to be undertaken. The conditions of employment, including some account of promotion possibilities, should also be clearly set out.

6. In order to attract suitable applicants, recruitment needs and necessary qualifications should be well-publicised.

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1. For a definition of certain terms used in this appendix, please see the section on terminology following the two appendices.

7. In addition to having the required level of education, good character and suitable qualifying experience, applicants should have a flexible and stable personality, be manifestly motivated for the work they are seeking, have the qualities necessary for forming good human relationships and be motivated to learn.
8. Recruitment and selection procedures should be explicit, clear, scrupulously fair and non-discriminatory. The body responsible for deciding on acceptance or rejection should be composed of persons with a range of relevant experience. It should work with impartiality.
9. Whatever the instruments used to assess personality characteristics, care should be taken to ensure that the measuring instruments are unbiased and validated.
10. Staff recruitment and selection should be undertaken taking account of the desirability of ensuring an adequate representation of men and women staff members, as well as ethnic minorities, in order to meet the needs of the suspected or sentenced offenders dealt with.
11. Recruitment and selection to higher grades should be based on practical professional experience allied to managerial potentiality. In the interest of developing an effective service or services, recruitment and selection for the higher grades should take account of the need to provide career opportunities as well as to develop new approaches and special skills. Where external recruitment takes place, it is especially important that the experience and aptitudes of any person so recruited and selected are entirely suitable.
12. Where staff are hired on contract or form part of a governmentally grant-aided service responsible for the implementation of sanctions and measures, their recruitment and selection should be such as to ensure that their personal qualities and formal qualifications are fully adequate for their tasks and responsibilities.
13. In order to avoid wastage of manpower through dissatisfaction leading to early resignation, and establish a solid basis for subsequent training, arrangements should be made to orient recruits on entry and give them a realistic perception of their work.

### III. Training

14. All training of staff should take strict account of the tasks undertaken by the service for the implementation of sanctions and measures in so far as its aims, content and methods are concerned. The service concerned with the implementation of sanctions and measures should ensure that staff receive an adequate training, including a knowledge of relevant international instruments.
15. Unless the necessary professional training has been undertaken prior to recruitment, the service responsible for the implementation of sanctions and measures should provide such training or ensure that it is provided.
16. The purpose of initial training should be to adapt the new entrant to the tasks to be performed by imparting professional skills and an understanding of the working environment, in particular a knowledge of the problems concerning criminality and its social contexts.

Training should also impart a knowledge of the essential values of the profession and thereby allow the new entrant to find his/her place in the service for the implementation of sanctions and measures.

17. Initial training programmes should combine the theoretical and practical aspects that have a bearing upon the individual's tasks and functions, and the organisation and functioning of the service. In consequence the duration of the training should be sufficiently long.

These programmes should include, *inter alia*, the study of themes concerning the observation and interpretation of behaviour, communication and other human relations skills.

They should be modified to take account of developments concerning the aims and methods of the service for the implementation of sanctions and measures, especially those that entail a change in the nature of particular functions, and any external developments which bear directly upon these matters.

18. Initial training methods should make use of effective learning procedures. When appropriate, use should be made of teachers who are external to the service for the implementation of sanctions and measures.
19. The initial training process should include a verification of the knowledge acquired and permit the evaluation of the trainees. Provision should, therefore, be made for ways of making fair assessments during the training as well as at its conclusion.
20. Continued training should seek to enable staff to achieve continuous improvement and thereby promote increased professionalism. This training should ordinarily lead to a nationally recognised qualification in a particular subject or subjects.

As a general rule such training should be arranged in consultation with the persons concerned. Continued training should be compulsory when new developments create new and essential demands on a service and should be initiated before such changes are implemented. It should also be compulsory when particular aspects of duties so require.

As far as possible such training should include experience at international level when this seems desirable as a way of furthering individual personal development or when it is required for some specific service purpose.

21. The content of continued training should be targeted as far as possible taking into account any work-related needs expressed by the staff. Procedures which allow the expression of these needs should be devised in consultation with the staff.

22. Where special forms of continued training are considered to be of special importance for promotion, the service(s) concerned with the implementation of sanctions and measures should make efforts to provide such training to interested individuals.

23. In the provision of training, use should be made of specialists who are external to the service(s) for the implementation of sanctions and measures. Such training should be conducted in conjunction with specialised bodies external to the service(s) concerned.

24. Arrangements should be made concerning hours of work to allow staff to follow continued training sessions in ordinary working time. This should not preclude the possibility of requiring some study in spare time.

25. In order to secure a high quality of service, continued training should include programmes undertaken in common with different categories of staff, regardless of grade or function, so as to improve collaboration between these categories within the service(s) concerned with the implementation of sanctions and measures. The programmes should, therefore, seek to familiarise staff with work carried out in multidisciplinary teams.

26. Management training should offer staff programmes with a wide range of content and methods with a view to developing capacity for administration and team leadership, and, where appropriate, the mobilisation of external resources. The delegation of responsibility should be given a special place among the various themes taken up.

Management training appropriate to the nature of assigned responsibilities should be obligatory both for the higher grades of management as well as for those exercising direct managerial responsibility for work units.

27. Systematic evaluations of training should be carried out in order to measure the effectiveness of training both in terms of what is learned as well as the way any knowledge gained is put into practice at the place of work. Such evaluations should lead to any necessary adaptations either to training programmes or the conditions for applying the results of training.

28. Since the choice of the training personnel is strictly dependent upon the kind of training that is to be arranged, a wide diversity of choice should be encouraged. They should possess professional attitudes, an experience combining both theoretical and practical aspects, an excellent capacity for the analysis of human behaviour and an ability to listen to others.

29. Training personnel should be recruited using procedures that make it possible to objectively ensure that they possess to a high degree the human and professional qualities necessary for carrying out their functions. They should receive any training necessary for carrying out these functions as and when required.

30. When training personnel are drawn from the staff of the service concerned with the implementation of sanctions and measures, their position and duties should be clearly defined. When necessary, in order to keep their knowledge and practical experience up-to-date, they should return to work in the field. Any significant time spent on temporary appointment to carry out training activities should be recognised for career purposes.

31. Since the training of staff of all grades should be considered an essential investment to achieve effectiveness, an adequate proportion of the budget of the service for the implementation of sanctions and measures should be earmarked for training expenses.

Any substantial change of policy concerning the implementation of sanctions and measures that entails consequences for staff training should be accompanied by an estimate of corresponding budgetary needs. This should be the case, in particular, when special projects for suspected or sentenced offenders are set up which might require supplementary training of the staff involved.

32. The decentralisation of training activities should always be accompanied by the allocation of an individual budget to the decentralised training authorities.



33. The members of staff exercising a specialist function, whether employed full- or part-time, should be given the opportunity on entry into the service for the implementation of sanctions and measures, to undertake training designed to facilitate their adjustment to a new environment for the exercise of their particular function.

Where the need arises, these categories of staff should be offered any form of supplementary training necessary for the proper carrying out of their tasks.

#### **IV. Conditions of work and management responsibilities**

34. Effectiveness requires that staff be aware of the fundamental principles that provide the framework for their work. To that end, a policy statement should be published, and updated, as necessary, that defines the general aims, principles, values and methods of the service concerned.

35. The preparation of such a policy statement should be undertaken in broad consultation with the staff in order to secure interest and involvement from the outset.

36. The policy statement should cover the activities of the service(s) responsible for community and custodial sanctions and measures and emphasise the importance of collaboration and mutual understanding. Where the service(s) responsible for both the community and custodial sanctions and measures are separately administered the two documents should be harmonised so as to ensure that there are no contradictions in the principles and values underlying the work undertaken by each service.

37. The policy statement should be supplemented by a plan to achieve stated objectives. Such objectives should be realistic and potentially attainable. The professional opinions of the staff should be sought and taken account of when objectives are set.

38. The methods by which objectives are to be attained should seek to engage the professional creativity and sense of responsibility of staff at every level of the organisation. For this reason, management at all levels should affirm, maintain and develop the professional identity and skills of all staff members.

39. Professional identity is rooted in the understanding and ethical application of a body of specialised, developing knowledge, and work skills. A variety of learning opportunities should therefore be routinely offered to staff of all grades and categories to enable them to keep abreast of new developments in their field of activity. In particular, opportunities should be offered to probation staff to learn about the problems of prison work and the attempts made to overcome them. Prison staff should be offered similar opportunities to learn about probation work.

40. The conditions of work and pay should permit an effective staff to be recruited and retained, and enable its members to carry out their functions correctly and develop their awareness of professional responsibilities.

41. Efforts should be made to ensure that the work of staff concerned with implementing sanctions and measures receives the social recognition which it merits.

42. Management at all levels should strive to prevent working conditions likely to give rise to stress symptoms among the staff by suitable arrangements for physical safety, reasonable working hours, decision latitude, open communication and a psychologically supportive climate in each work unit.

43. Where staff have been exposed to traumatic incidents in the course of duty, they should be offered immediate assistance in the form of debriefing sessions followed, if necessary, by personal counselling and any other necessary long-term measures.

44. Staff welfare policies should be instituted to provide help to staff with personal and private problems likely to affect their work. Full information should be made available to staff about the nature of the help which can be offered.

45. Realistic information about promotion possibilities should be made available to staff. Promotion decisions should emphasise competence, that is, possession of the skills necessary to perform a particular job well. In assessing this, selection procedures should enable due account to be taken of work experience, work effort and the professional quality of work done, including the capacity to collaborate with, and secure collaboration from, others. Regular and reasonably frequent performance appraisals should be the subject of discussion with the individual concerned so as to help staff develop their full potential and prepare for possible promotion.

46. Promotion need not be the only form of recognition of competence. Other forms of recognition of competence should be sought and used when appropriate.

47. Research on staff functioning should be encouraged. Such research should seek to determine, *inter alia*, to what extent the work of a given service could be significantly improved by better forms of staff recruitment, selection, training, work organisation, incentives and professional support.

## V. Mobility

48. In order to enhance effective working within and between the prison and probation services, the possibility for those working in one service to be seconded to undertake training in the other service should be encouraged. Such a secondment should take place only with the consent of the individual concerned, should be provisional and should not entail any change in the formal status of the individual member of staff.

49. In order to improve the working of the service(s) for the implementation of sanctions and measures, the temporary secondment of probation staff to undertake prison work and prison staff to undertake work in the probation field, should be possible. The length of the secondment period, which should not amount to a permanent change of employment, should be determined in the light of its purpose or purposes.

50. Temporary secondment should be dependent upon the possession of appropriate qualifications by the person concerned. Budgetary constraints should never lead to the secondment of persons who lack the necessary qualifications. Arrangements should be made for the selection of suitable persons. Any necessary forms of training or preparation should be provided prior to carrying out the secondment.

51. The permanent change by a staff member from prison to probation work or vice versa should be considered following an application for such employment and be subject to national conditions governing such an application.

### Appendix II to Recommendation No. R (97) 12<sup>1</sup>

#### *European guidelines for national ethical guidelines for staff concerned with the implementation of sanctions and measures*

### I. Ethical requirements in general

1. Staff concerned with the implementation of sanctions and measures must loyally and conscientiously carry out the duties assigned to them by the legal instruments applied by the state. The same must apply as regards compliance with the policies, practices and instructions of the service(s) concerned with the implementation of sanctions and measures pertaining to the performance of those duties, in so far as they are not obviously at variance with the legal instruments applied.

2. The service(s) concerned with the implementation of sanctions and measures has/have an obligation to make clear to its/their staff the ethical requirements involved in the implementation of sanctions and measures so that work at every level of the organisation can be based on defensible ethical premises. The service(s) concerned should seek to prevent or, where necessary, resolve ethical doubts felt by staff about its/their policies, practices or instructions by instituting appropriate procedures and providing guidance.

3. Staff concerned with the implementation of sanctions and measures must conduct themselves, both on and off duty, in a manner which is in keeping with the policies, principles and instructions of the service(s) concerned, has no adverse effect on the performance of their duties and does not undermine the credibility of the service(s). Staff must immediately inform their superior of any conduct or action liable to have adverse consequences for the service(s).

4. Staff must abstain from conduct which may give rise to a suspicion that money or other resources provided for service use is used improperly. In any case of doubt, guidance should be sought by the individual and provided by the service.

5. When information concerning a suspected or sentenced offender has to be transmitted to an authority entitled to receive it, staff have an ethical obligation to ensure that such information is objective, frank and complete, particularly if the information relates to any unlawful activity on the part of the offender.

6. A spirit of co-operation and mutual support must govern relations between colleagues, with a view to promoting a working environment that is physically and psychologically healthy and safe for both staff and suspected or sentenced offenders. Staff must readily offer their assistance to any colleague who needs such assistance in the course of his or her duties, especially concerning an outbreak of violence or any other distressing incident.

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1. For a definition of terms used in this appendix, please see the following section on terminology.

7. Staff concerned with the implementation of sanctions and measures must respect the rights of their colleagues, whatever their race, ethnic or national origin, colour, language, religion, age, gender, sexual inclination or physical or mental condition. They must not under any circumstances take part in any form of harassment or discrimination, or even attempt to excuse such behaviour.
8. Staff concerned with the implementation of sanctions and measures must show due regard for diverging opinions, so as to avoid offending anyone and ensure respect for others. They must not criticise colleagues in front of a suspected or sentenced offender or any of his or her family or circle of acquaintances.
9. Staff concerned with the implementation of sanctions and measures must fulfil their duties in an honest manner and with openness towards other people or bodies working with the service(s) concerned with the implementation of sanctions and measures and with the public, so as to foster confidence in the service and its staff.
10. The service(s) concerned with the implementation of sanctions and measures has/have an ethical obligation to ensure that members of staff are fully informed about the nature of the contact they may have with the media in accordance with any relevant national legislation on freedom of expression and any policy or instructions based on it. When staff make statements to the media they must loyally act in accordance with such legislation, policy or instructions. On such occasions they must demonstrate honesty, objectivity and frankness.

## **II. Ethical requirements in relation to suspected or sentenced offenders**

11. All work in connection with the implementation of sanctions and measures must be based upon respect for the worth of the individual human being and the rights conferred on the suspected or sentenced offender by national or international legal instruments. The respect accorded to the suspected or sentenced offender must include his or her family and relatives.
12. In their work with suspected or sentenced offenders all staff must loyally seek to promote the purposes of the sanction or measure in accordance with the policies and practice of the service(s) concerned with the implementation of sanctions and measures.
13. Staff must abstain from inflicting violence or any other form of physical or mental ill-treatment on suspected or sentenced offenders in their charge and must do all in their power to ensure that such behaviour is not engaged in by others.
14. Staff must abstain from any form of discrimination in the implementation of sanctions and measures and do all in their power to prevent discrimination by other persons and bodies.
15. Staff must abstain from any behaviour which provokes suspected or sentenced offenders in their charge. Conversely, staff must seek to evoke positive behaviour in suspected or sentenced offenders by providing a constructive example in attitudes, words and actions.
16. Staff working directly with suspected or sentenced offenders have an ethical responsibility to inform them about their obligations and rights in relation to the sanctions and measures applicable as well as about the forms of help that can be offered to assist them to adopt law-abiding behaviour.
17. Information about suspected or sentenced offenders and their situation as well as that concerning their families must be handled with respect and treated in accordance with any legislative or administrative provisions on confidentiality. Staff must loyally follow the instructions contained therein.
18. Staff must not under any circumstances accept bribes or engage in corrupt activities with suspected or sentenced offenders or their families and must do all in their power to ensure that such acts are not engaged in by other members of staff.
19. Individual staff members must establish and maintain professional relationships with suspected or sentenced offenders and their families. They must request guidance whenever they experience doubts about the correctness of their relations with offenders and their families. Staff members with supervisory responsibilities must not hesitate to take appropriate action concerning any subordinate's doubtful relations with offenders and their families.

## Terminology

1. The term “sanctions and measures” means both custodial and community sanctions and measures. Community sanctions and measures, as defined in Recommendation No. R (92) 16 are those which maintain the offender in the community and involve some restriction of his or her liberty through the imposition of conditions and/or obligations, and which are implemented by bodies designated in law for that purpose. “Measures” are those forms of action decided on in connection with an alleged offence before, or instead of, a decision on a sanction as well as to ways of enforcing a sentence to deprivation of liberty outside a prison establishment.
2. “Staff concerned with the implementation of sanctions and measures” means the staff of the service having operational or managerial responsibility for the implementation of sanctions and measures, as defined above (usually prison staff and probation staff).
3. Reference is made in the text to “suspected offenders” since the service concerned with the implementation of sanctions and measures may be responsible for measures taken before trial. Examples of this are remand in custody, the provision of a supportive contact person before trial or, under certain conditions and with certain safeguards, the commencement of treatment planning.
4. Since Appendix II sets out binding ethical precepts and not rules, “must” (in French, the verb “devoir”) has been used for the verb forms . This is meant to imply that the precepts are intended to exert compelling ethical force.

# COUNCIL OF EUROPE

## COMMITTEE OF MINISTERS

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RECOMMENDATION No. R (93) 6

**OF THE COMMITTEE OF MINISTERS TO MEMBER STATES**  
**CONCERNING PRISON AND CRIMINOLOGICAL ASPECTS**  
**OF THE CONTROL OF TRANSMISSIBLE DISEASES**  
**INCLUDING AIDS AND RELATED HEALTH PROBLEMS IN PRISON**

*(Adopted by the Committee of Ministers on 18 October 1993  
at the 500th meeting of the Ministers' Deputies)*

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

Considering that it is in the interests of the member states of the Council of Europe to achieve greater unity between its members and that one way of pursuing this objective is joint action both in the field of health care in prisons and in the field of crime policy;

Aware of the extent of the challenge presented to prison authorities by the responsibility for the development of preventive measures and the medical, psychological and social care of HIV-infected prisoners;

Convinced of the need to establish a European strategy to combat HIV infection in prisons;

Taking into account the 1987 statement of the consultation on the prevention and control of Aids in prisons, of the special programme on Aids of the World Health Organisation;

Recalling its Recommendation No. R (87) 25 concerning a common European public health policy to fight the acquired immunodeficiency syndrome (Aids);

Recalling the conclusions adopted by the 8th Conference of Directors of Prison Administrations (Strasbourg, 2-5 June 1987) on communicable diseases in prisons with special reference to Aids;

Recalling the conclusions adopted by the 16th Conference of European Ministers of Justice (Lisbon, 21-23 June 1988) on the criminal law and criminological questions raised by the propagation of infectious diseases, including Aids;

Welcoming Recommendation 1080 (1988) of the Parliamentary Assembly of the Council of Europe on a co-ordinated European health policy to prevent the spread of Aids in prisons;

Referring to its Recommendation No. R (89) 14 on the ethical issues of HIV infection in the health care and social settings;

Aware that respect for the fundamental rights of prisoners, in particular the right to health care, entails the provision to prisoners of preventive treatment and health care equivalent to those provided to the community in general;

Referring in this connection to the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter;

Referring to its Recommendation No. R (87) 3 on the European Prison Rules which help to guarantee minimum standards of humanity and dignity in prisons;

Considering that in order to comply with ethical requirements and to be effective, preventive and health care measures should be based on the voluntary co-operation of the prison population,

Recommends that the governments of member states:

– see to it that the principles and provisions set out in the appendix to the recommendation and prepared in the light of present-day knowledge are put into practice in national and regional prison health policies designed to combat HIV infection and other transmissible diseases;

– ensure the widest possible dissemination of this recommendation, paying special attention to all individuals and bodies responsible for implementing health policy in prisons, and also to all law officers and bodies concerned with crime policy and related criminological aspects of the control of transmissible diseases.

#### Appendix to Recommendation No. R (93) 6

##### I. Prison aspects

###### A. General principles

1. There is an urgent need to draw up, in each state, a coherent policy for combating HIV/Aids in prison.

Such a policy should be developed in close collaboration with national health authorities and be incorporated in a wider policy for combating transmissible diseases in prisons.

Ways and means of preventing HIV/Aids in prisons should be fostered.

Health education and information for all inmates and personnel should be an integral part of prison policies.

2. The systematic medical examination carried out on entry into prison should include measures to detect inter-current diseases, including treatable infectious diseases, in particular tuberculosis. The examination also gives the opportunity to provide health education and to give prisoners a greater sense of responsibility for their own health.

3. Voluntary testing for HIV/Aids infection, together with counselling before and after the test, should be made available. Health staff should, under the responsibility of a doctor, explain to prison inmates the consequences of test results prior to undergoing such tests, and inform them of the results, in full confidentiality, unless he/she declines to receive such information.

In the present state of knowledge, compulsory testing of prisoners should be prohibited since it would be ineffective and discriminatory and therefore unethical.

4. At each stage of HIV/Aids infection, prisoners should be offered the same medical and psychosocial treatment as that given to other members of the community. In general, they should have access to health services which are equivalent to those of the community at large.

Co-operation with national or regional health systems facilitates the medical care of seropositive prisoners and prisoners suffering from Aids, as well as their medical follow-up on entry and after release.

5. Medical care, psychological support and social services should be organised for seropositive prisoners, to facilitate their integration after release.

6. A special effort should be made to disseminate information among both prison staff and prisoners to ensure that they are aware of modes of HIV transmission, as well as the rules of hygiene to be observed and precautions to be taken to reduce the risks of contamination during detention and after release.

Health and prison authorities should provide information and, where appropriate, individual counselling on risk behaviours.

Information should be made available to prisoners in a language they can understand, if necessary taking into account their cultural background.

7. In the interests of preventing HIV infection, prison and health authorities should make condoms available to prisoners during their period of detention and prior to their provisional or final release. Each state should be free to select the most appropriate channel for this purpose: medical service, sale in canteens or any other arrangements suited to current attitudes, the type of prison population concerned and the prison establishment's mode of operation.

8. Information about the health of prisoners is confidential.

The doctor may only provide such information to the other members of the medical team and, exceptionally, to the prison management, as is strictly necessary for the treatment and care of the prisoner or in order to examine the health of the prisoners and staff, with due regard to medical ethics and legal provisions. Normally this should take place with the consent of the person concerned. Disclosure of information should follow the same principles as those applied in the general community.

HIV/Aids serological status is not generally considered necessary information.

9. As segregation, isolation and restrictions on occupation, sports and recreation are not considered necessary for seropositive people in the community, the same attitude must be adopted towards seropositive prisoners.

When prisoners try to sexually assault other prisoners or more generally try to harm other prisoners or staff, disciplinary measures or solitary confinement may be justified independently of the HIV status.

10. Sanitary facilities conforming to standards in the community should be available to prisoners in all sections of a prison.

11. All means necessary to allow them to observe the rules of hygiene should be made available to prison staff and prisoners.

12. Seropositive prisoners should receive medical follow-up and counselling during their period of detention and particularly when they are notified of test results.

Medical services in prison establishments should ensure that medical and psychological follow-up of prisoners is available after their release and should encourage them to use these services.

13. HIV-infected prisoners should not be excluded from measures such as placement in semi-liberty hostels or centres or any other types of open or low-security prison.

14. As far as possible, prisoners with terminal HIV disease should be granted early release and given proper treatment outside the prison.

15. Adequate financial and human resources should be made available within the prison health system to meet not only the problems of transmissible diseases and HIV/Aids but also all health problems affecting prisoners.

16. Persons deprived of their liberty may not undergo medical research unless it is expected to produce a direct and significant benefit to their health.

Ethical principles concerning research on human subjects must be strictly applied, particularly in relation to informed consent and confidentiality. All research studies carried out in prisons should be subject to approval by an ethical review committee or to an alternative procedure guaranteeing these principles.

Research on the prevention, treatment and management of transmissible diseases in prison populations should be encouraged, provided that such research yields information not available from studies in the community.

Prisoners should have the same access to clinical trials of treatments for all HIV/Aids-related diseases as persons living in the community.

Epidemiological HIV/Aids monitoring, including anonymous, non-correlated screening, could be considered only if such methods are used in the general population and if their application to prison populations appears likely to yield results useful to the prisoners themselves.

Prisoners should be informed in due time about the existence of any epidemiological studies carried out in the prison where they are detained.

Publication and communication of the results of research studies must ensure absolute confidentiality concerning the identity of prisoners who have participated in such studies.

## *B. Special measures*

17. The prison authorities should adopt, as far as possible, measures to prevent the illicit introduction of drugs and injection material into prisons. However, such measures should not prejudice the trend towards the closer integration of prisons into their economic and social environment.

18. Prevention requires the introduction and development of health education programmes in order to reduce risks, including the provision of information on the need to disinfect injection equipment or use it only once.

A disinfectant should be made available to prisoners not only to protect them against transmissible diseases, but also to enable them to observe the rules of hygiene.

19. Health care and social programmes should be developed with a view to preparing drug-using prisoners for release and to adapting early-release arrangements, conditional on following appropriate treatment (hostel, after-care centre, hospital, out-patient service, therapeutic community).

20. Non-custodial measures should be more widely used by courts or other competent authorities in order to encourage drug addicts to seek treatment in health or social institutions.

Drug addicts should be encouraged to follow such treatment programmes.

21. Prisoners and their families, spouses or partners who are allowed unsupervised visits must be offered information, counselling and support in connection with HIV/Aids.

Preventive and contraceptive measures should be made available to prisoners and their partners in accordance with the law in force in the community.

22. Health education programmes should be adapted to the specific needs of women prisoners.

Pregnant seropositive prisoners must receive care and assistance equivalent to those given to women outside the prison. They must have as much information as possible on the risks of infection of the unborn child and, if national legislation so provides, have the option of voluntary termination of pregnancy.

A seropositive child born to a woman prisoner should remain with the mother, if she so desires, in conformity with prison regulations. The child should have access to appropriate specialist medical services.

23. Health education programmes should be adapted to the needs of prisoners, particularly young prisoners, to foster attitudes and behaviour conducive to the avoidance of transmissible diseases, including HIV/Aids.

24. Foreign prisoners suffering from HIV/Aids should be given the same information, counselling and health care as other inmates.

25. HIV/Aids infection should not prevent a prisoner from being transferred on the basis of a bilateral agreement or of the Council of Europe Convention on the Transfer of Sentenced Persons.

The medical report on a sentenced person transferred to his/her country of origin should be sent directly by the prison medical services in the sentencing state to the prison medical service in the enforcing state, since the report is protected by medical confidentiality.

26. Arrangements for the deportation of foreign HIV/Aids-infected prisoners may be postponed for humanitarian reasons if the prisoners are seriously or terminally ill.

## **II. Criminological aspects**

27. The priority in controlling transmissible diseases, including HIV/Aids, is the introduction of preventive measures and information designed to develop awareness and a sense of responsibility among the public.

28. Sanctions relating to the transmission of transmissible diseases and HIV/Aids should be envisaged within the context of existing offences, and the institution of criminal proceedings should be considered as a last resort.

29. Such criminal proceedings should be aimed at sanctioning those who, in spite of information and awareness-building campaigns to prevent the spread of HIV/Aids, have nevertheless endangered the lives, physical integrity or health of others.

30. Health care officials or practitioners who have violated norms and practices designed to prevent the spread of transmissible diseases, or who do not fulfil their duty to treat individuals infected by HIV/Aids, should be liable to disciplinary sanctions and, if appropriate, be subject to the criminal laws in force.



# COUNCIL OF EUROPE

## COMMITTEE OF MINISTERS

RECOMMENDATION No. R (92) 18

### OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

### CONCERNING THE PRACTICAL APPLICATION OF THE CONVENTION ON THE TRANSFER OF SENTENCED PERSONS

*(Adopted by the Committee of Ministers on 19 October 1992  
at the 482nd meeting of the Ministers' Deputies)*

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

Having regard to the Convention on the Transfer of Sentenced Persons;

Restating the importance of the social rehabilitation of sentenced persons and to that end the transfer of such persons, where they do not have the nationality of the sentencing state, to the country where their own society is;

Desirous therefore of further facilitating the practical application of the convention within such a lapse of time as may enable the intended aim to be achieved;

Recalling the terms of its Recommendation No. R (88) 13 concerning the practical application of the Convention on the Transfer of Sentenced Persons;

Having in mind its Recommendation No. R (84) 11 concerning information about the Convention on the Transfer of Sentenced Persons,

1. Recommends the governments of member states:

*a.* to include with other necessary documents the form reproduced in Appendix I hereafter both when making a request for transfer and when acknowledging receipt of such a request;

*b.* to proceed diligently and urgently in processing requests for transfer in such a way that the provisions of Article 5, paragraph 4, of the convention are entirely complied with;

*c.* to adopt, in accordance with the principles laid down in Appendix II hereafter, guidelines on the criteria to be met when taking a decision whether or not to agree to transfer requests submitted to them;

*d.* to communicate the text of such guidelines, as well as any future amendments thereto, to the Secretary General of the Council of Europe;

*e.* as far as possible and without prejudice to the rules in the convention, to give reasons for all decisions refusing a transfer;

*f.* to take steps enabling them not to have to refuse a transfer on the sole grounds that fines imposed on the sentenced person in connection with his sentence remain unsatisfied, or that *contrainte par corps* has been imposed;

*g.* when handing over the transferred person, to give the administering state an updated statement in conformity with Article 6, paragraph 2.*b*);

*h.* as far as possible, to make available to their nationals – before the latter have given their consent to a transfer – precise and easily comprehensible information on the rules that will be applied to them with respect to determining the length of the sentence to be served as well as the terms and conditions of enforcement of the sentence in the event of them being transferred;

*i.* to encourage direct contacts between national administrations entrusted with the operation of the convention, in particular through the informal channels of communication that are available to them through the lists mentioned below in item 2.*a*;

*j.* to enlarge and improve on the “Standard text providing information about the Convention on the Transfer of Sentenced Persons” provided for in Recommendation No. R (84) 11 in such a way as to make its content easily comprehensible to all and to ensure that the person concerned is advised that the conditions for being eligible for parole, conditional release, etc. in the administering state will differ from those applicable in the sentencing state;

*k.* unless otherwise provided for through national law, international conventions or bilateral agreements, when the transferred person has escaped custody and left the territory of the administering state, and when that state is unable to obtain custody to enforce completion of the sentence, it shall inform the sentencing state that the enforcement of the sentence cannot be completed, and the sentencing state may then enforce completion of the sentence. This does not obviate the need to inform the sentencing state in accordance with Article 15.*b*;

2. Instructs the Secretary General of the Council of Europe:

*a.* to keep an updated list containing precise information on the names and addresses as well as the telephone, telefax and telex numbers of the persons responsible in each Party for the operation of the convention and to transmit a copy of such a list as well as any necessary updates to each of these persons;

*b.* to transmit to the governments of all the Parties to the convention copies of the national guidelines that will be communicated to him under the terms of Recommendation 1.*d* above;

*c.* to transmit this recommendation to the governments of the non-member states which are Parties to the convention as well as to the governments of states invited to accede to the convention.

**Council of Europe Convention  
on the Transfer of Sentenced Persons**

*Acknowledgement of request for information about prisoner repatriation*

Name of prisoner : .....

Prisoner number\* : .....

Location\* : .....

|  |   |
|--|---|
| Requesting state : .....<br><br>Name : .....<br>Position : .....<br>Address : .....<br>.....<br>.....<br>No. Tel.: .....<br>No. Fax: .....   | Requested state : .....<br><br>Name : .....<br>Position : .....<br>Address : .....<br>.....<br>.....<br>No. Tel.: .....<br>No. Fax: ..... |
| Date request made : .....<br>Originator's reference : .....  | Date request received : .....<br>Recipient's reference : .....  |
| Officer responsible for further action in the requested state (if not addressee):<br>Name : .....<br>Position : .....<br>Address : .....<br>.....<br>.....<br>No. Tel.: .....<br>No. Fax: .....<br><br>Summary of action now being taken :<br>.....<br>.....<br>.....<br>Date by which next response may be expected :<br>.....<br>Reference to be quoted in correspondence : .....<br>..... |   |

Signature : ..... Name : ..... Date : .....

Note: The original of this acknowledgement should be signed and returned to sender in the requesting state within five working days of receipt. The copy should be retained by the requested state.  
\* if known.

Appendix II to Recommendation No. R (92) 18  
*Principles applicable to national guidelines  
concerning the criteria to be met when taking a decision  
whether to accept or to refuse a request for transfer*

1. The guidelines should indicate:
  - a. whether the Party applies continued enforcement under Article 10 of the convention or converts the sentence under Article 11 of the convention;
  - b. any deviation consented upon from the provisions of Article 6 of the convention or to the requirements stated in conformity with Article 17, paragraph 3, by way of which information and supporting documents might not be totally or partially translated.
2. The guidelines might *inter alia* indicate:
  - a. the mandatory grounds for refusing requests;
  - b. the usual grounds for refusing requests, for example, that the Party concerned will refuse transfer of those of its nationals that have left or remained outside their country with the intention of abandoning it as their place of permanent residence and/or have no social or family ties there.

# COUNCIL OF EUROPE

## COMMITTEE OF MINISTERS

RECOMMENDATION No. R (89) 12

### OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

#### ON EDUCATION IN PRISON

*(Adopted by the Committee of Ministers on 13 October 1989  
at the 429th meeting of the Ministers' Deputies)*

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

Considering that the right to education is fundamental ;

Considering the importance of education in the development of the individual and the community ;

Realising in particular that a high proportion of prisoners have had very little successful educational experience, and therefore now have many educational needs ;

Considering that education in prison helps to humanise prisons and to improve the conditions of detention ;

Considering that education in prison is an important way of facilitating the return of the prisoner to the community ;

Recognising that in the practical application of certain rights or measures, in accordance with the following recommendations, distinctions may be justified between convicted prisoners and prisoners remanded in custody ;

Having regard to Recommendation No. R (87) 3 on the European Prison Rules and Recommendation No. R (81) 17 on adult education policy,

Recommends the governments of member states to implement policies which recognise the following :

1. All prisoners shall have access to education, which is envisaged as consisting of classroom subjects, vocational education, creative and cultural activities, physical education and sports, social education and library facilities ;
2. Education for prisoners should be like the education provided for similar age-groups in the outside world, and the range of learning opportunities for prisoners should be as wide as possible ;



Forty years  
Council of Europe

3. Education in prison shall aim to develop the whole person bearing in mind his or her social, economic and cultural context;
4. All those involved in the administration of the prison system and the management of prisons should facilitate and support education as much as possible;
5. Education should have no less a status than work within the prison regime and prisoners should not lose out financially or otherwise by taking part in education;
6. Every effort should be made to encourage the prisoner to participate actively in all aspects of education;
7. Development programmes should be provided to ensure that prison educators adopt appropriate adult education methods;
8. Special attention should be given to those prisoners with particular difficulties and especially those with reading or writing problems;
9. Vocational education should aim at the wider development of the individual, as well as being sensitive to trends in the labour-market;
10. Prisoners should have direct access to a well-stocked library at least once a week;
11. Physical education and sports for prisoners should be emphasised and encouraged;
12. Creative and cultural activities should be given a significant role because these activities have particular potential to enable prisoners to develop and express themselves;
13. Social education should include practical elements that enable the prisoner to manage daily life within the prison, with a view to facilitating his return to society;
14. Wherever possible, prisoners should be allowed to participate in education outside prison;
15. Where education has to take place within the prison, the outside community should be involved as fully as possible;
16. Measures should be taken to enable prisoners to continue their education after release;
17. The funds, equipment and teaching staff needed to enable prisoners to receive appropriate education should be made available.

Recommendation N° R (88) 13 of the Committee of Ministers to member States concerning the practical application of the Convention on the Transfer of Sentenced Persons<sup>5</sup>

*(Adopted by the Committee of Ministers on 22 September 1988 at the 419th meeting of the Ministers' Deputies)*

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

Desirous of facilitating the practical application of the Convention on the Transfer of Sentenced Persons and of encouraging the widest possible use of the transfer mechanism it provides;

Having regard to Recommendation N° R (84) 11 concerning information about the Convention on the Transfer of Sentenced Persons,

- I. Recommends the governments of member States:
  1. *Concerning the choice of enforcement procedure (Article 3.3 of the convention)*
    - a. that, when considering whether to exclude, by virtue of Article 3.3 of the convention, the application of one of the enforcement procedures provided for in Article 9.I, they take due account of any difficulties which such an exclusion might entail for the application of the convention or the functioning of the transfer mechanism ;
    - b. that, if they have made the declaration under Article 3.3, they take account of the difficulties which that declaration might entail for the application of the convention or the functioning of the transfer mechanism in relation to other Contracting States, and seek a solution which would enable the transfer of the sentenced person, taking into account in particular his interest in being transferred;
  2. *Concerning the application to "nationals" (Article 3.4 of the convention)*

that they consider availing themselves of the possibility under Article 3.4 to define the term "national" in a wide sense, having regard to any close ties the persons concerned have with the administering state;

3. *Concerning the processing of transfer requests*
  - a. that they establish procedures and make organisational arrangements for the effective handling of transfer requests and inform the other Parties thereof, with a view to making them aware of the procedure in all its stages ; this could be effected by addressing explanatory notes or letters to the other Parties or by means of an *aide-mémoire*;
  - b. that they deal with transfer requests and take decisions on whether or not to agree to a transfer as expeditiously as possible, and, to that effect, consider introducing target dates for the processing of cases ; where a request raises particular difficulties likely to cause delay, the other Party and the sentenced person should be so informed;

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<sup>5</sup> When this recommendation was adopted, the Representative of Greece, in application of Article 10.2.c of the Rules of Procedure for the meetings of the Ministers' Deputies, reserved the right of his Government to comply or not with paragraph 1.2 of the recommendation.

c. that, to expedite the processing of transfer requests, particularly in urgent cases, the competent authorities make the widest possible use of modern means of telecommunication, such as telex and telefax facilities;

4. *Concerning information to be supplied to the sentenced person*

that, to enable the sentenced person to give his informed consent, the competent authorities of the sentencing state endeavour to provide him with all relevant details of the expected effects of his transfer, including, if possible, information on the conditions for early release;

5. *Concerning the transfer of the sentenced person*

a. that they effect agreed transfers as soon as possible after the sentenced person has given his consent;

b. that they ensure that information on any remission earned by the prisoner in the sentencing state and any other factors relevant to the enforcement of the sentence, based on a hypothetical date of transfer, is supplied to the administering state before the transfer is effected; where this is not possible, the information should be supplied as soon as possible after transfer;

II. Instructs the Secretary General of the Council of Europe to transmit this recommendation to the governments of non-member States party to the convention and to the governments of states invited to accede to the convention.



# COUNCIL OF EUROPE

## COMMITTEE OF MINISTERS

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RECOMMENDATION No. R (84) 11

### OF THE COMMITTEE OF MINISTERS TO MEMBER STATES CONCERNING INFORMATION ABOUT THE CONVENTION ON THE TRANSFER OF SENTENCED PERSONS

*(Adopted by the Committee of Ministers on 21 June 1984  
at the 374th meeting of the Ministers' Deputies)*

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

Having regard to the Convention on the Transfer of Sentenced Persons of 21 March 1983 ;

Desirous of assisting Contracting States to fulfil their obligation, under Article 4.1 of the convention, to furnish sentenced persons to whom the convention may apply with information on its substance ;

Considering it essential that this information is provided in a language which the sentenced person understands ;

Convinced that a standard text to be used for conveying information on the substance of the convention to potential transferees will assist Contracting States in arranging for the necessary translations,

I. Recommends the governments of member states to provide an authoritative translation of the standard text annexed to this recommendation into their official language or languages, taking into account any reservations or declarations to the convention of which the potential transferees would need to be aware, and deposit the translation with the Secretary General of the Council of Europe at the time of ratification, acceptance or approval of the convention ;

II. Instructs the Secretary General of the Council of Europe to forward copies of the translations so received to each of the Contracting States for use by their prison authorities ;

III. Instructs the Secretary General of the Council of Europe to transmit this recommendation to the governments of the non-member states which have participated in the elaboration of the convention and to the governments of states invited to accede to the convention.

## APPENDIX

### Standard text providing information about the Convention on the Transfer of Sentenced Persons

The Convention on the Transfer of Sentenced Persons enables, under certain conditions, persons who have received a custodial sentence in a country other than their own to be transferred to their home country to serve the sentence there. A brief explanation of these conditions is given below. This document does not constitute an exhaustive description of the convention. If, therefore, you wish to enquire into the possibility of being transferred to serve your sentence in (administering State), you should ask the prison authority, or the appropriate authority in (administering State), for more detailed information, for example, to arrange for you to receive a copy of the convention and for both States to consider the possibility of your transfer. You may also address any request for information to a consular representative of (administering State).

#### *Who has to agree to the transfer?*

A transfer requires :

- a. the consent of the person concerned or, where requisite, that of his legal representative ;
- b. the consent of the State where he was sentenced ; and
- c. the consent of the State to which transfer is requested.

#### *Who may benefit from a transfer to (administering State)?*

You may be eligible for transfer to (administering State) if the following conditions are fulfilled :

- a. if you are considered a national of (administering State) ;
- b. if the judgment by which your sentence was imposed is final ;
- c. if, as a general rule, at least six months of your sentence remain to be served, though in exceptional circumstances this period may be less ; and
- d. if the offence for which you were tried is a criminal offence under the law of (administering State).

#### *What sentence would need to be served following transfer ?*

— (States using the "continued enforcement" procedure :)

The maximum sentence to be served following transfer would be the amount of the original sentence which remained after deduction of any remission earned in (sentencing State) up to the date of transfer. If the sentence imposed in (sentencing State) was longer or of a different nature than the sentence which could be imposed for the same offence in (administering State), it would be adapted to the nearest equivalent sentence which was available under the law of (administering State) without being longer or more severe than the original sentence.

— (States using the "conversion of sentence" procedure :)

It would not be possible to confirm before transfer the precise nature and length of the sentence to be served in (administering State), because the original sentence would need to be converted by (a court) (the competent authorities) in (administering State) following transfer to a sentence which could have been imposed if the offence had been committed in (administering State). You would be given some idea, however, of the nature and length of the sentence to which the original sentence might be converted in (administering State), to help you to decide whether to seek a transfer. Under the terms of the convention a sentence converted in this way will not be more severe nor longer than the original sentence, will not be subject to any minimum which the law of (administering State) may provide for the offence, and will take account of the full period spent in custody before transfer.

If you are transferred, your sentence will be enforced in accordance with the law and regulations which apply in (administering State).

### *Prosecution for other offences*

Please note that in the event of your transfer the authorities of (administering State) are entitled to prosecute, sentence or detain you for any offence other than that for which your current sentence was imposed.

### *Pardon, amnesty, commutation*

Your transfer would not prevent you from benefiting from any pardon, amnesty or commutation of sentence which might be granted by either (sentencing State) or (administering State).

### *Review of original judgment*

If new information came to light after your transfer which you considered grounds for a review of the original judgment passed in (sentencing State), it would be for (sentencing State) alone to decide on any application for review.

### *Termination of enforcement*

If for any reason whatsoever the sentence originally imposed in (sentencing State) ceased to be enforceable in (sentencing State), the (administering State) authorities, as soon as they were informed of this, would release you from the sentence being served. Similarly, when the sentence being served in (administering State) ceased to be enforceable there, you could no longer be required to serve the original sentence imposed in (sentencing State) if you should return there.

### *Some information on the procedure*

You may express your interest in being transferred to the authorities of either (sentencing State) or (administering State).

If the (sentencing State) authorities are prepared to consider your transfer, they will provide the (administering State) authorities with information about you, about the facts relating to your conviction and sentence and about the nature and length of your sentence. If the (administering State) authorities are prepared to consider your transfer, they will respond by providing (information about the nature and duration of the sentence you would need to serve after transfer)<sup>1</sup>, (an indication as to how your sentence might be converted following your transfer)<sup>2</sup>, together with information about the arrangements for remission, conditional release, etc. in (administering State).

Provided both States are content to agree to your transfer, you will be asked whether, having received and considered the information provided by (administering State), you consent to being transferred under the convention.

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1. Applies to states using the "continued enforcement" procedure.  
2. Applies to states using the "conversion of sentence" procedure.

# COUNCIL OF EUROPE

## COMMITTEE OF MINISTERS

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RECOMMENDATION No. R (82) 16

### OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON PRISON LEAVE

*(Adopted by the Committee of Ministers on 24 September 1982  
at the 350th meeting of the Ministers' Deputies)*

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

Considering that it is in the interests of member states of the Council of Europe to establish common principles on crime policy ;

Considering that prison leave contributes towards making prisons more humane and improving the conditions of detention ;

Considering that prison leave is one of the means of facilitating the social reintegration of the prisoner ;

Having regard to experience in this field,

Recommends the governments of member states :

1. to grant prison leave to the greatest extent possible on medical, educational, occupational, family and other social grounds ;
2. to take into consideration for the granting of leave :
  - the nature and seriousness of the offence, the length of the sentence passed and the period of detention already completed,
  - the personality and behaviour of the prisoner and the risk, if any, he may present to society,
  - the prisoner's family and social situation, which may have changed during his detention,
  - the purpose of leave, its duration and its terms and conditions ;
3. to grant prison leave as soon and as frequently as possible having regard to the aforementioned factors ;
4. to grant prison leave not only to prisoners in open prisons but also to prisoners in closed prisons, provided that it is not incompatible with public safety ;
5. to take all necessary measures in order that prison leave may be granted where possible, under well-defined conditions, to foreigners whose families do not live in the country ;
6. to take all necessary measures to grant prison leave where possible to homeless persons and persons with difficult family backgrounds ;
7. to consider the possibility of granting leave for offenders subject to "security measures" and detained elsewhere than in prison ;

8. to use the refusal of prison leave as a disciplinary sanction only in cases of abuse of the system ;
9. to inform the prisoner, to the greatest extent possible, of the reasons for a refusal of prison leave ;
10. to provide the means by which a refusal can be reviewed ;
11. to consult with other than prison authorities where appropriate and to seek their co-operation and that of the agencies and persons who can contribute to the better functioning of the system ;
12. to elicit the support of all prison staff ;
13. to provide the resources necessary for the system to function effectively ;
14. to supervise closely and evaluate the continuous functioning and development of any prison-leave system ;
15. to keep the public widely informed of the aims, operation and results of the system.

# COUNCIL OF EUROPE

## COMMITTEE OF MINISTERS

RECOMMENDATION No. R (79) 14

### OF THE COMMITTEE OF MINISTERS TO MEMBER STATES CONCERNING THE APPLICATION OF THE EUROPEAN CONVENTION ON THE SUPERVISION OF CONDITIONALLY SENTENCED OR CONDITIONALLY RELEASED OFFENDERS

*(Adopted by the Committee of Ministers on 14 June 1979,  
at the 306th meeting of the Ministers' Deputies)*

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

Desirous of facilitating the application of the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders, which was opened for signature on 30 November 1964 and entered into force on 22 August 1975,

- I. Recommends the governments of member states :
  1. If they are not yet Contracting Parties to the Convention, to ratify it as soon as possible with a view to extending this system of mutual assistance ;
  2. If they are Contracting Parties, with regard to :

*Article 15. first paragraph*

That the requesting state alone should be competent to grant a pardon or an amnesty or order a review of sentence, and that it should inform the requested state thereof ;

*Article 17*

That, when applying its law and deciding on the manner of enforcing the sentence, the requested state should take account, as far as possible, of the personal situation of the sentenced person before his incarceration ;

*Article 20*

That the requesting state be precluded from taking any of the enforcement measures requested unless it withdraws its request before the requested state has informed it of an intention to take action on the request, or unless the requested and the requesting states have decided by mutual agreement not to enforce the sentence in the requested state ;

*Article 21*

That the right of amnesty may be exercised by either the requesting state or the requested state, and that the requesting state alone should have the right to decide on any application for the review of a sentence ;

That the requesting state shall without delay inform the requested state of any decision that causes the right of enforcement to lapse, and vice versa ;

*Article 25*

That the right of enforcement should revert to the requesting state if the requested state expressly relinquishes it, which should only be possible if both the states concerned agree or if enforcement is no longer possible in the requested state ;

II. Invites the governments of member states Contracting Parties to the Convention to inform the Secretary General of the Council of Europe, within a period of five years, of the measures taken to implement this recommendation.

## OTHER COMMITTEE OF MINISTERS' DOCUMENTS

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Guidelines for prison and probation services regarding radicalisation and violent extremism

*(Adopted by the Committee of Ministers on 2 March 2016, at the 1249th meeting of the Ministers' Deputies)*

## I. TERMINOLOGY USED FOR THE PURPOSE OF THESE GUIDELINES:<sup>6</sup>

Radicalisation represents a dynamic process whereby an individual increasingly accepts and supports violent extremism. The reasons behind this process can be ideological, political, religious, social, economic or personal.

Violent extremism consists in promoting, supporting or committing acts which may lead to terrorism and which are aimed at defending an ideology advocating racial, national, ethnic or religious supremacy or opposing core democratic principles and values.

Dynamic security is a concept and a working method by which staff prioritise the creation and maintenance of everyday communication and interaction with prisoners based on professional ethics. It aims at better understanding prisoners and assessing the risks they may pose as well as ensuring safety, security and good order, contributing to rehabilitation and preparation for release. This concept should be understood within a broader notion of security which also comprises structural, organisational and static security (walls, barriers, locks, lighting and equipment used to restrain prisoners when necessary).

## II. SCOPE

The present Guidelines recommend measures to be taken by prison and probation services in order to prevent persons under their responsibility from being radicalised to accepting violent extremist views which may lead to terrorist acts, as well as to detect, manage and resettle radicalised persons.

Prisoners, including pre-trial detainees, as well as probationers and conditionally released offenders are the primary subjects of the interventions recommended.

Prison and probation staff are the primary actors to implement these guiding principles. Representatives of other agencies and of religious denominations working with prisoners and probationers, as well as legal counsel, family members and peer groups may also be concerned with these guiding principles.

Radicalisation is a social and political problem that concerns public authorities as a whole. Prisons are only one of the institutions in which radicalisation might occur, but only a comprehensive social and political approach to the root causes of the problem can efficiently address it.

Although prisoners and probationers at risk of being radicalised or of becoming violent extremists represent a small number in the Council of Europe member States, it is nevertheless

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<sup>6</sup> For the purpose of these Guidelines the use of "shall" continues CDPC drafting practice in the penitentiary field. This practice was established with the adoption of the European Prison Rules in 2006 (Recommendation Rec(2006)2 of the Committee of Ministers to member States). The use of "shall" is not to be interpreted in any way as denoting existing obligations under international law or otherwise as implying an imperative or mandatory rule for member States.

important to put sufficient resources and efforts into dealing with this problem efficiently given the potential danger it represents for society.

The present Guidelines shall be applied in conformity with the relevant international human rights instruments and standards and in full compliance with the European Convention on Human Rights.

These Guidelines underscore and further develop existing Council of Europe standards and shall be read together with the rules contained in the relevant Council of Europe recommendations, in particular the European Prison Rules (Recommendation Rec(2006)2 of the Committee of Ministers), the Council of Europe Probation Rules (Recommendation CM/Rec(2010)1 of the Committee of Ministers), the European Rules for juvenile offenders subject to sanctions or measures (Recommendation CM/Rec(2008)11), Recommendation CM/Rec(2012)12 of the Committee of Ministers concerning foreign prisoners, Recommendation CM/Rec(2014)3 of the Committee of Ministers concerning dangerous offenders and Recommendation CM/Rec(2014)4 of the Committee of Ministers on electronic monitoring.

The attention to some of the most relevant rules and principles contained in the European Prison Rules is specifically drawn by listing them in the text of the Guidelines in order to remind the prison and probation services that they should not depart from these when dealing with radicalised persons under their responsibility.

### III. BASIC PRINCIPLES AND GENERAL CONSIDERATIONS

#### a. Respect for human rights and fundamental freedoms

1. Preventing and tackling radicalisation and violent extremism shall always be based on the rule of law and shall comply with international human rights standards because respect for human rights and the rule of law is an essential part of a successful counter-radicalisation effort. Failure to comply with these is one of the factors which may contribute to increased radicalisation.

2. Torture and inhuman or degrading treatment or punishment is prohibited. Freedom of expression and freedom of religion shall be respected.

#### b. Respect for data protection and privacy

3. Any supervision and restriction of contacts, communications and visits to prisoners, due to radicalisation concerns, shall be proportionate to the assessed risk and shall be carried out in full respect of international human rights standards and national law related to persons deprived of their liberty and shall be in accordance with Rule 24 of the European Prison Rules concerning contact by prisoners with the outside world.

4. Where there is exchange of information related to radicalisation and violent extremism between prison and probation services and national law enforcement and intelligence agencies, strict and clear procedures shall be agreed and respected in terms of privacy and data protection.

5. Those working towards the rehabilitation of prisoners should be able to operate with appropriate autonomy and independence from those engaged in intelligence gathering on violent extremists. The success of rehabilitation is indeed premised upon the trust derived from such autonomy.

c. Imprisonment as a measure of last resort

6. In order to effectively apply the principle according to which prison shall be used as a last resort, a variety of individually tailored sanctions and measures shall be applied where possible in order to keep offenders in the community and to improve their crime-free life prospects. Co-operation with other agencies in this respect could contribute to exchanging good practices regarding general prevention measures related to radicalisation and violent extremism.

7. Young offenders may be particularly vulnerable to radicalisation. In order to avoid the negative effects of imprisonment, sanctions and measures in the community shall be considered first. Additional efforts and resources shall be allocated for working with these offenders.

d. Good prison management

8. Good management and good order in prison shall respect diversity, tolerance and human dignity of both prisoners and staff as this helps avoid situations conducive to radicalisation and violent extremism.

9. While not necessarily sufficient in themselves to trigger radicalisation - violence, racism, islamophobia and other forms of discrimination - generate resentment and provide the ground for radicalising narratives to take root. Inadequate detention conditions and overcrowding can also be factors enhancing the risk of radicalisation in prison. Tackling these issues should therefore be considered as an integral part of the counter-radicalisation effort.

10. Similarly, radicalisation processes can be accentuated and reinforced when disproportionate measures are deployed by the prison administration. Therefore punitive measures, use of force and means of restraint shall be proportionate to direct and serious threats of disruption of good order, safety and security in a given prison in order to preserve to the extent possible relations of trust and support in helping the reintegration of the offender.

11. Prison management shall involve consulting staff and, subject to the needs of good order, safety and security, taking the opinion of prisoners on matters of concern regarding the general conditions of imprisonment.

12. Prisoners' feelings of safety and trust in the legitimacy of staff's actions are likely to induce positive change and facilitate their rehabilitation and resettlement. Every effort shall therefore be made to preserve and build on such relations of trust in order to help offenders start or develop a crime-free life.

13. As much as possible, prison and probation services shall select and recruit staff with relevant linguistic abilities and cultural sensitivity. Intercultural and multifaith awareness training for staff shall form an integral part of education and training in order to promote understanding of and tolerance to diversity of beliefs and traditions.

14. Staff shall be selected, supported and trained in order to develop and maintain their professional ethics and resilience to potential pressure leading to radicalisation.

15. Educational activities are essential in the rehabilitation process of probationers or prisoners that may have adopted violent extremist views. Not only does it provide a structure to the daily routines during imprisonment, but it also provides the opportunity to develop new skills that can facilitate resettlement.

16. Tackling the issue of radicalisation in prison requires that good prison management is not only related to high professional ethics and attitudes but requires adequate resources. This can mean that additional funds might be needed for recruitment and training.

#### IV. PRISON AND PROBATION WORK

##### a. Assessment

17. Risk and needs assessment should be carried out by multi-disciplinary teams. When initial and subsequent risk and needs assessment of offenders is carried out, special attention shall be paid to identify offenders vulnerable to radicalisation. In conformity with the existing national procedures regarding risk assessment, offenders' views should be recorded in relation to this and offenders should be given the opportunity to challenge such assessments.

18. In order to establish individual treatment programmes aimed at successful rehabilitation of prisoners and probationers, assessment tools specifically tailored to identify risks of radicalisation shall be developed and used from the outset of the implementation of a penal sanction or measure and repeated at regular intervals as necessary when there is a concern that the prisoner might be undergoing a process of radicalisation.

##### b. Admission to prison and allocation

19. Special attention shall be paid to admission procedures of all prisoners as the good carrying out of such procedures allows feelings of trust and safety to be established in prisoners, enabling proper assessment of their health condition at entry, and contributing to good risk and needs assessment, sentence planning, classification, allocation and accommodation.

20. Regardless of whether prisoners sentenced for terrorist-related crimes are kept in separate prisons or wings or are dispersed across the prison system, the risk they may pose, including the risk of radicalising other prisoners, shall be evaluated individually before their allocation is defined and shall be reviewed at regular intervals.

##### c. High-security prisons or high-security sections in prison and prison transfers

21. The need to keep prisoners sentenced for terrorist-related crimes in high security prisons or under high levels of security in ordinary prisons shall also be evaluated individually and such decisions shall be reviewed at regular intervals. Rule 53 of the European Prison Rules, regulating the use of special high security or safety measures, shall apply in such cases. Furthermore, as stated in rule 70 of the European Prison Rules, any prisoner subjected to such measures shall have a right of complaint and appeal to an independent authority.

22. The regular transfers of prisoners sentenced for terrorist-related crimes may have a negative impact on the reintegration prospects of such prisoners. The need for such transfers shall therefore be carefully evaluated on an individual basis against the risk posed by such prisoners.

##### d. Culture and religion

23. In accordance with Rule 29 of the European Prison Rules, cultural and religious traditions shall be taken into account regarding nutrition and as far as practicable regarding clothing, opportunities for worship and religious holidays. Where possible, prisoners shall be allowed to take their meals at times that meet their religious requirements.

24. Prison services shall be encouraged to establish agreements with religious denominations in order to allow a number of approved religious representatives proportionate to the number of prisoners of the same faith in a given prison to enter the institution. Religious representatives should be properly trained on how to exercise their functions in a prison environment.

25. In order to induce positive personal change in prisoners, preferences shall be given to religious representatives who are attuned to the cultural norms and values and conversant in the languages spoken by the prisoners. Sufficient time, adequate space and resources shall be provided to enable approved religious representatives to meet prisoners in private and to hold collective services.

e. Inter-agency co-operation

26. Prison and probation services shall co-operate with each other as well as with other law enforcement agencies at local, national and international level, as dealing with radicalisation and violent extremism leading to terrorist acts requires a comprehensive approach based on professional standards.

27. Prison and probation services shall co-operate with other public and private agencies and wider civil society in order to provide aftercare and to contribute to the resettlement and reintegration of offenders.

28. It is in the interest of the prison and probation services to collect knowledge and best practices and share these internationally.

V. DETECTION, PREVENTION AND DEALING WITH RADICALISATION AND VIOLENT EXTREMISM IN PRISON

a. Use of dynamic security

29. Frontline staff shall be trained to act in line with principles of dynamic security in order to maintain safety, security and good order in prison and to contribute to the prisoner's rehabilitation. They should be trained in particular to use intercultural mediation and different techniques of intervention in case of crisis management.

b. Procedures for detection

30. Frontline staff shall be trained and supported in order to be able to distinguish between religious practices and the adoption of violent extremist behaviour and shall be empowered to react swiftly and proportionately in case of real and imminent risks posed to the life, health or personal integrity of prisoners or staff. In particular, staff shall be given tools to report concerns regarding signs of radicalisation to violent extremism and appropriate procedures shall be applied to assess promptly and professionally such risks.

31. Where specific tools and methods for identifying radicalised prisoners are developed and used by prison and probation services in order to help their frontline staff, these shall be based on professional and ethical standards and shall be reviewed and updated on a regular basis.

32. When developing indicators of radicalisation, staff shall be warned that such indicators are not to be considered in isolation but in the context of personal features and specific circumstances of a given case in order to avoid arbitrary conclusions.

33. Adequately trained members of prison or probation staff may be appointed as necessary, in case radicalisation is an issue of concern in a given prison or probation area, in order to ensure that staff know where they can readily obtain advice on radicalisation issues and prisoners or probationers know how to report concerns about radicalisation.

c. Special programmes

34. Special programmes, including the use of mentors, shall be developed for and offered to prisoners and probationers, where appropriate, and in particular for those who are considered susceptible to radicalisation, in order to help them find life options free from crime and violent extremism. Specially trained staff shall be involved in carrying out or supervising such programmes.

35. Former violent extremists who have renounced violence may serve as legitimate actors for the rehabilitation of probationers or prisoners.

36. Involvement of religious representatives, volunteers, peers and family members can also be considered on a case-by-case basis as they may be very beneficial for efficient reintegration of offenders.

## VI. POST-RELEASE WORK

37. In order to aim at successful reintegration, prison and probation services shall not work in isolation, but communicate and establish links with community organisations in order to ensure the continuation of special programmes developed during imprisonment or probation after release, or after probation supervision ends, where appropriate.

38. Similarly, former prisoners shall be assisted in contacting different support structures in the community. On a case-by-case basis, the involvement of families and social networks shall be considered, as these may affect positively the resettlement process.

39. Electronic monitoring schemes and other control measures shall be combined with other professional interventions and supportive measures aimed at the social reintegration of radicalised offenders.

## VII. RESEARCH, EVALUATION AND COMMUNICATION

40. Sufficient resources shall be allocated to carry out scientific research and evaluation of existing programmes tackling radicalisation. Any such programme shall be knowledge-based and shall be regularly reviewed.

41. In order to ensure public reassurance and understanding, regular work with the media shall be carried out.

# RESOLUTIONS

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**RESOLUTION (70) 1**

*(Adopted by the Ministers' Deputies on 26 January 1970)*

**PRACTICAL ORGANISATION OF MEASURES FOR THE  
SUPERVISION AND AFTER-CARE OF CONDITIONALLY  
SENTENCED OR CONDITIONALLY RELEASED OFFENDERS**

The Committee of Ministers,

Recalling the Resolution (65) 1 on suspended sentence, probation and other alternatives to imprisonment;

Considering that effectiveness of treatment measures presents in all member states a most important aim of criminal policy;

Considering the desirability of avoiding the imposition of prison sentences whenever that proves possible;

Considering that probation, conditional release and similar measures providing treatment in freedom are being developed in most member states;

Considering that it is advisable to devise the most suitable legal framework and the most effective services and methods of treatment in respect of these measures;

Considering that the establishment of common principles for the use of conditional measures is desirable for the profitable development of these measures; and in addition that this will help the implementation of the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders,

Recommends governments of member States :

1. (a) To consider their legislation in order :



- to examine the advisability of introducing, developing and improving the various forms of suspended sentence and related measures, or of adjusting the methods of carrying out such measures ;

- to examine the possibility of abandoning or reducing limitations for the application of conditional measures (concerning categories of offenders or categories of offences) which hinder individualisation of sentences ;

(b) To envisage that, so far as possible, a pre-sentence investigation which provides useful information on the offender's character and social circumstances should be ordered each time pronouncement of probation or a related measure implying supervision is considered ;

(c) To employ for such investigation personnel trained to obtain and present objective information on the offender's needs and treatment potentialities ;

(d) To provide guarantees against unjustified intrusion into privacy in the course of the social enquiry as well as against improper use of the information obtained ;

2. (a) To review and, if necessary, amend the legal provisions attached to the granting of conditional release such as those relating to the length of the sentence imposed, the minimum period to be served before release, or limitations concerning certain categories of offenders, for example, recidivists ;

(b) To ensure that those serving life sentences have the possibility, by means of periodical review, of being granted conditional release or at least clemency after due consideration of their personality and the need for the protection of society ;

(c) To require of the probation service, or such other services as may be competent in the matter, the duty, in addition to statutory after-care, to offer after-care even to offenders unconditionally released ;

(d) To ensure that any procedure for conditional release provides for each offender to have his case fully examined and make known his own views, for prompt decisions, for due account to be taken of the offender's treatment needs and for the protection of society ;

(e) To review and develop, especially in the light of current innovations, the means intended to facilitate the transition from institutional life to freedom on release. In particular specific and detailed plans for release should be begun at an appropriate moment during the sentence ;

3. (a) To secure the development of methods of supervision which further the creation and utilisation of a relationship between the probation officer and his client

in their social context through which help may be given with personal problems;

(b) To review and, if necessary, initiate legislation so that any requirements accompanying probation, conditional release and similar measures may enable the most effective individualisation of treatment to be achieved, whilst also ensuring that these requirements fully respect human rights and personal dignity;

(c) To examine the existing provisions for the treatment of offenders presenting special problems (such as drug or alcoholic addiction) and if necessary extend such provisions;

(d) To examine, and if necessary develop, the residential provisions for those on probation or conditional release;

(e) To ensure that modification of requirements laid down in orders of conditional sentence or release may be possible in the light of changed needs or circumstances;

4. (a) To ensure no matter what the administrative framework in which probation, parole and prison services are placed, that there is full integration of their methods for dealing with offenders;

(b) To ensure the recruitment of a professionally qualified personnel as the essential basis for an effective probation service;

(c) To consider the value attached to the using of voluntary workers in collaboration with professional staff;

(d) To give attention where necessary to the improvement of probation officers' conditions of service in view of the special difficulties inherent in their work;

(e) To arrange for initial training of professional staff which shall complete any pre-entry training undertaken as well as for in-service training to improve theoretical knowledge and practical experience;

(f) To secure effective procedures of selection and instruction for voluntary staff as well as reimbursement of their expenses;

(g) To consider case loads of professional and voluntary officers in order to arrive at the most effective treatment and the most suitable employment of human and material resources;

5. (a) To provide for a general administrative inspection of the probation and parole services;

(b) To provide supervision in order to secure control of the enforcement of orders of probation or conditional release;

(c) To ensure that casework supervision is provided for individual officers so as to maintain and develop professional standards;

(d) To secure efficient case recording;

6. (a) To ensure that requirements imposed under orders of probation or conditional release shall be observed by enabling appropriate sanctions to be used to this end;

(b) To consider their legislation and practice so that any sanctions invoked, where the probationer or the parolee without relapsing into criminality evades supervision or disregards requirements, may take account of, not only the breach of the conditions imposed, but also the offender's overall attitude and the needs of his treatment;

(c) To consider their legislation and practice in order to secure that where there is relapse into fresh criminality there shall be the choice of :

- imposing an unconditional sentence for both the new offence and that which previously resulted in a conditional measure;

- maintaining the initial conditional measure possibly with modifications of some conditions laid down in it and imposing a second penalty, but this time unconditional in respect of the new offence;

- pronouncing a second conditional measure covering both the original and the new offence;

7. To promote research on selection of offenders for probation as well as on the working of probation and conditional release systems;

8. To secure wide dissemination of the Council of Europe report on the practical organisations of measures for the supervision and after-care of conditionally sentenced or conditionally released offenders in particular in their appropriate services;

Invites governments to report to the Secretary General of the Council of Europe every three years informing him of the action taken by them on these recommendations.

Resolution (67) 5

*(Adopted by the Ministers' Deputies on 4th March 1967)*

Research on prisoners considered from the individual angle, and on the prison community

The Committee of Ministers,

Considering that in the member countries of the Council of Europe, despite the existence of alternative measures to prison sentences, a very large number of offenders serve their sentences or undergo their treatment in prison establishments;

Considering the need to prepare offenders for their return to society and to combat relapse into crime;

Considering that these objectives have not been achieved, relapse being apparent on a large scale among former prisoners;

Considering also the serious expense which institutional treatment represents for Governments and, as a consequence, the need to increase the effectiveness of such treatment to the maximum;

Whereas, therefore, it is necessary to undertake a detailed study of prisoners as individuals as well as of the prison community;

Whereas, one of the objects of the Council of Europe in the matter of crime problems is to promote criminological research by an exchange of information and by co-ordination of efforts in this sphere;

Whereas such co-operation would make it possible to harmonise measures of European criminal policy;

Having regard to the recommendations of the Third Conference of Directors of Criminological Research Institutes,

Recommends member Governments to:

(a) encourage research on prisoners and the prison community, for example, by establishing research centres within their prison administrations or supporting research undertaken by independent organisations;

(b) assist research workers by giving them access to prison establishments and by ensuring the co-operation of public services;

(c) take the findings of such research into consideration when working out measures of crime policy;

(d) promote research to evaluate results of new measures of criminal policy, and more particularly undertake research when changes are made or contemplated;

Recommends in particular that research promoted or contemplated by Governments should cover all aspects of institutional treatment, in other words:

- (a) that research on prisoners considered from the individual angle should include:
- (i) clinical studies;
  - (ii) comparative studies of the offender's personality before and after a particular measure has been applied to him;
  - (iii) studies which relate the subject's conduct after treatment to the treatment he received;
  - (iv) a study of the correlations between offenders' characteristics and the effects of the various forms of treatment applied;
- (b) that research on the prison community should include:
- (i) studies of the role, viewpoints and attitudes of prisoners;
  - (ii) studies of the role, viewpoints and attitudes of prison staff;
  - (iii) studies of the relations between these two groups, which together comprise prison society;
  - (iv) studies of those factors which in the social structure of the prison impede change, thereby giving rise to a marked resistance to reform within the prison organisation.

## Resolution (62) 2

*(Adopted by the Ministers' Deputies on 1st February 1962)*

### Electoral, civil and social rights of prisoners Recommendation 195

The Committee of Ministers,

Having regard to Recommendation 195 (1959) of the Consultative Assembly of the Council of Europe on penal reform;

Having regard to the resolution adopted in Paris on 6th June 1961 by the Ministers taking part in the Conference of European Ministers of Justice;

Having regard to the necessity of promoting in member countries of the Council of Europe a prison system which, while protecting society, nevertheless upholds respect for human dignity;

Considering that the "Standard Minimum Rules for the Treatment of Prisoners", adopted on 30th August 1955 by the first United Nations Congress on the Prevention of Crime and Treatment of Offenders, should be supplemented to this end, defining by common agreement the limits which a regime of detention may legitimately set to the exercise by the prisoner of rights pertaining to him as an individual;

Recommends that member Governments of the Council of Europe should apply the following provisions so far as is consistent with their constitutional principles and international undertakings.

#### *A. General Principles*

1. The rules set out herein define the effect of detention on the electoral, civil and social rights which the prisoner, untried or convicted, would enjoy if he were free. They constitute examples of the application of common minimum rules.

2. When, in a given State, a person is deprived by law of the rights referred to at Point 1, it is desirable that these rules be taken into consideration, should the relevant legislation be modified.

In the absence of any national law on a particular point, these rules should be regarded as expressing European legal conscience in that respect.

3. These provisions are founded on the principle that the mere fact of detention does not affect the possession of these rights, but that their exercise may be limited when it is incompatible with the purpose of imprisonment or the maintenance of the order and the security of the prison.

4. Under no circumstances shall the rules set out in this resolution be interpreted as restricting or derogating from the rights and freedoms recognised in the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocol thereto.

## *B. Electoral Rights*

5. If the law allows electors to vote without personally visiting the polling-booth, a detainee shall be allowed this prerogative unless he has been deprived of the right to vote by law or by court order.
6. A prisoner permitted to vote shall be afforded opportunities to inform himself of the situation, in order to exercise his right.

## *C. Civil Rights*

7. (a) Except as stated at Point 8 below, the mere fact of imprisonment shall not impede a prisoner from exercising his civil rights in person or through a representative acting on his behalf;  
  
(b) If a prisoner finds it impossible to exercise his rights in person, he shall be allowed to be represented.
8. The prison administration may forbid a prisoner to exercise his civil rights:  
  
(a) if the exercise of such rights is incompatible with the aims of imprisonment or the treatment of the offender;  
  
(b) if, in the case of a convicted person, the exercise of such rights may be postponed without prejudice to his interests until his release.

## *D. Social Rights*

9. When a prisoner has acquired the right to social security benefits before his imprisonment, this shall not be annulled by the mere fact of imprisonment.
10. A prisoner shall as far as possible preserve his right to social security benefits during imprisonment; all appropriate arrangements to that effect shall be made.
11. With the exception of pensions to which the prisoner is entitled by virtue of contributions paid only by him, the payment of benefits to the prisoner may be suspended or reduced during the period of imprisonment, but family allowances for his dependants should continue to be payable directly to the beneficiaries with or without the consent of the prisoner.

## *E. Protection of Rights*

12. A prisoner may at all times defend a legal action. As a plaintiff he may continue proceedings which were pending at the time he was imprisoned, if the requisite action cannot conveniently be postponed until his release.
13. He may likewise institute new proceedings if such action cannot conveniently be postponed until his release and is compatible with the aims of the imprisonment or the treatment of the offender.
14. A prisoner shall not have the right to appear in person before the competent court, unless the law or the court require his presence.

15. In civil and administrative proceedings to which the prisoner may be a party under the rules now set out, he shall have the right to communicate orally or in writing with the person empowered to defend his interests.

16. Subject to the special regulations governing communications with lawyers, visits and correspondence received by a prisoner may be supervised by the competent authority.

17. A prisoner shall have the right to make prompt written application to government departments or similar bodies, in order to safeguard his interests. All correspondence from such departments or bodies shall be transmitted to the addressee without delay.