



Strasbourg, 22 August 2019

**Comments for the attention of the European Committee on Crime Problems (CDPC)
prepared by the European Committee for the Prevention of Torture and Inhuman or
Degrading Treatment or Punishment (CPT)**

**on the proposed revision of the European Prison Rules
and Commentary thereto**

The CPT appreciates the opportunity afforded to it by the European Committee on Crime Problems (CDPC) to comment formally on the proposed revision of certain provisions of the 2006 European Prison Rules (EPR). The Committee also welcomes the fact that a representative of the CPT's Secretariat has been able to participate in the meetings of the Council for Penological Co-operation (PC-CP) Working Group (WG) and to contribute to the process of the revision of certain rules of the EPR as well as the Commentary thereto since 2017.

At the outset, the CPT wishes to state that it considers the current process of updating the EPR, as envisaged by Rule 108, is both timely and necessary. The EPR have become an important reference for practitioners and policy makers and are frequently cited by the European Court of Human Rights in its judgments as well as by the CPT in its reports. In the period since the adoption of the EPR in January 2006 there have been considerable developments in how prisons should operate and be scrutinized stemming from the case law of the European Court of Human Rights, the standards developed by the CPT and other monitoring bodies, international standards (notably, the UN Mandela Rules of 2015 and the UN Bangkok Rules of 2010) and academic research.

The CPT recalls that the CDPC, at its June 2018 meeting, mandated the PC-CP WG to prepare preliminary draft texts amending eight areas of the EPR, that the PC-CP WG finalised its proposals at its meeting of 1-3 February 2019 and that the revised Rules will be presented to the PC-CP plenary meeting in November 2019. Based on the version approved at the February 2019 meeting (ref: PC-CP (2018) 15 rev 5), the CPT will briefly comment on each revised area in turn.

1. Solitary confinement (Rule Nos. 3, 24, 53, 53A and 60.6a-e)

i. Special high security or safety measures and separation

The CPT acknowledges the challenges faced by prison authorities to manage particularly violent prisoners who pose a threat to the physical safety of staff and other prisoners and/or to the good order and functioning of a prison establishment. However, any separation of prisoners due to such behaviour which results in a situation of de facto solitary confinement must be based on formal procedures regulated by law. In this respect, see for example the approach set out in the Committee's 21st General Report on the CPT's Activities (2010-2011). In the last few years, the CPT has through its multiple prison visits advocated that far more proactive action is required by prison administrations to avoid situations whereby such prisoners slip into a situation of long-term isolation due to a lack of engagement by the prison authorities to establish a clear pathway out of segregation.

With this in mind, the CPT supports the approach taken by the drafters of Rule 53 (as amended) regarding special high security or safety measures and of Rule 53A (new) concerning separation. The negative effects of solitary confinement are such that its application should be considered as a last resort measure and clearly circumscribed in terms of duration. Even when solitary confinement is imposed for short periods, prisoners must be offered a minimum of social contact and at least one hour of outdoor exercise every day. The aim should be that prisoners in isolation benefit from a structured programme of purposeful and preferably out-of-cell activities and are provided with meaningful human contact for at least two hours every day and preferably more, with staff and/or with one or more other prisoners. Imposing solitary confinement for prolonged periods has a negative impact on the mental health of prisoners and does not lead them to behave better. Prisoners requiring longer-term separation could be placed, for example, in step-down units with an increased multi-disciplinary staff presence to assist the prisoner to prepare for a return to an ordinary accommodation unit and eventually the community.

Further, the CPT considers that it is important that European and United Nations minimum standards for the treatment of prisoners should be aligned on such fundamental issues as solitary confinement.

ii. discipline and punishment

The CPT has consistently advocated that solitary confinement as a disciplinary measure should be an "exceptional measure" and its duration should not exceed 14 days for a given offence, and preferably lower. Further, there should be a prohibition of sequential disciplinary sentences resulting in an uninterrupted period of solitary confinement in excess of the maximum period. If a prisoner has committed more than one very serious disciplinary offence for which it is deemed appropriate to impose more than one punishment of solitary confinement which totals more than 14 days, the prisoner must be provided with a period of time out of solitary confinement (i.e. an interruption of several days) after 14 days before a new period of solitary confinement is served. Any offences committed by a prisoner which call for more severe sanctions should be dealt with through the criminal justice system.

Further, the CPT considers that solitary confinement as a disciplinary punishment is fundamentally harmful for children and therefore should be prohibited. Indeed, in many European jurisdictions this is already the case. Likewise, there can be no justification for imposing solitary confinement on pregnant women, breastfeeding mothers or parents with infants in prison.

Consequently, the CPT supports the changes proposed under Rule 60.6 a. to d.

2. Records and file management (No 15.1 and 16A on “Admission and record keeping”)

The CPT considers that it is important to ensure that the necessary information concerning a prisoner is recorded upon their entry into prison, and it agrees with the proposals set out in Rule 15.1. Likewise, the Committee concurs with the formulation of new Rule 16A which highlights the importance of ensuring that meticulous record keeping for each prisoner should continue throughout the time that the prisoner is kept in prison.

3. Women (No 34)

In the period since 2006 there has been a recognition supported by numerous studies that there is a need for a distinctive approach towards women prisoners. In many countries, women prisoners are often treated like male prisoners with no specific rules and regulations addressing their particular needs as women. Prison policies and daily practices within prisons usually range from being gender-neutral to being gender-biased, especially as women make up a small minority of the overall prison population and the focus of prison systems is oriented toward the standard male prisoner. However, women have particular biological and gender-specific needs and vulnerabilities that require an alternative prison policy oriented toward their requirements. The physical environment is an important aspect of this.

Therefore, while welcoming the amendments made to Rule 34, notably Rule 34.1 which promotes specific gender-sensitive policies, the Committee considers that there is a strong case for developing a specific Council of Europe Recommendation on women in detention building on the 2010 UN Bangkok Rules and its own work.¹

4. Foreign nationals (No 37)

In many Council of Europe countries, the number of foreign national prisoners is increasing and in several countries they make up over half of the prison population which places particular challenges on prison administrations. It is positive that the Council of Europe has adopted a specific recommendation concerning foreign national prisoners (CM/Rec (2012) 12) which lays out in detail the approach to be followed with regards to them. The amendments made to Rule 37 reflect the key principles contained in the 2012 Recommendation, notably that:

- positive steps to be taken by prison authorities to ensure that foreign prisoners are not in practice treated worse than other prisoners;
- special attention be given to contacts with the outside world;
- foreign national prisoners be considered for early release as soon as they are eligible.

¹ See CPT Factsheet on Women in Prison, January 2018: CPT/Inf(2018)5.

The CPT concurs with the proposed changes. It also considers that there is an increasing need for prisons to have access to interpretation services to ensure that foreign national prisoners who are unable to communicate with staff directly do not become isolated and/or frustrated.

5. Use of restraints (No 68)

The CPT subscribes to the general precept that instruments of restraint should only ever be used as a last resort and governed by the principles of legality and proportionality, which is reflected in the proposed Rules 68.1 and 68.5 and Rules 68.2 and 68.3. It is also important to recall that instruments of restraint shall never be used on women during labour, during childbirth or immediately after childbirth (proposed Rule 68.7).

Moreover, as with instances of use of force, it is essential for the purposes of oversight and accountability that every use of restraint is properly recorded in a specific register. This obligation is set out in proposed Rule 16A.2.f regarding individual prisoners but should also encompass the compilation of reliable data about the overall use of restraint in an individual prison and across a prison system.

6. Complaints (No 70)

The CPT considers that it is important that prisoners have effective avenues at their disposal for making a complaint, both internal complaints procedures and external procedures to an independent body. In its 27th General Report published in April 2018, the CPT set out the general principles which should guide complaints mechanisms in prisons. These principles are reflected both in the text of the proposed Rule 70 and the commentary thereto and represent an important substantive addition to the EPR. Further, the draft Rule reflects the requirements that have been established by European Court of Human Rights case law under Article 13 of the European Convention on Human Rights.

In light of the potential for abuse in prisons, it is important that they do not become places of potential impunity and that complaints concerning allegations of ill-treatment are not dealt with informally but are investigated effectively. The proposed Rules 70.3 and 70.5 address this issue.

The CPT also subscribes to the importance of ensuring prisoners understand the complaints procedure and are effectively informed, paying due attention to their language and mental capabilities. Likewise, it is important that prisoners may make confidential complaints, seek legal advice, have a right of appeal and not be subject to any reprisals for having made a complaint. Lastly, requiring prisons to keep a record of all requests and complaints (with due regard to confidentiality and safety) is not only a matter of accountability but also of enabling management to identify any particular trends which may require addressing at a higher level than the individual complaint.

7. Adequate staffing level (Nos 71 to 91 and specifically 83.a)

It goes without saying that prisons cannot operate effectively without adequate numbers of trained staff. However, in far too many Council of Europe member States prisons have too few staff working directly with prisoners. In addition, prison officers are often not adequately trained nor sufficiently supported to carry out their challenging tasks professionally. Consequently, it is important that the EPR explicitly set out the necessity of prisons being adequately staffed at all times. The CPT also welcomes the adoption of the Guidelines regarding Recruitment, Selection, Education, Training and Professional Development of Prison and Probation Staff by the CDPC in April 2019.

Further, in the light of the CPT's experience,² the Committee considers it important that draft Rule 83a places a duty on States to ensure that measures are in place to guarantee a minimum level of service in prisons to cope with disruptions such as strikes by prison staff.

8. Inspections and monitoring (Nos 92 and 93)

The CPT has consistently promoted the establishment of independent national monitoring mechanisms for prisons and it is appropriate that the EPR should spell out more clearly the modalities and powers associated with independent monitoring bodies, referencing the Optional Protocol to the UN Convention against Torture (Articles 17 to 21) and the Mandela Rules (Rules 83 to 85). Further, the CPT subscribes to the proposal that monitoring bodies should not only make recommendations in their reports but that there should be a response to such recommendations by the national authorities indicating the action taken and that the publication of the monitoring reports and responses should be the norm.

The CPT notes that the proposed Rule 93 does not comment on the composition of the inspection teams although the commentary to the text does reference certain criteria and refers to Mandela Rule 84.2 and Article 18.1 of OPCAT. The Rule would strengthen the independent nature of the monitoring bodies by including certain criteria required for membership of such a body.

Commentary to the EPR

As regards the updated commentary to the EPR, the CPT notes that it was approved by the CDPC in June 2018 and that the text was sent to the Committee of Ministers of the Council of Europe for information. The Committee is pleased to note that the revised commentary takes into account the CPT's standards developed since 2006 and that throughout the text numerous references are made to the CPT in a manner that should assist policy makers and practitioners in better understanding the scope and purpose of the Rule in question.

² See, in particular, the CPT's Public Statement in respect of Belgium concerning the failure of its authorities to put in place a minimum level of service to guarantee the rights of inmates during periods of industrial action by prison staff, July 2017: CPT/Inf (2017) 18.